



**PETER A. ALLARD
SCHOOL OF LAW**
THE UNIVERSITY OF BRITISH COLUMBIA



The Adjustment of Labour Relations: From “Power Control” to “Game Behaviour”?

Qi Li

Capital University of Economics and Business

APDR Working Paper Series

Volume 4 Number 1

ISSN 2371-6304



by Qi Li, 2017.

This article is made available as part of the Asia Pacific Dispute Resolution Working Paper Series and is licensed under a [Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License](https://creativecommons.org/licenses/by-nc-nd/4.0/) (CC-BY-NC-ND)

THE ADJUSTMENT OF LABOUR RELATIONS: FROM “POWER CONTROL” TO “GAME BEHAVIOUR”?

Qi Li

Capital University of Economics and Business

Introduction

In 2010 after the global financial crisis, a wide range of strikes demanding for higher wages swept China’s eastern coastal areas from February to July. The strikes showed the lack of effective internal adjustment mechanisms of labour relations in Chinese enterprises. Employers unilaterally determining the level of wages and deteriorating employment conditions have intensified the conflict between employers and employees. In the absence of effective communication, workers cannot properly claim their rights and interests so that they ultimately resort to strikes. It can be predicted that China’s years of “relatively stable” labour relations have reached a turning point. Imbalanced labour relations may bring about foundational change in enterprises, which urges policy makers to formulate or adapt policies to accommodate the change.

This paper points out that, due to China’s market transition and imbalance of power between labour and capital, labour relations are “employer-led”, whereas the government, based on the considerations of political stability and economic development, has been adopting the “power control” model to adjust labour relations. As the private sector and foreign-invested enterprises are relatively excluded from “power of control”, this model is becoming less and less effective. Labour conflicts are being accumulated and intensified, becoming the principal social unrest in China today. A considerable amount of the 2010 strike cases have been solved by negotiations between employers and employees. This negotiation mechanism, unlike “collective consultation” by the Chinese government and government-run unions, is collective bargaining and “game playing” between the two parties of interests.

The “Employer-Led” Labour Relations

Along with the three decades of economic reform, the State Owned Enterprise (SOE) reform and the growth of the private sector, China’s labour relations have been transformed gradually by the market economy. The main parties of labour relations have been clearly defined. In the state-owned enterprises, workers have completely lost their original status of “national and business owners”. They are separated from state assets and from means of production and they use their labour to earn a living.¹ While workers’ rights, status and income continue to be declining, the SOE managers are rising in power, status and income, which has greatly changed labour-capital relations from differentiation to opposition. On the one hand, workers’ status is changed from state assets ownership to enterprise employees; they seek to maximize wages and optimize working conditions. On the other hand, management seeks to maximize profits and economic efficiency.

When China's private sector developed in the 1990s, labour relations were the typical employment relationships. Employees and employers were two different/opposing groups of economic interests. The interests of the two sides were a pure "zero-sum" relationship where the employers sought maximization of profits and employees asked for maximization of wages. The price of labour was determined by the market, in compliance with the economics theory of "wage rate is not higher than the marginal productivity". The market adjusted the price/wage rate according to the degree of labour scarcity. Labour relations maintained a clear contractual relationship, and employers and employees retained the rights of dismissal and resignation.²

In contemporary China, in private, foreign-invested or the state owned enterprises, labour relations are characterized by the dominance of employers (management); that is, labour is controlled. In the context of excess labour supply, the labour market is a buyer's market and is controlled by employers. Employers screen and select job applicants; working conditions, including work environment, work hours, and labour intensity, are determined by the employers; employers unilaterally decide all aspects of labour process, including hiring and firing of the employees, wages and benefits, rewards and punishment, etc.³

In general, the employment relationships have become the main form of labour relations in China, which is featured as "zero-sum" game, and "employer-led" imbalanced labour relations.

The "Power Control": The Government's Adjustment of Labour Relations in Post-Reform China

After China entered into the market economy in the 1990s, the central government conducted a study on the future development of labour relations. The basic visions of labour relations adjustment were summarized in a 1993 report: to safeguard the legitimate rights and interests of both sides of the labour relations; to speed up the legal construction of labour relations adjustment; to define the adjustment models and establish operational mechanisms; and to comprehensively use various tools to achieve the main objectives of adjusting labour relations. The report defined the adjustment model as "internal voluntary consultation combined with timely government intervention."⁴ The ministry of labour further issued a report on December 21, 1993, declaring: a) to establish labour relations to adjust systems compatible with the socialist market economy; b) to establish national legislation and Labour Standards to regulate labour relations; c) to establish internal coordination mechanisms of labour relations in enterprises; d) union and management representatives shall be involved in coordinating labour relations under government guidance; e) the administrative departments shall supervise and maintain labour relations; f) and judicial arbitration to protect the interests of both sides. In the past two decades, these ideas and models have not been achieved. Both in the process of the transformation of labour relations and after the transformation, the government has always retained the model of "power control" of labour relations. Of course, this is due to a number of political and economic factors.

The factor of political stability

The emergence of "power control" model is directly linked with China's political

environment. With the deepening of the market economy reform, the rising social unrests have threatened the Chinese Communist Party's (CCP) political stability. *People's Daily*, CCP's official newspaper, published an "editorial" in 1990 that read:

"Stability overrides everything. We must unswervingly adhere to the *Four Basic Principles*, consistently oppose bourgeois liberalization and struggle against peaceful evolution. If we allow bourgeois liberal ideas to be spread, certainly there will be more turmoil, no peace, and the goal of doubling the national economic growth will not be realized. As long as we maintain stable development, China will fashion fundamental change."⁵

Since then, "maintaining stability" has been closely associated with economic reform, laying the foundation for "power control". The requirements of "maintaining stability" have significant impact on the creation and development of the "power control" model. "Maintaining stability" has formed a certain mentality in government officials; officials were highly sensitive and weary of workers' spontaneous union organization and other self-organizations to protect labour rights, and they considered the self-organizations as destabilizing factors to be prohibited. As a result, although workers have become aware of their legitimate rights and interests, they are not able to organize unions that truly represent their interests against capital interests. Over time, the lack of autonomous unions coupled with the lack of internal adjustment mechanisms make labour relations imbalanced, and collective power of workers weakened. Hence, the foundation of the government's original design of "internal voluntary consultation" is missing.

The factor of economic growth

The performance of the local party and government officials is linked to both maintaining stability and economic growth. According to the political philosophy of the central government, social stability depends on economic growth. Long lasting stability cannot be achieved with poor economic performance. Economic growth in turn relies on capital growth. Hence, it is inevitable that the government power will be utilized to support capital and form "alliance" with capital.⁶ Since the economic opening-up, the private sector has steadily contributed to the fiscal revenue of local governments, which is the main factor to evaluate the political performance of local party and governments. The private sector has not only achieved the goal of profit maximization, but also promoted the growth in GDP, employment, import and export, tax and other macroeconomic indicators. Officials contributing to the growth of these indicators would pass political performance evaluation, get promoted and also gain other political benefits.⁷

Government officials, whose performances rely on economic growth, are bound to tilt the power to capital. This will inevitably lead to a consensus between political officials and businessmen: officials are indifferent to the violation of the legal labour rights and allow business owners to make their own rules. This is the huge obstacle to the implementation of labour laws. Workers, therefore, are not protected even when laws and regulations are in place.⁸ Moreover, the local governments' strong motivations to attract investment have led to the suppression of workers' self-organization. As a result, with the apparently imbalanced power

relations, “internal voluntary consultation” is hardly possible, which has further strengthened the logic and legitimacy of government “power control”.

Due to the above two factors, the designed adjustment model of “internal voluntary consultation combined with timely government intervention” has not been achieved. The model of “power control” continues to exist nowadays. Due to China’s peculiar political and economic factors, all levels of governments over-rely on “power control”, hoping to handle labour relations with the absolute power. This is why, the “power control” model is concentrated in the legislation of labour law and policy, labour security supervision, labour dispute mediation and petition, and so on.⁹

“Collective bargaining” under Government-run unions

Since 1993, The All-China Federation of Trade Unions (ACFTU) has been promoting a so-called “collective bargaining” system. The system is defined in Union Law, Labour Law, and Labour Contract Law as: “employees shall sign collective agreements with employers, in respects to wages, working hours, breaks and vacations, labour hygiene and safety, insurance and welfare, and other matters.” However, more than 20 years later, it is still not an effective adjustment mechanism of labour relations. The Vice President of ACFTU admitted in 2008 that the “collective bargaining” system was ineffective, with low quality and limited impact. He attributed the ineffectiveness to two factors: labour relations are imbalanced; and unions lack professionals to handle collective bargaining.¹⁰

There are two deeper causes of the ineffective collective bargaining. The first reason is that grass-root unions are hardly strong actors in collective bargaining. ACFTU has begun to set up unions in the private sector and foreign-invested enterprises since 1990s but has failed to mobilize the workers to be involved. Currently, the majority of the grass-root unions are actually controlled by employers. Union leaderships either are weary of employer retaliation or are not entrusted and supported by workers. Hence most unions only exist in name, and workers can hardly rely on unions to negotiate with employers.¹¹ The second reason is the lack of the worker’s participation. Currently, China’s collective agreements formation process is essentially a symbolic signing ceremony between employer representatives and union representatives that are controlled by employers. The “collective agreements” are copy-and-pasted directly from the template provided by unions of higher levels or the labour administrative departments. The contents of collective agreements are almost the same. Hence, there is no process of “negotiation” or “bargaining”, nor participation of employees. A survey shows that most workers do not know the existence of such agreements. The “collective agreements” cannot reflect the actual working conditions of different enterprises, nor the specific employment needs in different types of enterprises. They certainly cannot reflect workers’ specific demands of interests and rights.¹²

Simply put, the “collective bargaining” system by ACFTU is rather a specific form of the “power-control” model. Especially after 2007, ACFTU has basically given up on promoting this system as the main mechanism to handle labour relations. One leader of ACFTU suggested that since unions and enterprises were two equal entities of collective wage bargaining, collective wage bargaining should be guided by local governments. We should create a system of government-led collective wage bargaining.¹³

The “power control” model is contrary to the “employer-led” labour relations, which has serious consequences. Under the “employer-led” labour relations, when employers’ wrongful actions go beyond the limits of tolerance of workers, the workers would be pushed to organize strikes to express their dissatisfaction. The wave of strikes in 2010 indicates that the “power control” model is no longer effective.

The “Hidden Mechanism”

Among the 2010 strikes, a considerable number of cases are solved by negotiations between employers and employees. An analysis of these cases indicates that these strikes may have triggered a system of negotiations between employers and employees. However, because of the legal ambiguity of strikes itself, the negotiation mechanism is hard to be defined (to the satisfaction of all parties involved). Therefore, I call the collective bargaining and negotiation mechanism that is triggered by strikes as “hidden mechanism”.

The definition and the characteristics

“Hidden mechanism” can be defined as effective collective bargaining between employers and employees, which is triggered by non-legal labour strikes to protect workers’ legal rights and interests.

The main characteristics are:

First, it is a mechanism not stipulated by law. China’s laws and administrative regulations do not provide the basis for strike-triggered collective bargaining. The 1992 “Union Law” and the 1994 “Labour Law” grant unions the right to collective bargaining with employers. The Ministry of Labour and Social Security issued the “Interim Measures for Collective Wage Bargaining” and “Provisions on Collective Agreement”, which require that the collective negotiation mechanism should be initiated on “invitation” basis. That is, one party should invite the other to collective bargaining by written documents. According to the regulations, both employers and employees have the right to invite. On the contrary, in the “hidden mechanism”, the “invitation” is not expressed by written documents or via unions, but rather formulated by the radical strikes without notice in advance, in order to exert pressure on management to sit at the negotiation table.

Second, it is a pre-negotiation mechanism. In Western countries, the strike is a mean of pressure only after collective bargaining comes to stalemate. Because the strike increases the cost of negotiations, it is strictly regulated to low occurrence rate during the process of collective bargaining. Conversely, in “hidden mechanism”, the strike occurs prior to collective bargaining, and it is a necessary cost to collective bargaining. Of course, in our case study we find that strikes do not break out suddenly for no reason. Usually, it happens only after workers fail at communicating to management through normal channels and have to organize strikes to trigger collective bargaining.

Third, bargaining and negotiations in the “hidden mechanism” present the same characteristics of collective bargaining. Workers in the strike elect their representatives to negotiate. These representatives are low-and-middle level managers that come from different departments and represent the interests of different groups of workers. Furthermore, during the

negotiations, labour demands are made from grass-roots workers, ranging from dozens to hundreds. The large amount of demands adds more bargaining power for worker representatives, which complicates negotiations and makes the negotiations meaningful. The strike action also forces management to change attitude. Some cases indicate that through strikes, management becomes more serious to consider workers' demands. For example, in the Nansha Corp. strike, workers and management reached agreement on wage increase after negotiation. A worker representative commented that before the strike, management decided unilaterally the personnel system; however, after the strike, workers became more equal to management and could include their own input. Other workers commented that the former "strict hierarchy" of the Japanese management had been broken, and workers were treated better.¹⁴

Reactions to "hidden mechanism" by government-run unions and the government

Because of the high cost of negotiations, and because strikes would have a negative impact on "maintaining stability", unions and the government respond timely on the "hidden mechanism".¹⁵

Responding to the series of strikes in 2010, on May 29, ACFTU issued the "Opinions on Further Improving Workforce and Social Stability". The document declared that "protection of labour rights is the prerequisite and basis for maintaining stability." It required unions at all levels "to comprehensively promote collective wage negotiations; to promote enterprises to establish collective bargaining mechanism, resolution mechanism, and payment security mechanism; and to raise employee remuneration, especially for front-line staff and workers." On June 4, 2010, ACFTU issued "The Emergency Notice on Further Strengthening the Role of Unions", promoting the building of unions in foreign-invested enterprises, Hong Kong, Macao, and Taiwanese-invested enterprises and to include migrant workers. On the same day, the ACFTU requested local unions to take the initiative and invite the enterprises without the collective wage negotiation system to establish the system; to give legal "rectification proposals" to the enterprises that reject the negotiation offers or postpone decisions; and to take the enterprises that refuse to respond to the "rectification proposals" to the labour administrative departments.¹⁶ These documents showed that the ACFTU was trying to eliminate strike actions by strengthening the union construction and to promote collective bargaining on the "invitation" basis.¹⁷

Local government leaders also began to re-evaluate the "power control" model in adjusting labour relations. They instructed local legislative bodies to come up with appropriate measures. For example, Guangdong Province, together with the city of Guangzhou and the city of Shenzhen, had tried to revise the local legislations on collective bargaining from June to September 2010.¹⁸ The drafts of legislations also provided restrictions on the strike for the sake of prevention. However, because the "PRC Constitution", "Labour Law", "Union Law" and "Labour Contract Law" are all ambiguous on the strike, local legislations are limited to the existing legal framework to further specify preventative provisions on "work-stoppages" and "sabotage". Also because of this limit, the provisions of the same draft of legislation contradicted one another. For example, in the "Regulations on Collective Bargaining in Shenzhen Special Economic Zone (draft)", released by Shenzhen Municipal People's Congress

in August 2010, there were four provisions on “work-stoppages” and “sabotage”. Articles 24, 28, and 29 required employers and employees to carry out collective bargaining timely in the event of “work-stoppages” and “sabotage” and prohibited strike actions during the process of collective bargaining. However, Article 57 also prohibited the employers from terminating labour contracts in the event of “work-stoppages” and “sabotage”. This provision implicitly granted legal recognition of “work-stoppages” and “sabotage”.¹⁹

Conclusion

The wave of the 2010 strikes marked the completion of the market-oriented transformation of labour relations in China. It is an inevitable outcome of the two contradicting models of labour relations adjustments (the “employer-led” model and the “power control” model). From the responses of the unions (which are essentially government agencies) and the governments, we can see that the ACFTU and the governments still lack a clear understanding of the nature of the current labour relations adjustment mechanisms. They continue to limit the strike rights and promote the kind of “collective bargaining” under the “power control” model. In this context, I believe strikes will continue to be a manifestation of labour conflicts, and will continue to trigger “hidden mechanism”. If the governments do not change the approach, employers and employees can only achieve their interests and, hence, balance of labour relations through this mechanism.

Endnotes

¹ Chang, Kai, “Characteristics and Trends of Labour Relations in Contemporary China”, in Chang, Kai and Qiao, Jian, eds., *Chinese Labour Relations Report - Characteristics and Trends of Labour Relations in Contemporary China*, China Labour and Social Security Press, 2009, pp. 18.

² *Ibid* at 24-25; Institute of Labour Science research group, “Issues in Building Harmonious Labour Relations”, *Chinese Labour*, Issue 3, 2007, pp. 6-12; Yang, Yunxia and Qin, Xiaojing, “Contradictions in the Current Labour Relations in the Private Sector”, *Economic Issues and Research*, Issue 4, 2005, pp. 91-93; Cheng, Liansheng, “Trends and Policy Analyses in Chinese Labour Relations”, *Teaching and Research*, Issue 4, 2009, pp. 5-11.

³ Yi, Huansan, “The Private Enterprise Labour Relations in the Context of Capitalist Labour Market”, *Shandong Social Science*, Issue 7, 2009, pp. 92-96.

⁴ The Labour Relations Adjustment Research group, Ministry of Labour, “Some Basic Ideas on the Adjustment of China’s Current Labour Relations”, *Chinese Labour*, Issue 3, 1994, pp. 20-23.

⁵ Cited in Ling, Zhijun, *Ups and Downs: Chinese Economic Reform Memorandum 1989-1997*, Shanghai: Oriental Publishing Center, 1998, pp. 68.

⁶ Zheng, De, “Root Causes in China’s Current Labour Relations”, *Phoenix Weekly*, Issue 28, 2009.

⁷ Xia, Xiaolin, “The Private Sector: Labour Relations and Coordination Mechanism”, *Management World*, Issue 6, 2004, pp. 33-52.

⁸ Liu, Kaiming, “Chinese Migrant Workers in the Context of Globalization”, Chang, Cheng, Qiao and Fu, eds., *Labour Relations and Labour Policy in the Era of Globalization*, Beijing: China Labour Press, 2003, pp. 227-238.

⁹ Cited in Zhuang, Qinghong, “Social Reconstruction: Reconstruction of Power or Reconstruction of the Society”, *China Youth Daily*, September 15, 2010.

¹⁰ “Speech by Comrade Zhang Ming Qi in the Forum of ‘To Conduct In-depth Study and Implement the Spirit of the 17th Party Congress and to Strengthen the Trade Union Coordination of Labour Relations’”, January 5, 2008, available at www.acftu.net.

¹¹ Xu, Xiaoying and Guo, Juan, “Establishing Trade Unions: Lobbying and ‘Being Refused’”, *Business Week*, Issue 15, 2005, PP72-75; Xu, Xiaojun and Li, Ke, “In the Eyes of Workers: Survey on Enterprise Unions”, *Journal of Chinese Institute of Labour Relations*, April 2006, Vol. 20, Issue 2, pp. 48-52; Jiao, Jing, “Trade Unions: the Gap Between the Ideal and the Reality”, *Sino- Foreign Management*, Issue 10, 2006, pp. 28-29; Cadres Training Center, Shanghai Trade Union Management and Professional College, “Survey on the Shanghai Trade Union Status Quo And the Need of Training”, *Chinese Labour Movement*, Issue 1, 2008, pp. 38-40; Tianjin Federation of Trade Unions – Tianjin Trade Union Management and Cadres College research group, “On the Professionalization of the Trade Union Presidents of the Non-Public Enterprises”, *Labour Movement Research*, Issue 14, 2007, pp. 10-19.

¹² Li, Qi, “Reform and Adjustment: Labour relations in Contemporary Chinese State-owned Enterprises”, Beijing: China Labour and Social Security Press, September 2003, pp. 272-273.

¹³ “Speech by Comrade Zhang Ming Qi in the Forum of ‘To Conduct In-Depth Study and Implement the Spirit of the Seventeenth Party Congress and to Strengthen the Trade Union Coordination of Labour Relations’”, January 5, 2008, available at www.acftu.net.

¹⁴ Xiao, Sisi, “Nansha Corporaton Raised 800 RMB Pay to Solve the Labour Strike”, *Xinhua Net*, available at <http://finance.sina.com.cn/g/20100627/14528187706.shtml>.

¹⁵ For example, it was estimated that the Nanhai Honda strike from May 22 to June 4 2010 caused daily loss as high as 240 million to the company’s shareholders, see Liao, “Naihan Honda strike resulted in daily loss of over 200 million RMB”, *China Automotive Network*, available at <http://cars-china.com/yejie/changjiixinwen/2010052874751.html>. In another example, in the wake of the Nansha Corp strike, there were work stoppages in six autoparts suppliers, consequently, Toyota had to close two assembly lines, see Wu, Wei Ting, and Chen, Yong, “The Incident of Guangzhou Denso 72-Hour Work Stoppage”, *Economic Observer*, June 25, 2010, available at <http://finance.ifeng.com/news/20100625/2346932.shtml>.

¹⁶ Liu, Sheng, “ACFTU Requires Enterprise Trade Unions to Establish Collective Wage Consultation System”, *China Youth Daily*, available at *People Net*, July 3, 2010, available at <http://politics.people.com.cn/GB/12043258.html>.

¹⁷ For example, the Beijing Municipal Federation of Trade Unions has set up regulations that by the end of 2010, at least 60% of all enterprises were to establish unions, and at least 82% of employees need to join the enterprise unions; by the end of 2011, the numbers need to rise to 75%, and 87% respectively; and by the end of 2012, the numbers need to rise to 90% and 92% respectively. See Rao, Pei, “Beijing is to fully implement collective wage negotiations”, *Legal Evening News*, September 26, 2010, available at *Sina* <http://news.sina.com.cn/c/2010-09-26/135921172797.shtml>.

¹⁸ For example, the “Guangdong Enterprise Democratic Management Bill Draft” specifies that when more than one-third of workers required collective wage negotiations to the unions, the unions shall raise the requirements to the enterprise management on behalf of the workers; and when there is no union in place or when enterprise unions are not able to perform their duties properly, the local federation of trade unions shall organize employees to democratically elect negotiation representatives. These provisions promote workers’ participation in labour collective bargaining.

¹⁹ At the time of writing, these legal and legislative drafts had not passed in the local NPC standing committees.