

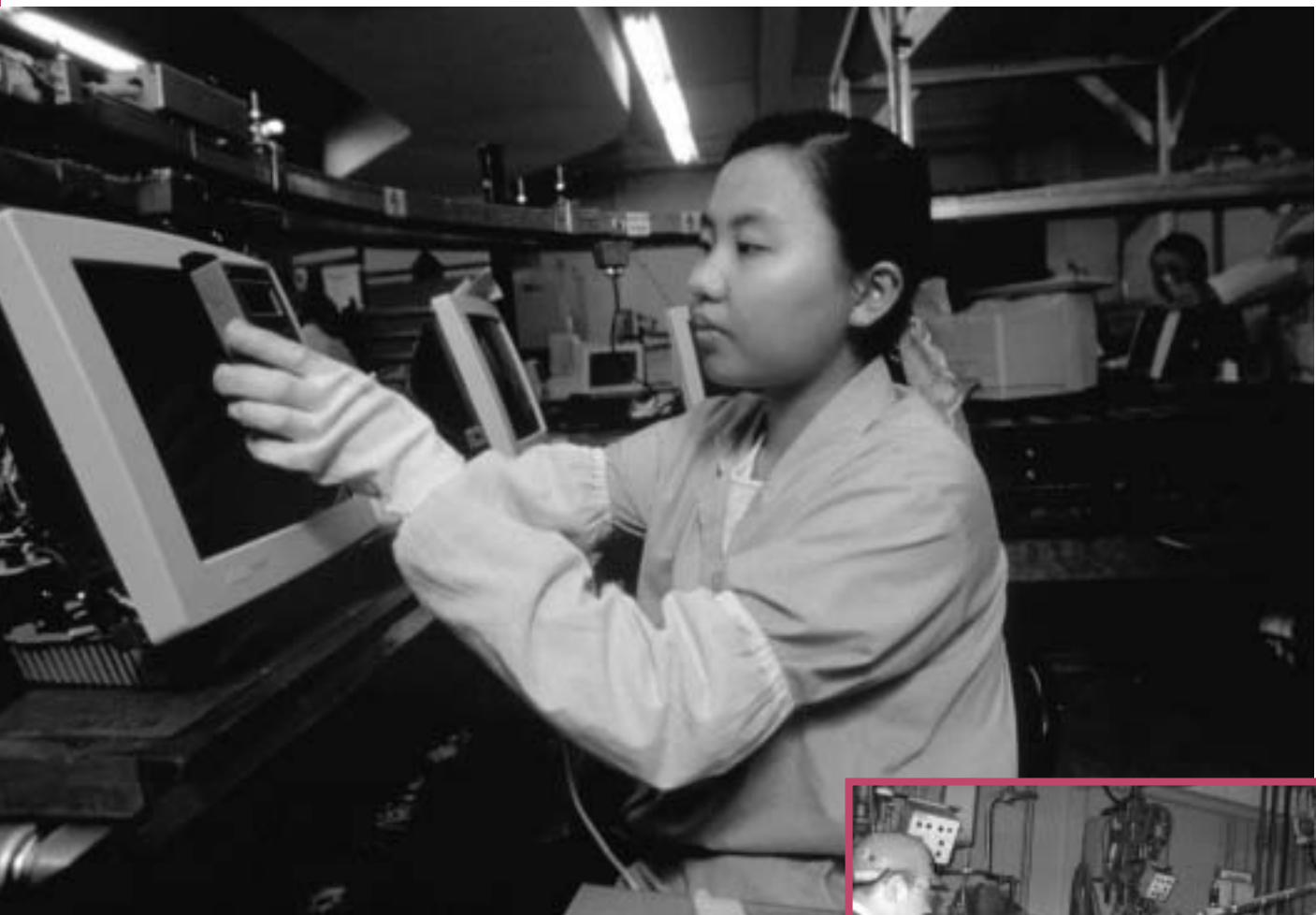
# INTERNATIONAL union rights

Volume 11 Issue 4 2004

INTERNATIONAL CENTRE  
FOR TRADE UNION RIGHTS

CENTRO INTERNACIONAL  
PARA LOS DERECHOS  
SINDICALES

CENTRE INTERNATIONAL  
POUR LES DROITS  
SYNDICAUX



## Trade union rights in China

# Volume 11 Issue 4 2004

Journal of the International Centre for Trade Union Rights  
● Centro Internacional para los Derechos Sindicales  
● Centre International pour les Droits Syndicaux

# INTERNATIONAL union rights

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Four issues: £20/US\$35/C30  
Cheques should be made payable to *IUR* and sent to  
ICTUR International Head Office, UCATT House,  
177 Abbeville Road, London SW4 9RL, UK

Printed by Upstream, London

INTERNATIONAL union rights  
ISSN 1018-5909

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# Editorial: China and the labour movement

**I**n the world's most populous nation, the majority still endure 'back-breaking labour in the fields' in conditions far removed from the astonishing urban development along China's coast as the economy opens to foreign investment. Multinational corporations, partnered with state companies, are competing for shares in the domestic market and building vast production facilities for the global export trade.

The attraction for capital is undoubtedly tied to China's low labour costs, but *IUR's* contributors suggest that the investment is bringing clear advantages for at least some Chinese workers. Kent Wong describes the improvement for workers in major cities as 'undeniable', while Cathy Walker explains that the standard of living, even among the peasants, 'has improved dramatically since 1992'. But Pun Ngai draws our attention to the dire situation of rural migrant workers who form a 'vulnerable underclass living in constant insecurity'.

## Trade liberalisation and workers

While the rapid economic boom may be delivering some benefits, the opening of this vast economy impacts throughout the rest of the world. This has been apparent in the wake of China's entry to the World Trade Organisation in 2001. A further huge change will come with the phasing out of the Multi-Fibre Arrangement (MFA) on trade in textiles at the end of 2004. Katie Quan describes this as the ending of '30 years of restriction of imports', which may lead to 50,000 job losses in California alone, with 'millions' more likely to be affected

in Bangladesh, Indonesia and Mexico.

The workers who will be forced to restructure their lives are now quite reasonably looking to their trade unions for protection from the worst of the coming social and economic impacts. And the potential impacts are by no means limited to the textiles industry. Finnish union leaders examine factory relocation, and decide 'that we cannot compete with China on wages'.

Yet just as unions mobilise responses, strong arguments are being constructed that call into question both the authority and value of any efforts to halt global transformations which fail to forge a common solidarity between workers in all of the countries concerned.

## Don't blame the workers

Some in developed countries rouse support for trade barriers by accusing Chinese workers of 'stealing our jobs'. However, it is not the Chinese working class that is wreaking havoc with employment prospects in other countries, but multinational corporations and the institutions of international trade. We need to accept the legitimate interest that Chinese workers have of ensuring continued economic growth and job creation in order to have a proper base from which to build strategies that might prevent the corporations from exploiting that situation.

Whatever we say about jobs and development in China, a real issue arises in relation to core labour standards. China has ratified neither of the key ILO conventions on freedom of association (Conventions 87 and 98), and frequently stands accused of violating trade union rights, particularly around the formation of independent trade unions. China may wish to argue that its refusal to ratify Conventions 87 and 98 relieves it of the obligation under international law to respect the principles of freedom of association, yet this is not an argument for which anyone should entertain any sympathy. Under the terms of the ILO Declaration of Fundamental Principles of 1998, all members of the ILO accept a duty to respect the 'core' labour standards, whether they have ratified them or not. And there is clear evidence of a sustained failure to respect these principles by China, particularly around the autonomy of the trade union movement.

The close relationship between the central union federation and the ruling party, and the entrenchment in law of the monopoly status of the ACFTU, prevents many unions from building any kind of relationship with the ACFTU. The problem the international trade union movement now faces is how to take on board the sheer scale of the ACFTU, which is the de facto organisation for more than 100 million members. As such it is by far the largest trade union in the world, sharing a scale of membership closer to that of the 148 million strong international confederation ICFTU than to any other national centre. Just as the question of how to engage with China is a key issue for corporate and governmental actors, it will be a crucial question for the trade union movement over the next decade.

## Next issue of *IUR*

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# Collective bargaining: problems and solutions

Up to now, the system of collective contracts has been implemented in China for 10 years. According to the data published by the All China Federation of Trade Unions (ACFTU), by the end of 2003 there had been 672,900 collective contracts covering 1,214,000 enterprises and 103,500,000 employees in China. In terms of the increasing speed and absolute quantity of Chinese collective contracts, no country or region could be comparable with China. However, a related report by the Ministry of Labour and Social Security of China indicated that in recent years, the number of labour disputes has increased by 40 per cent each year. On the whole, the number of disputes has doubled every three years. In 2003, there were 225,000 cases of labour disputes, which involved more than 800,000 workers. Certainly, there is no direct corresponding relationship between the high number of collective contracts and the growth in labour disputes, however, the data raises questions about the development of collective contracts and the adjustment of labour relations.

**T**HE implementation of collective contracts in China is legally based on the *Labour Law of the People's Republic of China*, which stipulates that employees in an enterprise may sign collective contracts with the enterprise on wages, working hours, break and vacation, occupational health and safety, insurance and welfare. The draft of a collective contract should be approved by a meeting of employees representatives or by all employees after discussion. The trade union, in a unionised enterprise, represents employees and will sign the collective contract with the enterprise on their behalf. For those enterprises which do not have a trade union, employee representatives (elected by employees themselves) sign the collective contract with the enterprises. The concrete rules for the implementation of collective contracts, the *Regulations on Collective Contracts*, were brought into effect in 1995 at the same time as the Labour Law.

## Development of the law

In December 1994, Mr Wei Jianxing, the president of the ACFTU and a member of the Standing Committee of the Political Bureau of the CPC at that time, presided the 2nd conference of the 12th ACFTU executive council, which definitely brought forward the idea that to promote the system of equal negotiation and collective contract is the important task of trade unions in implementing the *Labour Law of the People's Republic of China*. This session of the council also advanced requirements for this task in detail. The decision of promoting collective contracts gained support from the central government and

from the China Enterprise Confederation. In May 1996, the ACFTU together with the Ministry of Labour and Social Security and the State Economic and Trade Commission and China Enterprise Directors Association, issued the *Notice on implementation of collective bargaining and collective contract step by step*, which regulated that the system of collective bargaining and collective contracts should be 'put into practice on the basis of positive reliability, quality-guaranteed and effect-focused step by step'.

One of the important characteristics of collective contracts in China is top-down implementation pushed by administrative force. To promote collective contracts, the ACFTU prescribes the tasks and targets for each trade union nationwide and assesses the performance of each trade union based on such a criterion. This manner of administrative promotion makes signing collective contracts become a kind of 'movement'. In a short time, many enterprises – both state-owned and non-public – signed collective contracts with trade unions. However, in terms of the numbers of employees concerned, there were only about 22 per cent from non-public enterprises.

## The impact of collective contracts

There is no consensus on the effects of collective contracts in China. The officials from ACFTU deem that "along with the universal implementation of the collective contracts system, China has taken the first step of establishing an effective mechanism to enable both bodies of labour relations to bargain in order to settle labour relations problems legally and autonomously." However, government officials from the labour administration departments do not think this system has taken on such a great influence. In addition, some scholars regard the collective contracts in China like a formal system which has no substantial effect on the adjustment of labour relations.

In terms of my opinion, it is incorrect to simply deny the positive influence of collective contracts on the adjustment of labour relations. Nevertheless, at present, only a few collective contracts have indeed exerted effects on labour relations in enterprises, while the significance of most collective contracts is just confined to disseminating labour laws. Namely, the only function is to let the enterprise and the employees know that there is a method of collective contract in adjusting labour relations.

## Bargaining and workers' rights

This situation of collective contracts in China is caused by many restrictions. In terms of laws and rules, although the Labour Law stipulates that signing collective contracts is the right of workers and trade unions, it has not yet concretely

One characteristic of collective contracts in China is top-down implementation pushed by administrative force

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Application of the principles of Conventions 87 and 98 of the International Labour Organisation to China is an issue requiring in-depth investigation

regulated how to ensure the implementation of this right. Generally speaking, to realise the right of collective bargaining, it should combine to another two rights of workers and trade unions, namely, the right to organise workers' own trade unions and the right to strike. In other words, the right of collective bargaining must be based on the right to organise and this in turn is supported by the right to strike. These so-called Three Labour Rights, the right to organise, the right to bargain and the right to strike, are an inseparably integrated system. However, in today's China, these three rights are incomplete.

In terms of the situation of trade unions in state-owned enterprises, these unions have not changed their subsidiary role to enterprise management, and the president of the trade union is still treated the same as a deputy of management. At the same time, less than 30 per cent of private enterprises have organised trade unions. Furthermore, most trade unions in private enterprises are employer-dominated. In such a situation, it is quite difficult for trade unions to genuinely represent employees in bargaining with enterprise management.

The right to strike has not yet been ratified by Chinese laws. Although there is no clause in laws forbidding strikes, neither are there laws that protect strikes. Some local courts even judge that workers participating in strikes should bear criminal responsibilities in the name of "crime of mobbing to disturb social orders" or "crime of provoking a quarrel to create trouble". In such a context, it is impossible for trade unions to depend on the right to strike to deter or force management in collective bargaining.

The incomplete set of rights leads to nonstandard bargaining procedures and impacts upon the content of the contracts. Employers reject collective bargaining and contracts instinctively, especially in private enterprises. The *Trade Union Law*, amended in 2001, confirms that the behaviour of 'refusing equal negotiation without a warrant' is a breach of the law and that 'the people's government above the county level should take charge of correction'. These stipulations seem to be correcting the incomplete set of rights, but in practical implementation, due to the imbalance of power and rights between capital and labour, these unspecific administrative measures have not yet taken effect.

#### Looking to the future

At present, although the system of collective bargaining and collective contracts is not perfect and its impact is still limited as the basic instrument of labour relations adjustment in a market economy, this system has been ratified by laws and is in the process of being accepted by society. Therefore, the question as to how to further consummate this system is a significant task for governing labour relations in the future.

In the long run, the consummation of the collective contracts system in China needs to develop the legislation of collective labour rights and carry out systematic reconstruction. To this end, application of the principles of Conventions 87 and 98 of the International Labour Organisation to China is an issue requiring in-depth investigation. According to the current political and legal

environments in China, there is no condition for pluralism of trade unions, but trade unions still need democratisation and mass basis. Furthermore, just by reason of the system of centralised trade unions, it becomes even more necessary to solve the representative problem of trade unions. The most urgent issue for Chinese trade unions is how to be accepted by workers. It could be a good approach for trade unions to delegate and contact workers through collective bargaining implementation. For this purpose, we must legislate related laws, including the Law on Trade Union Organisation, Collective Contract Law, the Law on Strikes and so on. Now labour law academics in China have begun to advocate further legislation in these areas.

Since lawmaking and system reconstruction is a lengthy process, the present consummation of the collective contracts system could also focus on implementation and technique levels. Regarding this, several questions need to be taken into consideration:

**Boost the collective bargaining from enterprise level to industrial level or regional level.** From the experience of each country, the effects of collective bargaining at industrial level excel the bargaining at enterprise level, especially when workers are in a comparatively weak position. Industrial bargaining could avoid the direct counterwork between trade unions and enterprise management and escape the control on trade unions and collective bargaining by management. There is the same experience in China.

**Emphasise the actual effects and focus on the bargaining of a single issue, in particular, regarding wages.** If possible, it is surely better to bargain on total requirements. But in view of actual effects, we had better aim at the concrete situation of enterprises or industries and emphasise particularly on a certain aspect, such as collective dismissals from state-owned enterprises, wages and overtime in private enterprises, occupational health and safety problems, and so forth.

**Emphasising the actual effects of collective contracts is not only about the quantity.** To a certain degree, collective contracts could be a kind of demonstration. Not every enterprise trade union is able to bargain, but there will be some positive effects once they put bargaining into practice. Thus, there should be an explicit criterion on the content, procedures and fulfillment of collective contracts. For this purpose, the Ministry of Labour and Social Security has amended the *Regulations on Collective Contract* again, which has come into effect since 1 May 2004.

What is more, it is important to make clear that employees themselves should participate in collective bargaining. Collective bargaining is not only the right of trade unions, but also a right of workers, and workers entrust trade unions to represent them in bargaining. This is a general knowledge about the nature of collective bargaining in market economy, but it still needs comparative efforts to make this point clearer in China. It is worth noticing that this September the ACFU brought forward corresponding counter measures to some questions mentioned above in the *National exchange conference on work experience of collective contract by trade unions*. This must be good news.

# Unions *need* to talk

**T**HE US apparel industry has outsourced work for more than four decades, but soon there will be a dramatic acceleration of this trend. On 1 January 2005, the worldwide textile trade agreement known as the Multi-Fiber Agreement (MFA) will terminate, ending 30 years of restriction of imports through quotas. Researchers predict that manufacturers will close factories in dozens of countries in Latin America and Southeast Asia and will shift apparel production to countries where profits can be maximised – especially China. In Los Angeles alone, of the 90,000 Latina immigrants currently employed, upwards of 50,000 will likely lose their jobs within the next few years. Millions of workers in Bangladesh, Indonesia and Mexico have made urgent appeals to address the devastating consequences of this new free trade environment.

While garment unions will be fighting to retain jobs in many countries, they will also need to seek long-range solutions to worker empowerment. It makes sense that whereas multinational corporations have global sourcing strategies, workers should have countervailing international labour strategies. Just as unions developed coordinated organising and bargaining activities for different locations within the US, so now should they follow the work overseas and unite workers across borders, particularly vis a vis common employers. Only then can they hope to regain the leverage that was lost when corporations outsourced to foreign shores.

## Trade unions in China

To be sure, there are big problems with Chinese unions. The All-China Federation of Trade Unions (ACFTU) is the official union in China, and is the only organisation that can legally give sanction to unions that form at the grassroots level. This means that workers who have concerns about the ACFTU cannot form independent unions, but must work within the existing union structure for change. In practice, this has meant that public dissidence is not tolerated, and worker organisers have been jailed without due process for criticising government and union officials.

Another problem is that the ACFTU has not been effective in organising in China's changing economy. Unions had, and continue to have, high density in government-owned manufacturing and services. However as the economy has shifted to private ownership, unions have maintained collective agreements in some large private and foreign-owned enterprises, but these are few. In the special economic zones employing millions of migrant workers where sweatshop exploitation is rampant, unions are virtually non-existent.

Even more troubling is the ACFTU's inability to lead workers struggles. Although Chinese laws make it hard to organise, in fact millions of workers engage in wage disputes every year. The first months of 2004 saw a wave of strikes throughout Guangzhou province. In almost every case, the

union neither represents the workers in their lawsuits nor their strikes.

## The need for engagement

If we begin to engage with Chinese unions, we are certain to find opportunities to share experiences and be helpful. In researching labour issues in China, I have found that worker organisers and union leaders alike are eager to learn from foreign experience. While interviewing a young man who had participated in a strike in Guangzhou involving 8,000 workers at his sheet metal factory, I suggested that the gains he and his co-workers had made as a result of the strike would be more far-reaching if the agreements could be institutionalised in a collective bargaining agreement. This gave him pause for thought, because while his experience with trade unions was not very good, it was indeed a possibility that unions could play a positive role in securing workers rights.

Some ACFTU officials can only say what they have said for decades, but others are struggling with the tremendous gap between what the union is and what the workers need. They recognise that the ACFTU must change in order to be relevant, and they are struggling to find new ways to organise and establish collective bargaining relationships. It would be really helpful for these union staffers to have more models to learn from.

It is time that garment workers who are losing work due to the MFA meet Chinese garment workers who are gaining work. This inevitably breaks down barriers and demystifies the other side through humanising it, leading to commitment on both sides to work in solidarity.

The next step would be to learn more about each other. So little is known by the non-Chinese world about China, especially about labour. Those who read Chinese have access to a wealth of research, literature, and journalism about labour issues that is not available in other languages. Organisations like universities and media organisations have an especially important role to play.

Finally, unions need to begin to talk with each other. The challenge will be to base these relationships upon a firm commitment to democracy and respect for human rights while at the same time respecting and reaffirming the right of national labour movements to have varying models, styles, and practices.

In January 2004 in southern China I saw an enormous distribution centre at the port of Zhuhai in Guangzhou province. I was told that this was where all WalMart products manufactured in China were received, and then shipped to ports all over the world. "This is the jugular of the global economy", I thought, "If we could only organise this place we could control the global economy."

Worker organisers and union leaders alike are eager to learn from foreign experience

KATIE QUAN is chair of the Center for Labor Research and Education, University of California

Read this article in full at [www.ictur.org](http://www.ictur.org)

# Two core labour rights assessed

The ILO's *Declaration on Fundamental Principles and Rights at Work* (1998) commits Member States to respect and promote core labour standards

Some on the fringes of the ACFTU are quietly lobbying for the right to strike

**A**RTICLE 35 of China's Constitution guarantees the right to freedom of association. While the Constitution is the paramount legal document in China, the recently revised Trade Union Law (TUL) negates this most basic of trade union rights. Article 10 awards a strictly enforced monopoly to the All China Federation of Trade Unions (ACFTU) and virtually all attempts to organise outside these parameters result in arrest and imprisonment.

While the trade union monopoly is clearly a violation of ILO Convention No.87, it is the ACFTU's subservience to the authorities that causes most disillusionment among workers. The ACFTU's Constitution puts the interests of the Chinese Communist Party (CCP) before those of its members and accepts the latter's leadership. At the same time, a major consequence of the economic reforms has been both the clarification and polarisation of class interests and an accompanying dramatic rise in collective labour disputes. However, ACFTU has stuck to constitutional obligations and failed to protect the interests of its 130 million members even as state owned enterprises (SOEs) downsize to compete with foreign capital and private ownership has reappeared as a major force in labour relations.

## The right to form a trade union of choice

The ACFTU and the CCP are well aware that workers' self-organisation is likely to impact on the investor-friendly environment that continues to produce dazzling economic growth much more effectively than laws and regulations as these can always be ignored behind the well-guarded gates of unorganised factories.

A recent six-week long strike in the city of Xianyang illustrates the point. SOE workers at the Tianwang Textile Factory struck in an attempt to protect their seniority, wages and conditions in the face of pressure from a new majority shareholder, China Resources. Beginning on 14 September 2004, a 24-hour picket line was mounted and on more than one occasion this successfully stopped police from using water cannons to break the strike. Even though the workers involved in the strike action were determined to organise within the parameters of TUL, their initiative and capacity was too much for the authorities. The ACFTU refused to recognise the workers' efforts and the authorities – after a six-week standoff – detained and then arrested more than twenty of the workers' representatives.

The struggle in Xianyang is a particularly powerful addition to a list of struggles where workers have attempted to collectively organise. Since China's membership of the World Trade Organisation (WTO) in late 2001 the list includes: Daqing oil workers, Liaoyang metal workers and Fushun

coalminers in 2002, Dazhou taxi drivers in 2003 and Tieshu textile workers in 2004. What makes Xianyang different to say Daqing and Liaoyang is the fact that workers were taking strike action – as opposed to more general but probably less effective demonstrations outside government offices – before new working arrangements – following an SOE merger, buy out or bankruptcy – had been concluded by management.

Despite considerable pressure from labour unrest over the last five years, there has been no sign of movement on freedom of association on the part of the authorities. However, there may be room for optimism on the right to strike.

## The right to strike

The right to strike was removed from China's Constitution in 1982 on the grounds that the political system had 'eradicated problems between the proletariat and enterprise owners'.

In October this year the *China Economic Times* ran an article drawing attention to the fact that the right to strike did not enjoy legal protection. The article did not list the frequent firings, detentions and even imprisonment of strikers, which more often than not accompanies such action, but the writer did make it clear which side he was on by quoting a labour academic:

"We need to get the right to strike written into the labour law. Strikes are a perfectly normal economic issue. I think they are a good thing and show how workers have the consciousness to protect their rights."

In Chinese labour discourse there are three terms for a labour 'strike', all carrying degrees of political sensitivity. *Tai gong* is sometimes referred to as limited strike action but is better translated as 'go slow'; *ting gong* or literally 'to stop work' is the term employed in OHS law and the TUL and refers to workers stopping work to express their grievances, but stopping short of declaring a formal strike; *ba gong* literally to block work implies a proactive measure that is both organised and aimed at having a direct effect on production so as to force employers to negotiate. The word strike (*ba gong*) is not used in the trade union or labour law.

It should be noted that far from being an expression of militancy, nearly all strikes are defensive in character, moderate in their demands and concentrate on obtaining payments related to wages and overtime, seniority, pensions or injury compensation all of which are due in law. There are also a significant number of what might be termed as 'political' strikes where workers make tactical use of central government campaigns against corruption to expose a corrupt factory leader or management. This does not stop the arrest of organisers.

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There are more recent signs that labour shortages in some areas, in particular the southern Pearl River Delta (PRD) are leading to more offensive stoppages and strikes that are clearly alarming investors and factory management. A flurry of sympathetic articles in the Chinese media pointing out that wages in the PRD have been more or less stagnant for a decade has done little to calm nerves. One plastics factory owner with plants in Dongguan and Shenzhen told this writer that “[W]e don’t let our workers bring newspapers into the plant or the dormitories as we don’t want the news about labour shortages to get out. Of course we can’t stop the news spreading but we can at least slow it down”. The authorities have already moved to head off this increase in confidence by handing down sentences of up to three years to five workers at the Taiwanese-owned Stella International shoe factory in Dongguan. The fact that no evidence has been produced to directly implicate the five workers in an incident at the factory in which property was damaged does not appear to matter. The sentences are clearly meant as a warning to others.

All the same, some on the fringes of the ACFU – academics, labour lawyers for example – are quietly lobbying for the right to strike on the ‘apolitical’ grounds that it is necessary to a functioning market economy. The fact that China did not enter a reservation on the section pertaining to the right to strike when ratifying the International Covenant on Economic Social and Cultural Rights is possibly a sign that some sort of progress is in the pipeline and currently being discussed at a senior level.

### Discrimination

Prior to the 1949 Revolution in which the CCP took power in mainland China, discrimination was a *de facto* part of life and was largely accepted as such. Particularly serious was discrimination against women at all levels of human interaction. By the 20th century, perhaps the only popular struggles against discrimination as a concept were those directed against the presence of imperial powers though it should be acknowledged that CCP-controlled areas made considerable efforts to tackle discrimination against women at some levels, in education for example.

Post ’49, efforts to move towards equality between men and women became a cornerstone of official ideology and there is no doubt that great progress was made with the introduction of the Marriage Law (1950) which, on paper at least, rendered feudal concepts of women and ownership of women obsolete. If we measure progress by volume of laws and regulations, it appears to have continued especially in the workplace. Aside from Article 48 of the Constitution which stipulates gender equality in all spheres of life and the Labour Law which outlaws all forms of discrimination at work, there have been at least nine sets of laws and regulations addressing the issue of women in the work place, the most important being the “Law on the Protection of the Rights and Interests of Women” (1994).

Yet workplace discrimination against women remains a serious issue and the market reforms of the past twenty five years have seen it increase. From a legal rights perspective, there are two main reasons for this. Firstly, the laws and regulations concentrate on the *protection* of women on the grounds of their biological *differences* from men and the social burdens that are deemed a natural consequence – chiefly the dual responsi-

bilities of work and family. For example there are regulations against women working at height, performing certain tasks during menstruation, working at night during the later stages of pregnancy, allowing time off for nursing infants and earlier retirement for women civil servants. But there is much less emphasis on the fact that women are as capable and productive as men and should be treated as such. Secondly, there is no legal detail or actual law on the problem of active gender discrimination in the hiring process itself. Experts point to the absence of a more general equal opportunities law.

Failed legislation and somewhat flawed conceptual thinking has not been helped by market forces. A World Bank report published in 2003 points to a global trend which has seen “the creation of contractual, temporary and informal sector jobs which do not enjoy the same social protection as state sector jobs – especially key for women during their child-bearing years.”

### Gender and employment

Employers rarely hire women over the age of 35. It is already well-documented that employers in the special economic manufacturing zones generally take on young women from the countryside and conspire to get rid of them once they reach their mid-twenties and become less productive. Put another way, when they become more experienced and begin to agitate for higher wages. Researchers are pin-pointing this as a primary factor behind the labour shortages in the PRD.

Throughout the restructuring of the state sector, women workers have generally been first out of the door. The Ministry of Labour reported that in 1997, women accounted for only 39 per cent of China’s work force but made up nearly 61 per cent of its laid-off workers. While the continued large-scale lay offs since 1997 may have rendered a more even gender balance, this is hardly to be welcomed. Moreover women earned just 70 per cent of men’s pay in 1999, 13 per cent less than the figure for 1990. The principle reason for this drop is that market reforms have concentrated women in a restructured manufacturing sector which offers low paid and insecure jobs. Up to 22 million state sector manufacturing jobs were lost during the restructuring of this once well-protected industry.

If it is difficult for middle-aged men to find work, it is even worse for women over the 35 years of age, a threshold that has become popular among employers. Often single-skilled and with family responsibilities that restrict their capacity for retraining, women face employer discrimination in hiring that has often resulted in a descent into long term unemployment and poverty.

### Conclusions

The government’s continued blanket refusal to countenance genuine freedom of association is a clear violation of ILO principles. This stands in stark contrast to the government’s formal commitment to move forward on gender discrimination. Yet employer power, a pro-investor environment as well as a fall off in the government’s willingness to actively promote positive images of women have combined to bring about increasing gender inequality in employment that has rolled back some of the gains of the pre-reform decades. We cannot help but conclude that a prerequisite for a decline in discrimination is nothing less than a dramatic policy change on freedom of association.



The age threshold can be openly seen in job adverts in newspapers or at local labour markets

# Limitations and possibilities

According to CCP ideology, since workers were the 'masters of the state', there could be no serious conflict of interest between workers and management

**C**HINA'S Trade Union Law was extensively revised in 2001. Those hoping that workers would be accorded greater rights to organise unions independent of Chinese Communist Party (CCP) control would be entirely disappointed. Nonetheless, the law does enable Chinese trade unions to be more effective in improving working conditions, *if* the party-state is prepared to sanction a more assertive role for these hitherto quiescent organisations.

The changed landscape for Chinese unions China's trade unions are struggling for relevance in the new market economy. Since they were revived in the late 1970s, after the devastation of the Cultural Revolution, their primary roles have been to participate in allocating enterprise-based social welfare benefits and to maintain production order. These roles evolved out of an economy in which most enterprises were socialised and workplace relations were based on administrative arrangements rather than contract. According to CCP ideology, since workers were the 'masters of the state', there could be no serious conflict of interest between the aspirations of the workers and the management of enterprises. Collective bargaining and strike action were foreign to unions, and it was not (and is not) unusual for union officials to hold senior management positions.

Economic arrangements in the labour market have been undergoing a process of radical change since the mid 1980s. Conditions in the new 'socialist market economy' pose a fundamental challenge to the official union movement. There can be no pretence that the interests of firm managers and workers are congruent, especially in the mushrooming private sector. Very many state and collectively owned enterprises have been privatised, foreign investors employ an increasing proportion of the workforce and workplace relations are now based on contract. While these changes have led to greater prosperity for many, it is well known that very serious labour abuses occur persistently, that redundancies in privatised firms are widespread and that the benefits of the economic reforms have been distributed very unevenly. Labour unrest continues to grow, especially over non-payment of wages. The number of officially recorded labour disputes has spiralled in recent years. There are also common reports of (unlawful) strikes. If Chinese unions remain confined to their social welfare/production exhortation functions, they will be ignored by workers seeking a conduit for their grievances.

## Unions as worker representatives

The 2001 Trade Union Law revisions potentially increase union responsiveness to the new envi-

ronment, but they also maintain several features of earlier versions of the Law. Chinese trade unions remain organised on the principle of 'democratic centralism'. This means that grass roots unions are subject to the leadership of higher level unions, and ultimately the key officials of the only legal union peak body, the All China Federation of Trade Unions (ACFTU). Workers cannot form unions outside the authority of the ACFTU. Further, unions are required to accept the leadership of the Chinese Communist Party. The symbiotic relationship between the ACFTU and the CCP is reflected in the Law's continued guarantee of a major voice for the ACFTU in national and local policy formation.

On the other hand, the 2001 revisions give greater emphasis to Chinese unions as workplace representatives of workers, and increase, to some extent, the autonomy of trade unions from employers. The 2001 revisions greatly expand the protection of union officials and members from employer retaliation; a more likely phenomenon in the privatised economy. A major shortcoming, however, is the failure to ensure a clear structural distinction between enterprise management and the union's internal decision-making. The 2001 revisions make some attempt to address the legacy of union officials holding simultaneous management positions; they prohibit close relatives of managers holding executive positions in unions. But, crucially, they don't prohibit the managers themselves doing so.

## Collective bargaining and industrial action

Under the system of administrative allocation of labour, collective bargaining over the content of labour agreements had no place. Unions participated in the formation of enterprise strategies through the processes of 'democratic management'. Now that Chinese workers are employed under contracts, and the private sector is becoming the dominant sector of the economy, democratic management (still provided for in the Law) is proving more problematic to instigate. At the same time, the need for a workable system of collective negotiation has become obvious. The state has recognised this and now promotes the use of collective labour contracts. However, empirical research suggests that most collective contracts simply reflect the basic labour law provisions; there is little real negotiation. One prominent reason for this may well be that, while the Law promotes collective contracts, it does not promote collective bargaining.

The 2001 revisions make extensive reference to collective contracts, but they are very vague on mechanics. Greater clarification was furnished earlier this year by the Ministry of Labour and Social Security when it promulgated the *Pro-*



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This article reflects his personal views

*visions on Collective Contracts.* This document (which does not have the status of a statute) is the first regulatory measure to set out in any detail how a collective contract is supposed to be concluded. The *Provisions* indicate that collective contracts are to be signed after a process of 'collective negotiation' (*jiti xieshang*) – not collective bargaining – between union and management representatives. Employers cannot refuse to negotiate without a 'valid reason' (*wu zheng-dang liyou*), but it is not clear if this amounts to an obligation to negotiate in good faith.

The odd aspect of these Provisions is that they do not appear to enable unions to deal with recalcitrant employers. Of course, in most industrial relations systems, where negotiations over collective contracts break down, unions can resort to industrial action to exert economic pressure on firms. In some countries, unions can also invoke compulsory arbitration. In China, there is no clear-cut capacity to use either strategy. Chinese law is silent on the right to strike. However, given that strikes are not clearly authorised, there is no bar to public security agencies exercising their wide discretionary powers to deal with workers disrupting production, including deploying a broad range of criminal and administrative sanctions. While strikes over wage arrears are sometimes tolerated, industrial action in other contexts is often punished, sometimes quite severely. Article 27 of the Trade Union Law addresses strikes to some extent, but it imposes two near incompatible obligations on unions – to both represent the interests of the striking workers and to assist the enterprise in restoring work order.

Furthermore, a union cannot invoke compulsory arbitration against an employer in the event of deadlock (although a union can require arbitration over *breach* of a collective contract once it is concluded). Where consultation breaks down, either of the parties can ask the government labour bureaucracy to 'adjust' (*xietiao*) the dispute. According to Chinese legal scholars, however, this is *not* a form of compulsory arbitration.

Chinese legal regulation of collective contract making reflects the friction – evident in many places in the Law – between the state's desire to push unions to function more like their counterparts in other market systems, and its reluctance to accept the industrial consequences (the potential for greater workplace conflict) that this desire entails. It envisages a fundamentally harmonious relationship between an enterprise and its staff. This fails to face up to the steady rise in workplace conflict, a rise which needs to be explicitly acknowledged and channelled through more effective industrial processes.

### Compliance with Chinese labour law

While scope for effective collective bargaining is limited, there is one area where the revisions to the Trade Union Law enable China's unions to make a substantial contribution to bettering workers' lives – securing compliance with the law. On its face, seeing that the law is properly implemented does not put unions in tension with the party-state. Indeed such an objective is consistent with upholding state policy.

Notoriously, while China's major laws regulating labour standards and occupational health and safety provide a workable framework for protecting worker rights and delivering reasonable working conditions, there are systemic implementation failures. Chinese law focuses responsibility for enforcement onto state agencies, such as the

Ministry of Labour and Social Security. However, especially at local levels, these agencies do not have the resources to adequately supervise the vast numbers of Chinese enterprises. In many instances they are plagued by corruption and lack of expertise. It is therefore critical for the credibility of labour law in China that bodies other than the bureaucracy are able to supervise implementation of the law. With more than 100 million members, 300,000 officials and extensive coverage of firms (although less so in the private sector), China's unions have a far greater reach than the labour enforcement agencies. They have the potential to secure greater compliance with labour law, a potential that the 2001 amendments strengthens.

The 1992 version of the Law conferred a vague monitoring role on unions, but the 2001 Law is much more specific. Thus, unions are empowered to require employers to comply with collective contracts, and can refer violations to labour arbitration and then to courts. Unions are able to assist workers to bring cases to arbitration or to the courts. Unions can also intervene on workers' behalf where a firm's transgression involves embezzlement of wages, failure to provide a safe workplace, arbitrarily extending working hours, and violating the special protections afforded to women and junior workers. Where a firm refuses to respond to the union, the union can refer the matter to local labour bureau.

Nonetheless, there are important shortcomings in these extensive powers. First, individual staff members have limited recourse if union officials within a firm fail to exercise their compliance function. While unions have the capacity to represent workers where their workplace rights are violated, they cannot as yet be legally *required* to do so (although courts are beginning to entertain non-feasance complaints by union members). Individual staff members must direct their complaints to the next level of the union hierarchy. Second, where they are willing to act, unions cannot directly enforce the law, they must persuade the local bureaucracy to act, or commence litigation. Corrupt linkages between the bureaucracy and employers may stymie union requests for action, unless higher level unions are prepared to intervene. On the other hand, litigation is expensive and time-consuming.

### Conclusion

Incrementalism is a defining characteristic of China's legal and economic reform agenda. Amendments to China's Trade Union Law are no exception. There are moves towards greater union autonomy and some impulsion to make unions more responsive to workers' needs. These stop well short of transforming Chinese unions from an adjunct of the party-state into autonomous worker representatives.

Nevertheless, the 2001 amendments to the Trade Union Law offer limited, but important, new space in which Chinese trade unions might act to improve working conditions. This consists primarily in helping to enforce the law. There are some indications that the Chinese state may now be countenancing a more active union movement; for example it has recently insisted that Walmart in China accept unionisation. Whether Chinese unions will, despite their very significant constraints, indeed begin to be more effective will depend on the new Chinese leadership's greater willingness to see its citizens' workplace entitlements protected.

While strikes over wage arrears are sometimes tolerated, industrial action in other contexts is often punished, sometimes quite severely. The Trade Union Law imposes two near incompatible obligations on unions – to both represent the interests of the striking workers and to assist the enterprise in restoring work order

# Community based labour organising

Millions of impoverished young peasants continue to surge into the cities looking for work

Labour standards are poor in most non-state enterprises



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CHAN WAI LING is an Executive  
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**W**ITH China's accession to the World Trade Organisation in November 2001, global competition and local just-in-time production intensified. Millions of internal migrant workers, in particular young women, are recruited by transnational corporations in cities and industrial towns to race against increasingly short turnover between the placement of orders and shipment. By 2003, it was estimated that a predominant 82 per cent of the over seven million strong population in Shenzhen alone were peasant migrants from the countryside. Of these, about 80 per cent were female.

## Gendered rural-urban mobility

The rural and urban divide in reform China is enlarging, and regional differences in terms of economic developments are increasingly significant. Millions of impoverished young peasants in their late teens or early 20s, for both structural and personal reasons, continue to surge into the coastal and southern cities looking for work. Female villagers are pulled more strongly to neighbouring as well as faraway provinces to pursue their dreams when they are less advantageous and of lower educational level in the rural and familial context.

Under the Chinese *hukou* system (household registration system), migrant workers are of rural *hukou* and they are not entitled the right to welfare, medical, housing or unemployment benefits available to the local urban populace. Being the 'floaters' or 'temporary sojourners', they are a vulnerable underclass living in constant insecurity, accompanied by daily discrimination, repression, hardship and denial of their human dignity. For example, non-Cantonese dialects and diverse ethnic cultures often lead to rejections, interpersonal conflicts and social exclusions.

## Work and precarious employment

Most foreign-funded enterprises of Hong Kong, Taiwan, South Korea, Japan, America and Europe recruit village women who hold unmarried-status certificates for export-led production. They are assumed and expected to be more hard-working, deferent, submissive, obedient and docile than their male counterparts. On the assembly line, the traditional gender role and subordinate female identities are reinforced for women workers, and hence an inferior socio-economic status continues. In addition, they are expected to marry soon and not be worthy of even minimal investment in technical and professional training. Overwhelmed with patriarchal assumptions, and the exercise of modern disciplinary technology, the production process is rendered low-end, repetitive, meaningless and monotonous.

Migrant women workers' youth and labour

power are appropriated for profit accumulation and capital maximisation. Their wage is a meagre and pitiful amount, often far below the statutory level. Paying below the minimum wage set for an eight-hour workday is however illegal.

The minimum wage standard is adjusted annually. The benchmark standards are established locally, based on a formula provided by the central government and pegged to the cost of living in an area. For example, the minimum monthly wage set in the year of 2004 to 2005 for Shenzhen is 610 yuan (approximately US\$77). Analysts and economists have attested that although the Chinese economy has been fast developing, in real terms, the minimum wages have remained at the same level throughout the 1990s.

The Labour Law also defines that the overtime rate as an added percentage of the regular hourly rate. The hourly rates however are neither made transparent by the management nor understood by the workers. Overtime rates, therefore, are also nonexistent in most foreign-funded enterprises. The calculation of wages is arbitrary and manipulative. As the enforcement of laws and regulations is ineffective, the labour rights of a large number of migrant workers are not secured.

There is seemingly an endless supply of young Chinese peasant migrants as cheap labour in cities. The labour standards are poor in most non-state enterprises. Female migrants in particular are exploited to keep up with the break-neck work intensity for exports. In terms of occupational health, according to official statistics in 2001, some 42.7 per cent of the 9,585 industrial enterprises in Shenzhen involving 116,000 production workers were situated in toxic and dangerous working environments (HKCIC 2001:92). About 70 cases of occupational diseases were reported and 371 patients were under medication, of which unfortunately 23 died. The figures are believed to be underestimates.

With reference to the 2001 Health Survey conducted by CWWN, potential hazards and poisons at the workplace were not identified at all at an early stage. The 1,043 migrant women workers interviewed only vaguely realised the danger and damage afflicted onto them when they became very sick or pregnant. For a handful of respondents who knew that they were applying harmful chemicals on the shopfloor, in the forms of substance, liquid and gas, they named up to almost 20 hazardous elements including paint-spray, thinner, heavy metal, glue, rosin water, detergent, and so forth. Worse still, most of the workers were exposed to multiple threats when they had to complete a task with several chemical solvents. Protective instruments like masks, eye-glasses, aprons, gloves and so on are scarcely provided.

## Community-based labour organising

In responding to the poor working conditions and the serious infringement of labour rights in China, CWWN started its projects in Shenzhen, using a community-based organising model. Set up in 1996, CWWN stands as a non-profit NGO with the mission of promoting betterment for the lives of Chinese migrant women workers. It endeavours to fight for labour and gender rights, and to promote grass roots empowerment and social justice in China. Because of the great difficulties of organising migrant workers at the workplace level, CWWN attempts various projects to organise outside the traditional trade union model:

■ The Centre for Women Workers was established in 1996 to provide a platform for organising Chinese migrant women workers in the Special Economic Zone of Shenzhen. Major organising work includes labour rights education, protections against workplace sexual discrimination, sexual health education as well as training for returning migrants. The Centre has developed rapidly into a comprehensive dormitory organising and workers' training base for the migrant labour in South China.

The Centre offers women workers interactive programmes that tailor to their learning and entertaining needs. We also nurture them into volunteers and organisers of nearby dormitories and develop mutual support networks. Our work initiatives include running small group discussions on labour rights, reading, handicraft making, Cantonese and English learning, movie sharing, photography, singing, drama appreciation, and so on. Through these diverse cultural forms, they are facilitated to express themselves and articulate their collective identity as migrant women workers.

■ The Mobile Centre started operation on 8 March 2000. It is the first project we worked on with the Guangdong Prevention and Treatment Center for Occupational Diseases. The Mobile Centre is a renovated 17-seater van, equipped with books, magazines, television set, video and broadcasting equipments, and simple health and body check tools. It provides outreach organising to migrant women workers at three industrial towns of the Pearl River Delta. The mission of the Centre roots firmly in realising the fact that most of the foreign invested enterprises are full of risks and pitfalls, especially in terms of occupational health and safety. Women workers are suffering from skin allergies, headaches, sight problems and various kind occupational diseases. Some even have disorders in reproductive function and cancer.

From mid-2003 onwards, we have reengineered ourselves by actively facilitating the formation and self-organisation of a large-scale Concerned Group for Chinese Injured Workers. We provide regular visits to hospitals in the three industrial towns where injured workers are lying on beds, with broken arms or deformed bodies. Most of the workers were not being informed or educated about the potential hazards in their working environment, nor aware of legal protections or the entitlement to compensation. With the Concerned Group, we hope to ensure the empowerment of all migrant workers so that they

can work in a dignified way. Moreover, we advocate for better occupational health and safety education and protection of social insurances.

■ The Women Workers' Cooperative (the COOP) aims to assist Chinese migrant women workers to run economic activities in a collective and cooperative form. It promotes workers' democracy, empowerment and economic autonomy. From August 2002 onwards, a group of women workers who were determined to leave the sweatshops have been building up collective purchasing networks in factory dormitories. In December of the same year, the COOP overcame various barriers and opened a shop in an industrial town, operating business on daily necessities, books and magazines for migrant workers.

The COOP commits to self-determination among women workers on a collective basis. It is an alternate model of economic practice. Women workers unite themselves to resist against exploitations and exclusions by capital in competitive labour markets. It adheres firmly to principles of mutual cooperation and social equality and emphasises participation and democracy. As such, the system of the cooperative is entirely different from that of the factory.

■ The Occupational Health Education Centre, another project jointly organised with Guangdong Prevention and Treatment Centre for Occupational Diseases, was set up in September 2002. This Centre strongly believes that education and promotion is the best way for the prevention of occupational diseases and industrial accidents. Our frontline staff operate hot-line consultation services, produce education kits, provide information on occupational health risk assessment, and organise participatory training workshops for workers at plant level. The goal is to build a training and advocacy centre for occupational safety and health in China.

In 2003, the Centre took a step forward by setting up a specialised unit of legal support for migrant workers. Migrant workers are equipped with systematic legal knowledge such as protection of labour rights, compensation for injured workers and social securities. Our staff compiles relevant policy materials and makes them into easy-to-understand training manuals. Audio-visual aids are also employed for educational purposes.

All in all, CWWN serves an alternative community labour organising model, outside of the trade union system, to fight for labour rights in the export processing zones of China. It targets foreign-invested and private companies that rely extensively on the use of internal migrant workers whose basic civil rights and labour rights are seriously violated. In addition to building labour networks through the centre-based organising and the mobile van project, we also encourage cultural projects such as ARTivism to facilitate the migrant women workers as a collective to fight for their labour and feminist rights and to strengthen workers' solidarity. A Chinese magazine entitled *Voices of Dagongmei* (women workers) is regularly published. A collection of oral stories of migrant women workers is also being compiled to engender common and collective working experience and class consciousness.

The Centre for Women Workers was established in 1996 to provide a platform for organising Chinese migrant women workers in the Special Economic Zone of Shenzhen

# Activists criticise trip to China

“During our visit we endeavoured to stress that China should ratify and comply with the Conventions of the International Labour Organisation regarding freedom of association”

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**A**CTIVISTS of Finnish trade unions and international solidarity projects have criticised the ongoing visit to China by Finnish trade union leaders. A group of trade unionists said that the travel in China by Finnish union leaders is a setback to solidarity projects of the international trade union movement.

“It is really surprising that there will be no talk during the trip about Chinese human rights and

“China has no free trade union movement in the western sense of the word: its people lack important social freedoms such as the right to organise at work. During our visit we endeavoured to stress that China should ratify and comply with the Conventions of the International Labour Organisation regarding employee rights and freedom of association. We were unable to meet with representatives of trade unions at the workplaces that we visited.”

*Lauri Ihalainen, President, Central Organisation of Finnish Trade Unions – SAK*

working conditions. Trade union leaders in particular should realise that every handshake between a Western trade union leader and an official Chinese trade union leader serves the system that is in power”, says one activist.

“We have agreed on a tight schedule of negotiations, and this trip is no adventure”, said Mikko Mäenpää, chairman of the Finnish Confederation of Salaried Employees.

During their visit the leaders have met with representatives of the Chinese Ministry of Labour, officials of the Ministry of Social Affairs and Health, and the local representative of the International Labour Organisation. “We have consistently brought out that China has not signed the basic social treaties of the ILO. These people have not disputed that there are problems here with respect to wages and working conditions”, said Lauri Ihalainen, leader of the Central Organisation of Finnish Trade Unions (SAK).

“We do not have a mandate to negotiate on these issues. Our job is to visualise what this China Syndrome, which is sometimes exaggerated, means from Finland’s point of view,” said Ihalainen.

The ‘China syndrome’ in Finnish public debate refers to the transfer of production to China to take advantage of low labour costs in the country.

Ihalainen added “It has been important for us to see if Finnish jobs are being exported here. It has been seen that few companies that come here have reduced jobs in Finland. Some have even increased them”.

Ihalainen says that he was startled to see the poor conditions of rural Chinese and manual labourers. “We have had confirmation for the view that we cannot compete with China or India with wages, but rather with quality and with research and development.”

Mäenpää and Ihalainen had praise for Finnish companies in China, which generally pay better wages than the norm in China. However, the comparisons have also raised some thoughts. “In Finland employers have considered good working conditions and respect for social justice as important. Now it seems that profits are more important for corporate managers that have come to China, without regard for the surrounding society”, Mäenpää says.

Hannu Ohvo of the Trade Union Solidarity Centre of Finland said nobody would benefit from boycotting China. However, the Chinese government needs to be constantly pressured to respect human rights and trade union rights. “This aim would not have been advanced at all if the union leaders had not gone on this trip. The view of the international trade union movement toward labour rights in China is clear, and it is a sensitive issue for the Chinese government.”

## Defending human, trade union and democratic rights



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# Chinese labour activists in detention

YAO GUISENG, manual labourer from Hunan Province, charged with 'robbery and assault' following protests in 1989. Sentenced to 15 years.

GUO YUNQIAO, manual worker from Hunan Province and leader of a 10,000 strong workers' protest in 1989. Death sentence was commuted to 13 years in 1991.

LIANG QIANG, factory worker from Beijing and WAF member. Arrested in 1989 for writing 'reactionary' articles. Sentenced to 15 years for 'counter revolutionary crimes' in 1990.

HU SHIGEN, lecturer and a leader of FLUC Beijing with Wang Guaqi. Sentenced to 15 years for 'counter revolutionary crimes' in 1994.

LIU JINGSHENG, chemical plant worker in Beijing, helped establish CFDP and FLUC. Arrested in 1992 and sentenced to 15 years for 'counter revolutionary crimes' in 1994.

WANG GUAQI, printer and co-founder of FLUC and CFDP Beijing. Arrested in 1992 and sentenced to 11 years for 'counter revolutionary crimes' in 1994.

KANG YUCHUN, former doctor from Beijing and member of FLUC and CFDP. Sentenced to 17 years for 'counter revolutionary crimes' in 1994.

WANG MIAOGEN, manual labourer from Shanghai and President of Shanghai WAF. Sentenced to two and a half years in 1989, released in 1991. Forcibly committed to psychiatric hospital in 1993, where he remains.

LI BIFENG, former tax official in Sichuan Province, democracy campaigner, and church activist. Arrested in 1998 after sending reports on worker protests to HRIC. Sentenced to seven years for 'commercial fraud' in 1998.

ZHANG SHANGUANG, teacher in Hunan Province sentenced to seven years for counter revolutionary crimes. On release worked in a factory and organised workers. Arrested in 1998 and sentenced to 10 years for 'supplying intelligence to organisations outside China'.

HE CHAOHUI, railway office worker in Hunan Province, organised worker protests and sent information to overseas organisations. Arrested in 1998 and sentenced to 10 years for 'endangering state safety' in 1999.

YUE TIANXIANG, transport worker from Gansu Province, arrested in 1999 after establishing the journal Chinese Workers' Monitor. Sentenced to 10 years for 'subversion' in 1999.

LIAO SHIHUA, electronics worker and CDP member in Hunan Province. Led worker protests in 1998 and 1999. Sentenced to six years in 1999 for 'incitement to overthrow the government'.

WANG CHANGCHUN, miner in Sichuan. Arrested during violent clashes with police in 1999 along with six colleagues. Their whereabouts are unknown.

XU JIAN, factory worker in Inner Mongolia and

legal practitioner. Distributed labour rights leaflets. Sentenced to four years in 2000 for 'incitement to overthrow state power'.

FENG DAXUN, former journalist in Sichuan. Arrested in 1999 and sentenced to three years before being transferred from the detention centre for Gong Country Coal Mine.

HUANG QI, web journalist reported that forced surgery had been carried out on 200,000 fishermen. Arrested in 2000, and sentenced in 2001 for an unknown period on grounds of 'subversion'.

LI JIAQING, paper factory engineer. Organised a workers' congress and protests against a factory merger. Arrested in 2000 and sentenced in 2001 for an unknown period on grounds of 'gathering a crowd to disrupt social order'.

WANG SEN, CDP member in Sichuan, organised worker protests at steel factory in 2000. Arrested in 2001 and sentenced to 10 years for 'subversion' in 2002.

HU MINGJUN, CDP member in Sichuan, organised worker protests at steel factory in 2000. Arrested in 2001 and sentenced to 11 years for 'subversion' in 2002.

CAI GUANGYE, doctor at military hospital. Briefly detained after photographing worker protests in 2001, and re-arrested following further protests. Current whereabouts unknown.

LU WENBIN, factory electrician, arrested after organising worker protests in Jiangsu Province. Current whereabouts unknown.

YAO FUXIN, husband of former employee of a bankrupt factory in Liaoning Province. Led protests by thousands of former workers. Sentenced to an undisclosed period in 2003.

XIAO YUNLIANG, Led protests by thousands of former workers of a bankrupt factory in Liaoning Province. Arrested in 2002, and sentenced to an undisclosed period in 2003.

DI TIANGUI, retired worker from Shanxi who called for a national retired workers federation. Arrested in 2002, currently awaiting trial.

ZHAO CHANGQING, teacher in Shaanxi. Imprisoned in 1998 after criticising ACFTU, released and re-arrested in 2002 after signing an open letter calling for political reform. Currently awaiting trial.

WAN JIAFENG, CHEN NANLIU, MA CHANGWEI and QU PENGTAO, shoe factory workers from Guangdong, were sentenced to terms of three to three and half years in 2004 for 'intentional destruction of property' following a protest by 1,000 workers.

LIU JUFEI, DING KUI and LIU RONGNENG, shoe factory workers from Guangdong, were sentenced to three years imprisonment in 2004 for 'intentional destruction of property' following a protest by 4,000 workers.

Compiled from reports by: Human Rights in China; Human Rights Watch; China Labour Bulletin; China Labor Watch; Amnesty International; International Labour Organisation; National Labor Committee; and the ICFTU.

*Based on a report produced by the China Rights Forum*

CDP China Democracy Party  
CFDP China Freedom and Democracy Party  
FLUC Free Labor Union of China  
HRIC Human Rights in China  
WAF Workers Autonomous Federation

## Botswana

ACCORDING to reports from the international mining union ICEM, management at the Selebi Phikwe copper-nickel mine fired the entire local committee of the Botswana Mining Workers' Union following the annual wage bargaining round in July. Information received by ICTUR in November suggests that the local officers have now been re-instated, but that the company is continuing to accuse several union officers of possessing 'unlawful' information concerning wage levels at the mine.

■ In another mining dispute, the ICEM reported that, prior to a strike at the Debswana mines on 23 August, the government had declared that any strike would be 'illegal'. The industrial court went on to rule that the subsequent strike was 'illegal', paving the way for mass dismissals at several mines. ICTUR understands that more than 400 workers were dismissed at one mine alone.

*ICTUR has written to protest at both the mass dismissals and the governments' description of one of the essential means by which workers promote and defend their interests (striking) as 'illegal'. ICTUR reminds the authorities of the obligation to protect freedom of association and to prevent dismissals in retaliation for trade union activities. ICTUR notes that Botswana has ratified ILO Conventions 87 and 98.*

## Burundi

ON 24 September trade unionists Pierre Claver Hajayandi and Célestin Nsavyimana, President and Treasurer of the COSYBU federation were arrested following a speech to a workers' meeting in which the union leaders criticised the government's plans for constitutional change by referendum. According to ICFTU, the two leaders were released on 30 September.

*ICTUR has written to remind the authorities that trade unions are a vital*

*pillar of civil society and to affirm that union leaders have a clear right under international law to exercise freedom of expression and of association. ICTUR further insisted that a key function of a union leader's role is to comment freely on government policy.*

## El Salvador

US trade unionist Gilberto Soto was murdered on 5 November in front of his mother's house in Usulután, El Salvador. Soto, who was known in the US for his work to organise port drivers, was visiting El Salvador on behalf of the Teamsters union to meet with Central American trade union leaders and port drivers. So far, police have reported no progress in finding the killers.

*ICTUR has written to the authorities calling for an investigation into this case and calling for the authorities to take steps to ensure the safety of trade unionists who may be at risk.*

## Iran

ACCORDING to reports from the ICFTU, armed security forces were deployed against hunger striking workers at the Kurdistan Textile Factory in Sanandaj City between 31 October and 3 November. According to ICFTU the strike ended peacefully with a negotiated settlement, although there were signs that the agreement might not be implemented.

*ICTUR recalls the deaths of four striking workers which occurred at a copper smelting plant in the Kerman Province in January 2004 and has written to urge the authorities to take steps to avoid creating tensions around labour disputes by the deployment of armed security forces.*

## Jordan

IN MID AUGUST the government threatened to overrule the results of the elections of the General Federation of Jordanian

Trade Unions.

*ICTUR has written to remind the authorities that intervention in the internal affairs of the trade unions would breach of the principles of freedom of association. ICTUR further reminds the authorities of their duty to promote these principles further to the ILO Declaration of 1998.*

## Republic of Korea

ON 9 October the violent intervention of police officers broke up a workers' rally organised by the Korean Government Employees' Union, KGEU. ICTUR understands that 10 trade union members were injured when the police dispersed the workers, and that as many as 40 union members were arrested and temporarily detained. The KGEU rally was held to protest against proposed legislation that would ban the organisation from collecting union dues and prevent KGEU from carrying out its work as a trade union organisation.

■ Between 6 and 9 November at least seven KGEU offices were raided by police and as many as 107 union members were temporarily subjected to arbitrary detention.

*ICTUR has written to protest against the actions of the police and to remind the authorities of the status of trade union rights under international law. As a member state of the International Labour Organisation, South Korea is required to respect the principles of freedom of association by virtue of Article 2(a) of the ILO Declaration of Fundamental Principles, 1998.*

## Malawi

IN SEPTEMBER police fired upon a workers' demonstration using live ammunition and tear gas, according to reports from the BBC. ICTUR understands that live ammunition was used against a group of 600

tea workers in Mulanje in response to their demands for severance pay.

*ICTUR has written to remind the authorities that workers have a fundamental human right to organise activities in defence of their social and economic interests under the terms of ILO Convention 87, which Malawi has ratified.*

## Nepal

PREM SINGH BOHORA, Deputy General Secretary of the NTUC, who was kidnapped by a Maoist group on 3 June 2004, continued to be held by his kidnappers.

*ICTUR has written to the authorities to emphasise the key role played by trade unions in society and to affirm that the right of trade unionists to carry out their activities in security is required to be protected by the state further to international law. ICTUR called on the authorities to renew their efforts to secure the release of the union leader.*

## Nigeria

ICTUR understands that numerous trade union rights violations occurred in the period leading up to, and the immediate aftermath of, the general strike called by the Nigerian Labour Congress in protest at rising fuel prices:

■ 9 October, the leader of the NLC, Adams Oshiomole, was arrested at gunpoint by members of the state security services two days before the strike was due to commence. ICTUR understands that Mr Oshiomole was released after questioning, but that no charges were brought against him, nor was the reason for his arrest made clear;

■ 9 October, Emmanuel Udoh and Innocent Ogwuche of the NLC were arrested, and fuel supply meant for the NLC's generators and vehicles was impounded;

■ 11 October, officers of the Kaduna State Police Command in Tudun Wada fired live bullets on innocent and unarmed citizens, killing



a 12 year old boy, Master Mohammed Sani Idris. There have also been mass arrests in the states of Kaduna, Anambra and Borno, and in the Federal Capital Territory. The arrests were usually at gunpoint, and those arrested complained of battery and physical attacks;

■ 11 October, in Anambra State, seven union officials were arrested along Zik Avenue, Awka. They include Donatus Nkembuisi and Emma Nnaemeka, of the civil service union NSCU; A B Ubani and Anthony Obaze of the print workers' union NUPPPPROW; Obura Ngeneso of the public sector union AUPC; and labour activists Chidiebere Onwudinwe and Isaiah Nwosu;

■ 11 October, the national headquarters of the NLC were besieged by a contingent of heavily armed police officers. In the process, the NLC vehicles were at one point forcefully prevented from leaving the area;

■ 12 October, police intercepted a convey of union leaders and members, and commandeered their vehicles at gunpoint. Five union leaders (Abigail Bwana of the NLC; Buba Jajere of the electricity workers' union NUEE; Kabir Dungus of the public sector union AUPC; Usman Hyelda of the textile workers' union NUCFRNMPE; and Musa Inde of the teachers' union NUT) were taken into custody, while as many as 50 others were detained for several hours;

■ 12 October, police arrested eight leaders of the hotel workers' union NUHPSE;

■ 15 October, the entire staff of the Abuja office of the US AFL-CIO's Solidarity Center, amounting to some 13 people, were arrested together with a visiting

priest and a five-month old infant. ICTUR further understands that the premises of the Solidarity Center were searched, apparently on the order of a magistrate's court, but that no specified offences have been raised against the Center's staff, nor has any valid reason been given for the search or the arrests. ICTUR understands that those arrested were questioned and later released.

■ ICTUR understands that during October armed police also used teargas to expel workers demanding unpaid wages from the building of their former employer, Nigeria Airways.

*ICTUR has written to protest these actions in the strongest terms and to remind the Nigerian authorities that the arrests of trade unionists and the use of violence to disperse workers are serious breaches of ILO Conventions 87 and 98, which have both been ratified by Nigeria.*

## Pakistan

ON 30 October Mr Pirzida Imtiaz Syed, the Secretary General of the All Pakistan Federation of United Trade Unions, and several colleagues representing brick kiln workers were arrested and detained overnight by the railway police in Gujrat. The arrests appear to have been made without warrants.

*ICTUR has written to call on the authorities to investigate these cases and to ensure that appropriate actions are taken to prevent harassment of trade unionists.*

## Philippines

ON 16 November, police and military forces, carrying live

ammunition and supported by heavy armoured vehicles, were sent in to break picket lines, which workers had manned for 10 days at the Hacienda Luisita. Sugar mill security forces drove armoured vehicles into workers' barricades and fired tear gas, water cannons and live rounds at the protestors. At least 14 people were killed and more than one hundred were arrested in the violence.

*ICTUR has written to call for the release of all those arrested and to insist that the authorities launch a thorough investigation by an independent panel. ICTUR reminded the authorities that workers have a fundamental human right to organise activities in defence of their social and economic interests and that the Philippines has accepted under ILO Conventions 87 and 98 a commitment to promote peaceful, collective mechanisms for the resolution of industrial disputes.*

## South Africa

ICTUR received reports indicating that so-called 'Red Ants' security guards shot two striking factory workers with rubber bullets on 20 September at the Fruit Salad Health factory in City Deep Production Park, Johannesburg.

*ICTUR has written to the Labour Ministry to call for an investigation of this incident. ICTUR emphasised the status of trade union rights under international law.*

## Thailand

TEN trade union leaders and activists were dismissed from the Volex factory in Thailand during August - September. ICTUR is informed that these dismissals were made because union activists were accused of 'slowing down' production.

*ICTUR has written to remind the company that dismissal of trade unionists in retaliation for their trade union activities is a violation of principles that*

*are protected as fundamental human rights.*

## USA

THE INTERVENTION of the police on 5 October broke up a rally by Los Angeles workers in support of UNITE HERE members in dispute with their employers at the Hyatt Regency Hotel in San Francisco. ICTUR understands that 44 people, including members of the trade union and their supporters, were briefly arrested after they refused to obey a police order to end their rally.

*ICTUR has written to remind the Californian authorities that the USA is required to respect the principles of freedom of association under the ILO Declaration of Fundamental Principles, 1998.*

## Zimbabwe

ICTUR understands that criminal charges have been laid against trade unionist Collin Gwiyo following a raid of Mr Gwiyo's house which took place on 31 October.

■ A delegation of trade unionists from the South African federation, COSATU, who were visiting colleagues in Zimbabwe, were expelled from the country ahead of schedule at the end of October. The expelled trade unionists complained of harassment and poor treatment by Zimbabwe authorities during their journey to the South African border.

*ICTUR has written to remind the authorities freedom of association is a right protected under the African Charter of 1981. ICTUR reminded the authorities that visiting trade union delegations are clearly covered by the principles of freedom of association further to the analysis of the ILO Committee of Experts on Freedom of Association. ICTUR further called for the authorities to ensure that a thorough investigation be carried out into the case against Mr Gwiyo.*

# It's our union – and we want it back

*China Labour Bulletin* has begun to explore ways in which Chinese workers can reclaim the ACFTU from below

**C**HINA *Labour Bulletin* has been trying over the past couple of years to explore ways in which we can help Chinese workers to begin reclaiming the ACFTU from below. Raising the slogan “It’s our union and we want it back,” we have begun to develop several new initiatives in this direction. The most important of these is that Chinese workers should begin using the right accorded to them under the PRC Trade Union Law – as affirmed by the ACFTU at its last annual congress – to create, through a process of democratic election, trade union branches in factories and enterprises where none currently exist. The law requires that they then register such union branches with the ACFTU – but while certainly problematic, this of itself need not be an insuperable obstacle to real union work and activity.

The key, as we see it, is to target factories and enterprises where the workers are already engaged in some form of struggle with management – whether over unpaid wages (workers are currently owed tens of billions of US dollars), over unfair and exploitative contracts (or no contracts at all: another widespread complaint), or over official corruption in the SOE ‘restructuring’ process (in the third and final stage of SOE reform up to 190,000 factories will be privatised or made bankrupt, threatening tens of millions of workers.) Over the past two years, *China Labour Bulletin’s* main aim has been to get actively involved in Chinese workers’ struggles like these.

We began with individual workers’ cases. In one such case, involving a rural couple whose son had died from an occupational illness contracted while working in a Japanese-invested stone-milling factory, we hired a lawyer to help the couple sue the factory for compensation – so far unsuccessfully, but we managed to get one of China’s main legal affairs magazines to run a long feature article on the case. We’ll be using this article to publicise the case in Japan, with the help of the Japanese trade unions, in an effort to put pressure on the owner company to settle the bereaved parents’ compensation claim.

From there we moved on to tackling collective workers’ dispute cases – for example, the case of the Suizhou City Tieshu Textiles Factory, where several thousand workers had been protesting for over a year against a bankruptcy arrangement that left them without any redundancy money or pension entitlements. In February this year, the workers staged a mass blockade of the local railway line for several hours and around ten of them were then arrested and charged with disturbing public order. *China Labour Bulletin* decided that, as a concrete act of labour solidarity, we would find and pay for criminal defence lawyers to represent them in court. We secured the services of a top law firm in Beijing, and the

effect was salutary: within days of the lawyers’ arrival in Suizhou, the local police had released and dropped charges against most of the detained workers. Instead of the several-year sentences they could otherwise have expected, in the event only one of the workers received a one-year prison sentence. We then refocused the case back on to the workers’ original demands, by helping them mount a collective civil lawsuit against the local Bureau of Labour for failing to ensure that the factory had paid the workers’ pension contributions as required by law.

In another recent collective case that *China Labour Bulletin* has worked closely on, in April this year ten young workers from shoe factories owned by the Taiwan company Stella International were arrested and charged with ‘assembling a crowd to disturb public order’, following mass protests over low pay, excessive overtime hours and poor canteen food the company’s Xing Ang and Xing Xiong factories in Dongguan City in southern China. The protests had turned rowdy, and some US\$ 150,000 worth of company property was allegedly damaged and some managers assaulted. Although this was not a clean-cut freedom of association case, we decided to take it on because it nonetheless typified the kinds of problems facing Chinese workers in the private sector today: when no proper channels of complaint or grievance resolution are provided (let alone an actual union), tensions among workers often build to uncontrollable levels. And again, the detained workers deserved the best legal defence that could be found. In the event, another top law firm in Beijing agreed to defend six of the workers (we were unable to contact the families of the other four) – and much to our surprise, on a pro bono basis. In their defence statements to the court, the lawyers were able to demonstrate that the prosecution had produced no actual evidence linking any of the six defendants to any acts of violence or other criminal wrongdoing. Even more important, they turned the focus of the case back on to the workers’ original grievances, in effect putting Stella International firmly in the dock instead of the workers. To this extent, the court case against the Stella Ten was a milestone event in modern China’s legal and labour movement history. To our knowledge, pro-worker and union rights’ sentiments like the following, spoken by the defence lawyer Gao Zhisheng, have never before been expressed in a Chinese court of law:

“Having an effective institutional channel of communication between workers and company is the basic systematic safeguard and guarantee for stable labour relations, for safety in the workplace, and also for peace and stability in society as a whole. In China, however, this fact has been



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[www.china-labour.org.hk](http://www.china-labour.org.hk)

openly neglected and disregarded throughout the past half-century and more. The Xing Ang Shoe Factory is a large enterprise employing several thousand workers, but it does not even have a trade union branch (in China, of course, there is little difference in terms of workers' rights protection whether or not a trade union organisation is present.) Meanwhile, the almost complete scarcity of any judicial protections for workers' rights and interests leaves Chinese workers without any defence against the predations of their employers, such that so long as they have a breath left in their bodies they will endure almost any indignity and injustice, simply to survive. The pathological greed for profits on the part of the factory owners, together with the absolute protection afforded to corrupt capitalists by our judicial system – these, and these alone, are the real main reasons why this [protest] incident erupted in the first place.”

So while continuing to pursue our original Case Intervention strategy, in certain promising cases *China Labour Bulletin* is now adding on a factory-level union organising component as well – both as a way of promoting the workers' existing demands and as a way of creating a long-term organisational means of safeguarding their rights in the future. As we see it, there is a world of difference between a union branch set up by workers who are already engaged in workplace struggles and campaigns such as these, and which is consciously and democratically formed for the purpose of opening collective bargaining with management over the specific issues concerned, and a situation whereby the ACFTU parachutes into a factory a local official or two and imposes a union branch on the passive workforce, simply in order to boost its statistics on the rate of local unionisation in the private sector. In the former, the workers have a direct motivation and reason to create their own union and hence will have a sense of genuine ownership over it. They will also be much more psychologically ready and prepared to defend it against subsequent (and probably inevitable) efforts by the ACFTU to reassert hierarchical controls and conformity with the Party line. In the latter situation, the workers will at best remain, as is now generally the case, quite indifferent towards the new union presence. If enough Chinese workers in enough factories can be persuaded to try this approach, the ACFTU could – over an undoubtedly long period of time – begin to assume a significantly different overall character and role than its present one of acting as the Party's enforcer of labour discipline.

A couple of key points, however, need to be emphasised here. First, it is one thing to support and encourage Chinese workers themselves to gradually repossess the ACFTU, and quite another thing to be calling for the international labour movement to “constructively engage” with the ACFTU at senior levels. The one by no means follows from the other – and still less does the former serve to validate or endorse the latter. Indeed, to the extent that this new strategy begins to succeed, trades unionists elsewhere in the world will finally discover that there are valid alternative partner groups of workers in China with whom they can pursue meaningful union-to-union contacts – over issues ranging from health and safety to workers' education and grassroots' organising work. To be sure, thanks to the continuing legal ban on genuine trade union organising in China, the ACFTU will still be “the only game in town.” But talking to worker representatives

from democratically elected grassroots branches would clearly be a far more attractive and effective way of demonstrating international labour solidarity than talking to government-appointed officials at ACFTU headquarters.

Second, necessity has very much been the mother of invention in this new strategy of repossessing the ACFTU from below. On the one hand, mainland Chinese law criminalises and harshly suppresses any attempts at independent union organising, and *China Labour Bulletin* has long since recognised that the ‘underground organising’ route is completely unviable, at least for the foreseeable future in China. The personal cost – of arrest and long-term imprisonment – is simply too high for Chinese worker activists and their families to be willing or able to pay, nor should the international labour movement expect them to do so. On the other hand, China's own Trade Union Law contains, on the face of it at least, a very wide range of legal protections for workers who seek to organise strictly within the confines of the ACFTU. They are legally guaranteed, for example, an extension of their existing labour contract to cover their entire period as a union office-holder; they cannot be sacked, except if the employer pays them two whole years' worth of salary as compensation; and the law also expressly forbids any individual or organisation from seeking to prevent or obstruct workers from organising trade union branches at the factory level. Couple all this with the ACFTU's own stated drive to greatly increase the extent of unionisation within the private sector over the coming years – witness its recent head-to-head conflict with Wal-Mart over the retail giant's refusal to allow ACFTU branches to be created in its China factories and stores – and take into consideration the Guangdong regulations which specifically permit 10 or more individual workers to initiate the process of establishing a union branch in workplaces that don't have one – and you surely have a situation that is crying out to be exploited by genuine worker activists.

Even given all these emerging new opportunities and potential organising space, it would be naïve to expect that the Chinese authorities – including the leadership of the ACFTU – will not seek to restrict and curtail the kind of bottom-upwards strategy of ‘union repossession’ by genuine worker activists outlined above. The arrest in early November 2004 of more than twenty workers who had helped organise an unprecedented, seven-week-long strike by almost 7,000 textile workers in the north-central Chinese city of Xianyang, and who were in the process of trying to organise union elections in all eight of the factory's different workshops just prior to the police crackdown that ended their magnificent strike action, is a clear case in point. And it's in cases like these, above all, that the international labour movement should seek to demonstrate the principle of labour solidarity with Chinese workers, by giving its full support to the grassroots democratic union-organising movement; by providing both moral and financial assistance to the families of workers who get arrested simply for trying to put into practice the Trade Union Law's provisions on founding factory-level unions through direct elections; and by making sure they don't undercut these grassroots efforts by holding ill-advised summit meetings with the ACFTU leadership that can turn into photo opportunities for the Chinese government.

It's our union. And we will take it back.

The court case against the Stella Ten was a milestone event in modern China's legal and labour movement history

# Unionised MNCs

Full time union reps were hired by Toyota – but if the company didn't like the workers' choices for the part-time union representatives that was too bad for the company

**T**HE standard of living in China has improved since 1978 and has improved dramatically since 1992. The standard of living of the rich has dramatically improved but it has also significantly improved for ordinary people such as workers with jobs, shop keepers and even peasants, though the latter still do back-breaking work in the countryside.

## Tianjin Toyota

The Tianjin Toyota plant is a joint venture with the First Auto Works (FAW) which is owned by the Chinese government. I was told half way through my visit that if the Japanese owners knew I was visiting, I wouldn't have been allowed in.

The plant has about 4,000 workers and has been recently built. The present production goal is 120,000 cars per year. The average seniority of the workforce was two years and they were mostly all young men (with 300 women workers). Most had just graduated from a technical school where they had learned skills like welding and punch press operating.

The production system was the usual Toyota 'kanban' system but some were working at a very fast pace while others were walking very quickly and half-running. Even young workers will not be able to sustain this pace of work for long. The workers wore uniforms and hard hats.

The hours of work were from 8am to 4pm with 40 minutes for rest, five days a week. They could work 36 hours a month maximum overtime. Sometimes the plant was open on Saturdays for repairs and cleaning, but was not open on Sundays. During the morning break, 10am to 10.10am, the line stopped and everyone rested. The basic workers' wages are about 1,500 RMB per month (about 140 euro), which is average to above average in Tianjin.

The tour was conducted by one of the four full-time trade union representatives at the Tianjin Toyota plant. This young woman was fluent in English. I asked her how she had got the job. She told me three of the four full-time representatives had been newly hired for the position by Toyota (the other was chosen by the FAW). When she was interviewed for employment by Toyota, she was offered the job of being a trade union representative. I asked her what the role of the union representatives was. She explained that they were basically go-betweens between the workers and the management. There was a meeting once a month with the workers and this was an opportunity for them to raise issues and for the union leadership to attempt to deal with them. They see their roles as co-ordinators. If workers were still dissatisfied, they would give the workers additional explanations as to why something couldn't be done. An example she gave was the problem of salaries. The workers wanted salary increases but the administration wanted to give only modest increases. The role of the full-time

union representatives was to explain the needs of the market and the pressures the company was under. They told the workers if they got too much that they might be fired and that there are lots of other people waiting for work. She was quite candid that threatening the plant might close wasn't really true, but they were supposed to communicate that to the workers.

There were also 10 part-time union representatives, elected by the workers by a system of secret ballot (writing the names on a piece of paper) on a departmental basis. I asked her what would happen if the company didn't like the workers' choices for the part-time union representatives. She told me that was too bad for the company; they were the real union representatives. She meets with these part-time representatives every day and said that they also raised suggestions or ideas with her, not just problems or dissatisfaction.

## General Motors Shanghai plant

The joint venture General Motors plant in Shanghai (SGM) was built as a mirror image to a facility in the United States. I spent a day in the plant and the company safety director for China showed me around. She is fluent in English as well as being an intelligent and competent health and safety manager.

The plant has 5,500 workers and operates on three shifts with 40 jobs an hour making annual production of 220,000-240,000 units per year. The composition of the workforce was almost identical to Toyota. On the whole, the working conditions and health and safety conditions were very good. The pace of work was brisk but people were not visibly working too fast.

At first, the plant had 15-20 per cent women workers but now the company doesn't hire many women workers. The reason is that there are good laws to protect working women (eg. three months maternity leave, which is covered by social insurance, but the company makes up the difference in salary) and so the company prefers to avoid these obligations.

Wages and benefits are relatively high with wages for an average worker 2,200-2,500 RMB per month and with profit sharing it can be double that (workers took home 25 months' salary last year). These bonuses are paid quarterly. Overtime can be required up to one hour per day. Sometimes there is Saturday work but the workers always at least get Sundays off. As well, there are housing subsidies.

The company provides transportation for the workers to and from work and they live all over the city. Lunch is provided by the employer for free and they have 30 minutes for lunch. We were picked up by a regular in-plant bus and taken to the cafeteria where we ate with the other salaried staff. If there is overtime, the company provides snacks or dinner in the evening. The company provides uniforms, safety shoes



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and personal protective equipment on a replacement basis.

The company encourages workers to buy cars and provides a special benefit and fuel subsidy if they do. Workers on the line can afford to buy a small car and the company gives them a discount (six months' salary if they are a first timer). So far, more than 500 people have purchased cars but most of them are management. Workers still mostly take the bus.

The Shanghai Center for Disease Control plays an overseeing role for health and safety issues in the plant, including noise and dust measurements, health examinations and fatality investigations (a contractor's worker on the construction site died last month). As well, the employer must report to the Shanghai government every month on such issues as hours worked and overtime. The American manager mentioned there are a lot of government policies to be complied with.

I met with the trade union representatives at the end of the plant tour. Three people are responsible for conducting trade union elections which are held by secret ballot vote. The 5,000 workers elect 200 trade union representatives. These 200 union representatives in turn select the full-time trade union leadership (the equivalent of twelve and a half people since the chairman is also the chairman of the Communist Party organisation), who in turn select the chairman. The trade union was led by older representatives who were chosen by the workers. They had worked in a variety of workplaces.

Trade union elections were held last year and are held every five years. During this five-year period the company cannot fire any of the union representatives. Workers pay 0.5 per cent of their salary as union dues and the company pays two per cent to the union, as required by law. Lost time for all representatives, full and part-time is paid by the company, as required by law.

We had a lengthy discussion about the problems of return to work and permanent disability. The union has made a real breakthrough in this regard and the union chair was quite proud of this. Sickness benefits are normally paid through the trade union but due to 10 workers in the plant being off on long term or permanent disability, the trade union chair got an additional 20 million RMB (about 1.9 million euro) for medical treatment and sick pay.

### Beijing Jeep

The plant was originally built in 1958 and in 1983 became the first joint venture in the automobile industry when American Motors joined China as minority shareholder and co-owner. In 2001 the joint venture was renewed for 30 years with Daimler as the third party and China retaining the controlling interest (57.6 per cent).

Due to the expansion of Beijing a new plant, four times the size, will be built. All workers will be transferred to the new facility, except for those who don't want to go for personal reasons.

The plant has a very different style of production from the GM or the Toyota plant. The pace of work is much slower than at GM or Toyota. The present plant uses a very outmoded style of production. Due to the relatively slow pace of work, hazards don't offer the same risk as they would if the pace were faster.

There are presently 3,259 union members of whom 603 are women. Many of the workers are older but there have been new hires. Before new hires begin, they receive training on safety. The



trade union was established in 1984. It is run through a system of congresses which select the trade union working committee consisting of 11 people and one chairman. There are ten full-time trade union representatives and about 25 part-time trade union representatives. There are eight specialised working groups. All workers get a copy of the collective agreement.

The safety committee is chaired by the company plant manager and the trade union chairman. The trade union chairman has the right to meet Chinese and foreign managers with respect to safety and labour protection. Last year in the general assembly section a model fell over. The trade union chair went to see the DaimlerChrysler foreign manager. There was a design problem which was a great danger to the workers. If it had been allowed to continue, the workers might have refused to work. The Chinese and foreign presidents called a meeting and tried to solve the problem. The hazard was resolved.

There have been some serious accidents, for example, a worker in the welding shop had his arm crushed or cut off. A prosthetic arm has come from Germany for the worker and he now works in a supply area. The machine has now been fitted with a two-button control mechanism. The trade union ensures that no-one can be fired as a result of an accident.

When building in a new area, the trade union takes part in the decision-making process. Every Wednesday afternoon there is a two-hour meeting to discuss building the new plant. The trade union takes part. Also, in the collective contract, there is a provision to ensure investment is made in improving working conditions.

There are a variety of union structures in the Chinese auto plants. This is probably true for all industry in China today. The trade union delegates who have visited us in Canada and the people we met with in China have had a variety of perspectives on their role in China. Some have emphasised their need for stability, moderation and co-operation with employers. Some have stressed the need for understanding how unions function in a market economy. All have been interested in what we do and most recognise the need for the union movement in China to change with the times. A number have emphasised the need for examples from the Western trade unions to give them the opportunity to argue for change.

The union has made a real breakthrough for sickness and disability

The standard of living in China has improved dramatically since 1992

Most recognise the need for the union movement in China to change

# Labour solidarity with China's workers

The ACFTU is being thrust into an environment where they have little experience or background, but a new generation of union leaders in China is also emerging

**F**OR the last several years, the Asian Pacific American Labor Alliance, AFL-CIO, has been involved in developing exchanges between labour unions and labour scholars in the United States and China. This activity is in sharp contrast to the official policy of the AFL-CIO, which steadfastly refuses to have formal relationships with unions in China or other socialist countries such as Vietnam or Cuba.

The Asian Pacific American Labor Alliance is a national organisation of Asian American trade unionists established in 1992 with chapters throughout the United States. Many of its members are immigrants, and some of them have relations with labour movements in their native lands. The Asian Pacific American Labor Alliance has invited Chinese unions to speak at its last two national conventions and has participated in three different delegations that have travelled to China to meet with unions, workers, and scholars. We view these exchanges as crucial to promote labour solidarity, to strengthen communication and understanding between unions and workers, and to advance initiatives around common interests in this era of globalisation.

What have we learned through these exchanges? And what are the possibilities for developing labour solidarity with Chinese unions and workers?

With over 120 million members, the All China Federation of Trade Unions (ACFTU), China's only labour federation, is the largest labour organisation in the world. The ACFTU is directly tied to the government, and the Chinese government does not allow independent unions. Nevertheless, it would be wrong to view the ACFTU as a monolithic organisation or to ignore the ACFTU, as the AFL-CIO has done.

The ACFTU leadership and membership varies from province to province, city to city. There are differences between unions in the manufacturing sector versus those in the service sector. There are differences between the unions in the state enterprises versus unions working to organise in the growing private sector.

The Chinese economic and political situation has transformed dramatically in the last twenty-five years. Capitalism and the free market are expanding rapidly throughout China, with mixed results. The economic growth and expansion is undeniable, with China outpacing most of the developing world in economic growth and a steadily rising GNP. The material improvement in the lives of many workers in the major cities and in the coastal region is undeniable. At the same time, there is also growing economic inequality and worker dislocation, especially among workers in the formerly state-run enterprises. China faces huge economic problems, including mas-

sive unemployment and underemployment. In this changing environment, the ACFTU is also facing unprecedented challenges.

Within the state dominated economy, the ACFTU's role was much more proscribed. The ACFTU held that the interests of the workers and the government were virtually identical and that the role of the union was to defend the interests of both. Under the growing free market economy, however, the ACFTU is facing new challenges. With the expansion of capitalism, the growth of foreign investment, and the emergence of a new generation of entrepreneurs, the contradictions between workers and employers are escalating.

While the government's interest is to encourage greater foreign capital investment and to reduce the barriers to foreign corporations, this is potentially at odds with the union's interest in organising workers in the private sector and negotiating better wages and working conditions. The ACFTU is being thrust into an environment where they have little experience or background: organising in the private sector, negotiating collective bargaining agreements with foreign capital, and holding foreign corporations accountable.

In facing these new challenges, a new generation of union leaders in China is also emerging. Some have studied and travelled abroad and are actively seeking new ideas and approaches to address China's new labour conditions. By engaging in more dialogue with Chinese union leaders, unions in other countries could influence the future of Chinese unions. This process could also promote cross-border solidarity that could bring together workers within the same multinational corporations and within the same industries.

The ACFTU has developed formal relations with most major trade unions in Europe, Asia, Africa, and Latin America. In recent years, the ACFTU has reached out to other labour movements in order to learn about the role of trade unions in a free market economy and to learn about other nations' labour relations, labour laws, and collective bargaining procedures. Several European unions are investing considerable time and effort in their work with Chinese unions in the hope that this process could have a positive influence on their future development.

## Examples of labour solidarity

Two examples of labour solidarity initiatives we have been developing over the last several years are still in the early stages of development, but I believe they are helpful in identifying potential approaches to building labour solidarity in the future.

Five years ago, the United Teachers of Los Angeles (UTLA) developed fraternal relations



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with the Shanghai Teachers Union. This was the first union-to-union agreement between the United States and China. Every year the UTLA has either sent a delegation of teachers to Shanghai or has received a delegation of Shanghai teachers in Los Angeles. This exchange has been mutually beneficial. Teachers have had the opportunity to visit each other's classrooms, to review curricula, to discuss educational philosophy, and to discuss the role of their respective labour unions in both educational and public policy as well as in collective bargaining and representation.

The UTLA is a union that has joint affiliation with both the National Education Association (NEA) as well as with the American Federation of Teachers (AFT). This exchange is significant because teachers are currently the largest group of unionised workers in the United States, and the National Education Association is the largest union although it is not affiliated with the AFL-CIO. This exchange has provided opportunities for both NEA and AFT members to travel to China, to meet with teachers in Shanghai, and to learn about the structure and role of the Chinese educational system and Chinese labour unions. Worker-to-worker, union-to-union exchanges such as these help to create a bridge of understanding between workers in the same occupations and in the same industries.

A second initiative involves the exchange between labour scholars from major US and Chinese universities. Labour scholars from the Universities of California in Los Angeles and Berkeley, Harvard University, Cornell University, the University of Indiana, and Queens College in New York have participated in this exchange. They have met with labour scholars from Ren Min University, Peking University, the China Labour Relations College, and the Capital Labour Economics College.

This exchange has provided an opportunity for labour scholars to travel to each other's universities, to engage in discussions with graduate students in the field of labour relations, and to share their perspectives and analyses of trends within their labour movements. The scholars are currently developing a bilingual webpage and are translating key articles that reflect some of the recent research and analysis in the field. This exchange will also open the opportunity for joint research, conferences, and scholarship exchange.

A focus of the scholar exchange will be on Wal-Mart. Wal-Mart is the largest corporation in the world, and the largest private sector employer in the United States. Many of the goods sold in US Wal-Mart stores are produced in China. In fact, 10 per cent of the goods coming from China to the US are imported by Wal-Mart. Wal-Mart plans to open 300 stores in China in the coming years.

Many US labour leaders believe that Wal-Mart should be the major organising target of the US labour movement. Wal-Mart is a fierce, anti-union corporation that is having a major impact on the national and global economy. This approach reflects the race to the bottom in terms of wages and labour standards. The campaign to organise Wal-Mart is one that no single union in the United States can take on and will require large-scale cooperation between many unions within the AFL-CIO. This is also a campaign that necessitates international labour solidarity.

Currently the ACFTU is threatening action against Wal-Mart Stores Inc, the world's biggest retailer, if it prevents the thousands of workers employed in China from forming and joining

labour unions. This is a move that US unions should embrace and support.

Labour scholars and labour leaders in the United States and in China would both benefit by exploring cooperative research and organising strategies. This effort could potentially bring together unions, scholars, and nongovernmental organisations that are committed to working together to end the exploitative and abusive practices of Wal-Mart in both the US and China.

While these two initiatives are still in their early stages of development, they represent a hope for the future. For far too long, there has been no relationship between the largest labour movement in the industrial world and the largest labour movement in the developing world. The official position of the AFL-CIO is still to ignore and isolate the ACFTU.

In the past few years, the AFL-CIO has launched campaigns to oppose permanent trade status with China, to oppose China's admission to the WTO, to demand that China revalue its currency, and to press for trade sanctions against China. They have blamed China for the loss of 727,000 US manufacturing jobs. In the campaign to demand that China revalue its currency, the AFL-CIO even joined forces with the National Association of Manufacturers, an anti-union coalition of employers.

In reality, China will continue to play a major role in the world economy. The Chinese workforce and the Chinese labour movement are far too large and too significant to ignore. The interests of international labour solidarity necessitate more communication, more exchange, and more cooperation between unions and workers in China and throughout the world.

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## Public Services International

PSI is a global union federation representing 20 million workers, members of public sector trade unions in 160 countries.

PSI and its affiliates are committed to building quality public services that meet the needs of workers and communities. Priorities include global campaigns for water, energy and health services. PSI promotes gender equality, worker rights, trade union capacity building, equity and diversity. PSI is also active in trade and development debates.

PSI welcomes the opportunity to work cooperatively with those who share these concerns.

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# Howard lets loose

The current workplace regime is seen as harsh and unfair for millions of working families, but they have not experienced the worst

PRIME Minister Howard's re-election saw him win control of the Senate for the first time since the 1970s. His Industrial Relations election statement was sparse, so details of how extreme changes will be when the 'gloves are off' may not be clear until the new Senate sits in July 2005.

This article discusses what may become a radically new legislative framework for Australia's workplaces. It is based on press and policy statements and on IR Bills – defeated over the last five years by a Senate opposition majority of ALP, Greens and Democrats – that Workplace Relations Minister Andrews has reintroduced.

Howard is a political ideologue on industrial relations, assertively pro-employer. His new 'no holds barred' changes will shift more legal power to dominant employers. This will further steer the IR system for profit making with little balance for employees. The current workplace regime is seen as harsh and unfair for millions of working families, but they have not experienced the worst.

## A deregulation agenda

Howard is committed to full deregulation of the labour market, flexible workplaces; but downward flexibility in wages and conditions. The bipartisan Senate Poverty Inquiry found that 21 per cent of households – 3.6 million Australians – live on less than \$400 (240 euro) a week. The main source of poverty is joblessness, but also the phenomenon of the working poor. Many poor households are in work but receive very low pay. Working lives of casuals and those in precarious employment will worsen with further weakening of employee rights and union power.

The existing *Workplace Relations Act* (1996) is biased, ensuring employers have power and unfairly restricting workers' and union rights. Employers can now refuse to negotiate with a union and demand that employees sign Australian Workplace Agreements (AWAs). These individual contracts require submission to employer dictates. The Industrial Relations Commission cannot require an employer to bargain in good faith or to arbitrate to settle disputes. Reactionary employers already legally lock-out their workforce to apply bargaining pressure, and due to increasing employer confidence these long lock-outs will spread.

What of the employers? Key powerful corporate interests, political employer associations and extreme New Right commentators are shaping Howard's political agenda. Some main players are the Business Council of Australia, BCA comprising the largest transnational corporations that has strong influence with key New Right business leaders; the influential Australian Chamber of Commerce and Industry, ACCI; the AIG, Australian Industry Group; the MBA, Master Builders Association; the NFF, the National

Farmers Federation and the New Right H R Nichols Society, whose leading business ideologues sent a letter (*Australian Financial Review* 20/11/2004) to Howard demanding their agenda, based on UK 19th century master and servant doctrines under the guise of 'freedom to contract'.

An iconic issue for Howard is the removal of unfair dismissal rights of workers in small businesses with less than 20 employees. This for good reason went down in the Senate on many occasions. A point of obsession, Howard repeats doctrines to give the impression he is backing small business and that (unproven) "lower job growth is all the fault of unfair dismissal legislation". Howard has put up the same changes again. The outcome will be that millions of workers in small businesses could be sacked unfairly for no reason or for the worst reasons. This is a green light for those employers who mistreat their workforce. Unfortunately, there are sadists as bosses ruling with workplace fear. This is a recipe for unsafe workplaces, especially the bullying of women. An unfair dismissal case at least gives the employee a means of airing their grievance and if the case is strong to be reinstated or compensated. It is reprehensible that this individual right to be treated fairly is to be taken away. Dismissal laws only prohibit unfair behaviour and are not a major burden on small business. Less than 0.3 per cent of small businesses have a federal unfair dismissal claim in an average year. Less than one per cent of small businesses gave unfair dismissal laws as a reason for not hiring staff. (See *Australian Financial Review*, 20/11/2004).

Howard's next Bill denies small business workers redundancy pay. Up to 100,000 employees in small businesses are retrenched every year to face an average of five months unemployment. Employees working in small business for up to twenty years may – if they are unlucky enough to be laid off – walk away with nothing, unless there is redundancy pay, a very small minimum compensation as an Industrial Commission minimum.

Another iconic issue will be compelling workers and management to use AWA's, in spin language, Australian Workplace Agreements that are just individual contracts, setting working conditions beneath the minimum award. After eight years of vigorous promotion, AWAs cover less than three per cent of the workforce. A key political point to remember is that individual bargaining was the system 100 years ago. Giant transnational mining corporations use AWAs to de-unionise workplaces. Small business use AWA's to exploit their workforce.

## Taking on the unions

On the basis of past attempts, Howard's fundamental thrust is to make much union conduct unlawful. Legitimate union organising and bargaining with industrial action for the occupation-

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al, economic and social interests of members will be increasingly unlawful. Any union that does anything unlawful will be met with a more severe penal system. Howard makes political noise about the undesirability of intervention by third parties into the workplace citing the necessity to cut back unions and the Industrial Relations umpire, but the reality is that the third party intervening unnecessarily will be the Government.

The Howard Government's *Better Bargaining Bill* strengthened only employer rights to stop strikes. It was previously halted by the Senate but can now become law.

ACTU President, Sharan Burrow said:

"This Bill effectively seeks to ban the right to strike. There is no evidence to justify the Bill. The level of strikes in Australia is at record lows and long-term productivity growth is at record highs. The Howard Government is again taking the side of employers against workers. The changes would tip the balance in workplaces even further in favour of employers. The basic rights of employees need to be strengthened, not weakened. The government's changes would persecute workers for trying to bargain or to take industrial action over legitimate claims for better wages or workplace conditions."

And the ILO has already cited Australia's restriction against collective bargaining at the industry level or multi-employer level, against pattern bargaining, against industry strikes, as being in breach of the principles of freedom of association.

Will Australia's still unique Industrial Relations Commission system based on enterprise and individual bargaining with conciliation (but not arbitration) continue to exist? We do not know what Howard will do, so what is to come is not clear. In one ideological twist in the policy, many of the AIRC functions may be privatised. Andrews' election promise was \$2m to improve small business's access to mediation services. The H R Nichols Society calls for the abolition of the Australian Industrial Relations Commission and a return to the ancient common law.

Howard promises to protect independent contractors: that "the concept of freedom to contract is protected, promoted and enhanced". The details are not clear, but this is freedom only for the employer to contract on whatever terms the employer dictates. It is based on master and servant doctrines. In today's difficult labour market, far too many employers use legal contracting devices to force workers to sign documents saying that they are not employees and are therefore not entitled to basic minimum entitlements. Workers have to sign to become 'businesses' and then contract their labour. At times Australian industrial courts have looked behind these exploitative contract devices and revealed that these 'contracting businesses' are really employees, who should be covered by workers compensation. Howard's policies were vague, but they do not want industrial courts deciding that there are rights for dependent contractors.

Howard wants to further frustrate union right of entry, a basic right of union organising in Australia. When employers failed in a right of entry case, they lobbied Howard, so he had a Bill to exclude the operation of State right of entry laws where Federal right of entry laws also apply.

The strongest, most militant and political unions are singled out, particularly the building

and construction unions. The biased \$60 million Cole Royal Commission was followed by a Bill, defeated by the Senate. With this to be re-introduced, Australians can now expect to see a ideologically biased Building Industry police force to undermine building workers with a world of industrial spies on building workers, delegates, taping and harassing union officials, fabricating evidence, and prosecuting. Pattern and industry bargaining strikes would become unlawful, undermining collective bargaining power. Union officials could lose their livelihoods for five years for the most trivial breaches.

What is likely is compulsory pre-strike ballots. Many unions now do exercise the right to have a pre-strike ballot. But Howard's provisions will be so restrictive and delaying that they in practice will frustrate industrial action. If any balloting provision is breached, however minor, then the strike becomes 'unprotected' and unlawful. The employers then have sanctions under the *Workplace Relations Act* or at common law where - without an effective shield of statutory 'protection' - ancient torts make any strike unlawful.

Howard promises to strengthen secondary boycott laws that already make solidarity strikes and secondary boycotts unlawful under the *Trade Practices Act*; so how this could be more restrictive is difficult to say. The common law tort weapon for an employer to get an interlocutory injunction to stop strikes or else the union faces severe penalties will be more widely available.

These Howard policies breach Australia's international labour law obligations and ILO standards.

### Health and safety in danger

Howard in his policy plans to abolish the National Occupational Health and Safety Commission. This shows a callous disregard for the welfare of the working families. Each year there are 4,500 workplace-related deaths. The Government is planning to abolish the tripartite body that sets the standards for the application of workplace health and safety guidelines.

### Fight back

Howard has the power. Some form of these laws (or some surprises) will be passed in 2005, despite strong union and community opposition. The good news is that many unions are well organised to resist these new laws. Other unions will at least survive. The coming period will really test the ACTU's organising strategy. One challenge will be to build across unions and network members for solidarity. Another to strengthen active community alliances. Not necessarily easy, but remember the tremendous mobilisation over the waterfront. Such worker and community mobilisation will determine whether we revive that great Australian notion of a fair go for all.

Legitimate union organising and bargaining with industrial action for the occupational, economic and social interests of members will be increasingly unlawful

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**Trade Union News**  
..... FROM FINLAND

# UK law and Europe

UK workers gained new rights to parental leave, equal treatment for part-time workers and access to European Works Councils

**I**N the UK, Government Ministers are always keen to remind workers of the many new rights introduced following the election of a Labour Government. No doubt such claims will once again feature prominently in the run up to the next election, due in early 2005. But how many of these rights are home grown and how many are thanks to Europe? Can the new framework of UK rights be seen as a rejection of the deregulated, free market approach and a shift towards a regulated market with emphasis on social responsibility?

**Many new rights originated in Europe:**

- The introduction of the 48-hour working week came from the European Working Time Directive
- The introduction of a minimum of four weeks holiday entitlement came from the European Working Time Directive
- The protection of employment rights following a transfer of undertakings (TUPE) came from the European Acquired Rights Directive
- New rights to information and consultation stem from the European Framework Directive on Information and Consultation
- Recent extensions to protection against discrimination come from the European Framework Directive on Equal Treatment in Employment and Occupation.

But in some respects the claims of Labour Ministers are true – Labour did open the door to these important new rights. The 1997 Labour Manifesto committed the incoming Labour Government to sign the Social Chapter of the Maastricht Treaty thereby ending the ‘opt-out’ negotiated by the Conservative government. That action alone meant that UK workers gained new rights to parental leave, equal treatment for part-time workers and access to European Works Councils. It also tied the UK in to future rights that may be negotiated at the European level.

But since fulfilling that Manifesto pledge, the UK government has been among the most active in the Union in opposing any new European employment rights, blocking rights for agency workers, weakening rights on information and consultation and creating huge gaps in working time rights.

**The European Constitution and the UK**

This ingrained hostility to spreading European rights to UK workers was confirmed by Jack Straw at a speech to the CBI. Talking about the draft European Constitution, he pledged to block any attempt to reverse Thatcherite trade union ‘reforms’, promising instead to “put the interests of business at the heart of our (European) negotiating position”

Mr Straw said “We will insist... that the charter of fundamental rights creates no new rights under national law so as not to upset the balance

of Britain’s industrial relations policy”. Initial reports on the new Constitution suggest that the UK has succeeded in blocking attempts to include protection for the right to strike in the new Constitution, making such rights a political declaration with no direct legal enforceability.

But all is not lost. Mr Blair needs trade union support to win a yes vote in any referendum on the Constitution. More importantly, the Labour Party needs union support to secure a third term Labour Government. But that support is increasingly unlikely unless basic trade union demands are written into the next Labour Party manifesto.

So what do UK unions want to see? Continuing the focus on Europe, there are five basic but important improvements that could be made to the UK framework of law:

- Revisions to the Working Time Regulations so that employers cannot count bank holidays towards the basic four-week entitlement and an end to the opt-out which currently allows employers to force workers to agree to work more than 48 hours;
- Full implementation of the Temporary/Agency Workers Directive, which would provide protection for agency workers;
- Better enforcement mechanisms and stricter penalties against companies who fail to inform and consult workers prior to major workplace changes. Returning to the proposal that decisions arrived at without agreement should be considered ‘null and void’;
- Inclusion of the Charter of Fundamental Rights in the draft EU constitution so that UK workers can benefit from the framework of rights enjoyed throughout Europe;
- Full and proper implementation of the Posted Workers Directive to protect the rights of migrant workers.

**Social Europe v Anglo-US deregulation**

Many Labour Members of the European Parliament have been working with trade unions at national and European level to win advances in employment rights – despite hostility from the UK Government. They have won significant improvements but they need support.

The Charter of Fundamental Social Rights can deliver employment rights to UK workers, rights that will be difficult to reverse should the Tories ever take power again. But determination and a strong political will are needed if maximum advantage is to be taken of the ambiguous terms of the Charter.

Does the political will to push a social agenda exist in the UK? If not, can the European political will for a social agenda survive a concerted attack – both financial and ideological – from a reinforced Anglo-American pact? Both are important questions as we approach the UK Presidency of the Council in the second half of 2005.



CAROLYN JONES is director of the Institute of Employment Rights in the UK

# Unions think strategically

**T**HERE are many things about this strike that might seem reminiscent of the agonising conflict that embroiled Southern California grocery workers for four and a half months last winter. Most notably, they're both local strikes challenging powerful national corporations.

Like Safeway, Albertsons and Ralph's, the big San Francisco hotel chains – Starwood (which owns the Hilton), Sheraton, Hyatt, Holiday Inn and others have a mutual support arrangement. A strike against any member of the Multi Employer Group, they agreed long ago, would bring a lock-out in the rest.

Yet, unlike the picket lines in the south, which had an air of desperation after the first few weeks, the San Francisco strikers are nothing if not upbeat and challenging. It is a strategic strike – a test run for the kind of long-term planning advocated by many voices now calling for reform and renovation in the AFL-CIO itself.

Elena Duran, a locked-out housekeeper at the Sheraton, greeted with anger the announcement that hotel owners might extend the lockout beyond the union's two-week, limited strike. Facing a barrage of microphones at a press conference in the union hall on Golden Gate Avenue, and surrounded by dozens of other Local 2 members, she emphasised that "it's important for us to level the playing field." She was clearly willing to make some sacrifices to reach that goal - her husband works at the Sheraton, and was locked out with her, giving her family only strike benefits on which to survive.

For Duran, the playing field is uneven today because an international corporation like Starwood can use its profits from operating hotels around the world to subsidise its losses during a local strike at one of its franchises, like the San Francisco Hilton. That's why southern California grocery workers were able to empty stores of customers, but the market chains used profits earned elsewhere to weather the conflict. Ultimately, workers had to agree to big new payments for their healthcare, and lower wages for new employees. Here in San Francisco, health care premiums are the major sticking point, as well as the length of the contract, which is all about leverage.

In San Francisco hotel chains have demanded that workers go from paying \$10 a month for insurance today to \$273 five years from now. Barbara French, spokesperson for the Multi Employer Group, says this is just a proposal, and subject to negotiation. Hotel workers look at Los Angeles supermarkets and see it's not just a gambit.

For hotel workers to avoid the fate of their supermarket counterparts, they need a stronger union and more bargaining power. Over the last few years, Local 2 and its parent union have made several changes to meet that challenge, and the current hotel lockout revolves around one in

particular. The union's locals want to synchronise their contracts with large corporations so that in many cities they'll end in the same year – 2006. Seven cities already have achieved this goal – New York, Chicago, Hawaii, Monterey, Toronto, Detroit and Boston. Although bargaining, to begin with, would still take place for separate contracts in each area, the union would be able to make similar demands, and possibly even take action in multiple locations at the same time.

The chains may have been caught napping until recently, but that's changed now. Three contracts are up in three of the country's largest hotel markets – San Francisco, Los Angeles, and Washington DC. The same demands are on the table in each area, and this time, the companies are refusing to budge. While hotel group spokeswoman Barbara French emphasises the convenience of negotiating only once every five years, the problem isn't the duration of future contracts. It's whether there will be simultaneous negotiations in 18 months.

The San Francisco strike may soon spread to Los Angeles and the nation's capital. If it does, it will preview on a smaller scale the kind of multi-city union coordination that the companies find so disadvantageous. On their side, therefore, the hotels have raised the stakes, first, turning a four-hotel strike into a 14-hotel dispute, and now threatening to make a two-week lockout indefinite.

The plan for increasing union strength hasn't just concentrated on coordinated bargaining. A strike threat is an empty one unless workers are able to carry it through. Until recently, the strike fund only held three million dollars. For families like the Durans, who now depend on the \$200 weekly strike benefit checks to buy food and avoid eviction, the fund was dangerously inadequate. Every 1,000 workers on strike need \$200,000 a week. If all three cities strike, the fund wouldn't have lasted long.

But last year the old HERE union merged with the garment workers union, the Union of Needletrades, Industrial and Textile Employees, to create the new Unite Here. UNITE has been devastated by massive relocation of clothing production to low-wage countries around the world. San Francisco's own union Koret and Levi's plants all closed during the last two decades. But the union does have huge financial resources, from years of investing in New York real estate and a labour bank. Furthermore, it also has members in laundry plants around the country, who often wash the tablecloths and sheets from the hotels. By merging the two unions, the new entity gained the ability to weather much longer strikes, and brought together two parts of the same industrial workforce.

So now, the stage has been set for an epic labour struggle that transcends just pay, benefits, even San Francisco. It's about whether workers will be able to stand toe-to-toe with management.

A hotel workers' dispute in San Francisco shows unions have learnt strategic lessons from previous struggles



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## Worldwide

THE latest edition of the World Bank's *Doing Business* report devotes eight of its 80 pages to the matter of 'hiring and firing of workers'. The report criticises rigidity in labour regulations and proposes cuts on wages, flexibility of working hours and removal of dismissal protections. Global Unions' Washington Office noted that the report 'praises Colombia and Slovakia, in particular, for having undertaken "bold reforms"'. Copies can be purchased from [www.worldbank.org](http://www.worldbank.org).

## Canada

THE UFCW union has reported a series of favourable court rulings further to union recognition claims that it is pursuing at Wal-Mart stores across Canada. The Jonquière branch, which was formally certified with UFCW recognition in August, is currently the only unionised Wal-Mart in North America. Following the struggle to secure recognition at Jonquière, Wal-Mart has described the store as 'unprofitable'.

## Global

THE ICFTU is predicting 'disaster' in the wake of the end of the MFA quota agreement on international trade in textiles. According to a report published on the ICFTU website ([www.icftu.org](http://www.icftu.org)), the end of the MFA will result in the loss of millions of jobs in countries which are already some of the poorest in the world', citing Cambodia, Mauritius, Guatemala and the Dominican Republic.

## Colombia

FOUR representatives of prominent international trade union organisations were expelled from Colombia by the government on 30 October and 1 November. Victor Baez Mosqueira, General Secretary of ICFTU-ORIT, Antonio Rodriguez Fritz (ITWF), Rodolfo Benitez (UNI) and Cameron Duncan (PSI) were due to attend a regional trade union co-ordination meeting. ICFTU expressed 'outrage' at the expulsions. Colombia's Vice President later issued an apology, claiming that the deportations were a 'mistake by

immigration officials'. In an apparently unrelated incident a group of European trade union leaders had their visas revoked and were required to leave Colombia after just three days.

## New Zealand

THE NZCTU has welcomed legislative changes to the Employment Relations Law, which come into force in December. NZCTU reports a 'real promotion' for collective bargaining and noted increased protection for workers following enterprise transfers.

## Europe

THE European TUC and business federations 'social partners' have signed a framework agreement on work-related stress. The agreement, which has received mixed praise and criticism from commentators, will not be implemented in EC law but is rather intended as a basis for negotiation and social dialogue by unions and employers organisations in the member states.

## Development projects

A SHOCKING report from British NGO War on Want uncovers details of the vast sums of money that have been awarded to large consultancy firms from the UK government's aid budgets in return for advisory work on the water, rail, electricity and postal services in developing countries. War on Want reveals that the 'advice' proffered by these firms has been to sell off public services with scant concern for the social concerns that have been clearly articulated by unions such as PSI. The report makes a set of recommendations for the UK government's development agency and exposes clear conflicts of interests in this multi-million pound industry.

## Delocalisation

JOHN MONKS, General Secretary of the European TUC, put de-localisation at the centre of a recent speech, commenting that it was 'neither desirable nor practical' to build walls round Europe to stop companies and jobs leaving Europe, but neither could

unions allow companies to 'just up and go and leave wreckage among communities'. The ETUC leader set out a vision of information and consultation leading to 'social plans', agreed by companies in consultation with local unions, that would govern any 'de-localisation' that saw the company leaving a European base.

## International trade union movement

PLANS are afoot to begin a process of reform and integration that should see the ICFTU and WCL embark on the creation of a 'new international trade union organisation'. The proposal has not yet been mapped out in detail, as ICFTU has been awaiting a formal mandate to proceed with negotiations. The question is tabled for discussion at the quadrennial ICFTU Congress, which will meet in Japan in December 2004. WCL received a mandate to pursue the question at its last Confederal Board session earlier this year.

## Colombia

THE international energy federation ICEM has established a social dialogue forum in which Colombian unions and eight multinational companies operating in the energy and extractive sectors have engaged in discussions covering labour relations, working conditions and security of trade unionists.

## IMF/World Bank

TRADE UNION leaders from more than 40 countries met the World Bank and IMF in early October to press for changes in the institutions' policies, which the unions said included 'simplistic' support for labour market flexibility and dismantling worker protections. The IMF Managing Director Rodrigo Rato said that, despite union interventions, IMF remained convinced that such 'reforms' were often necessary.

## Europe

A NEW report issued in the ICFTU series of World Trade Organisation trade policy reviews makes the following

basic findings in relation to the 25 member states of the European Union:

■ Most members of the EU have ratified all eight core ILO Conventions, with the exceptions of Czech Republic (Convention 138 on child labour), Estonia (Conventions 111 and 138 on discrimination and child labour), and Latvia (Conventions 29, 138 and 182 on forced labour and child labour).

■ Trade union rights are described as generally respected in law and practice in the 15 pre-expansion member states, but ICFTU raises concerns at labour laws and rights violations in the new EU members. The report also notes that the EU has failed to explicitly recognise the right to take cross-border solidarity strike action, which exists as a right under international law and as a 'derivative right' in EC law.

■ The report notes gender differences exist in the labour markets of all member states, and that many women are still working in low-wage, atypical sectors and thus earn generally less than their male counterparts.

■ Child labour is described as 'not widespread' in Europe, but ICFTU notes 'unacceptable exploitation' in 'most countries to some degree', mainly in the informal economy and agriculture. The report also noted a need for full documentation of the extent of the problems.

■ The report identifies trafficking of women for forced prostitution as a problem throughout the EU, and notes also the trafficking of persons for forced manual labour. ICFTU also reports on other employment practices that breach Convention 29.

## ILO/Belarus

THE REPORT of the Commission of Inquiry to Belarus, established by the ILO in 2003, has now been received by the Governing Body and communicated to the Government of Belarus. The Commission, which is an exceptional measure on the part of the ILO, was assembled to investigate a pattern of interference with freedom of association in Belarus.

The Commission noted several breaches of trade union rights, such as interference by government in trade union registration. The Commission called for publication and 'wide dissemination' of its recommendations, and 'adequate protection or even immunity

against administrative detention [for] trade union officials in the performance of their duties or when exercising their civil liberties'. The Commission issued a deadline of 1 June 2005 for most of its recommendations to be implemented by the government of Belarus.

ICFTU welcomed the 200-page report, which provides detailed analysis of the background of trade unionism in Belarus against which the current problems have arisen, and hoped that it would influence EU policy concerning trade preferences. The Commission's report, and the Government's reply are available at: [www.ilo.org/public/english/standards/relm/gb/docs/gb291/index.htm](http://www.ilo.org/public/english/standards/relm/gb/docs/gb291/index.htm)

## UK

NEW legislation to regulate the activities of 'gang masters' was adopted following sustained efforts by several unions. British unions believed that the legislation would help turn around the worst practices in agriculture and other industries which operate the gang master system.

## Belize and Suriname

A NEW report issued in the ICFTU series of World Trade Organisation trade policy reviews makes the following basic findings in relation to labour standards:

■ Belize has ratified all eight core ILO Conventions, while Suriname has failed to ratify four of the core conventions relating to Child Labour and Discrimination.

■ Workers enjoy basic trade union rights in both countries, however the report is critical of limitations in Belize to the right to strike of a very broadly defined public sector workforce, and of anti-union activities by employers. Specific problems exist in the banana sector and export zones, where trade unions are not allowed in practice.

■ ICFTU reports that a degree of protection for equal opportunities exists in law, but that discrimination and unequal pay are widespread in Suriname, due to 'social pressures and customs', and that women hold few managerial positions in Belize. Discrimination against indigenous people is identified as a problem in Suriname.

■ Child labour is 'prevalent' in

Belize, in family businesses and citrus, sugar and banana industries, and in a variety of informal economy roles in Suriname. In Suriname school enrolment is low, while in Belize there is a shortage of school places.

■ ICFTU reports instances of trafficking in both countries, and notes that an estimated 30 percent of prostitutes in Belize are children

## Outsourcing

UNI, the international federation representing banking and telecom workers held a regional conference in the Philippines on what it called the 'global mobility revolution'. Trade unionists and academics discussed both the high wage levels and job creation for educated young workers that the movement of finance, IT and 'back office' jobs has brought to the region but also the growing insecurity that all workers face in these sectors. Delegates spoke of the movement of up to five million jobs 'over the next few years'. UNI re-emphasised a commitment to pursue organising campaigns in the destination countries as part of a 'global response' to this phenomenon.

## India

MORE THAN one million bank workers heeded a strike call by a coalition of banking unions on 24 August, reports the CITU federation in 'Working class' newsletter (<http://citu.org.in>). Unions described the response to the strike, called in support of a wages claim, as 'massive' and a 'total success'.

## UK

TRADE UNIONS welcomed improvements to the Employment Relations Act. Workers now have protection against being offered inducements by the employer against union membership or to take part in union activities or to make use of union services. The new rules follow a ruling of the European Court of Human Rights in the case of *Wilson, the National Union of Journalists and Others v the UK*. Among other amendments to the law, workers now have improved rights to be accompanied to disciplinary or grievance hearings and increased protection against dismissal during 'official' strike action.

## Beijing consensus

International trade union organisations meeting in Beijing on 10-11 October issued the Beijing Consensus, a statement recognising the pressures brought about by economic globalisation and emphasising the role that trade unions play to preserve peace and to promote development. The consensus affirmed the right of trade unions in developing countries to pursue their own developmental paths and called upon the union movement to 'transcend differences in ideology, culture and religion and international affiliation' and to 'promote exchanges and common dialogues'. The document was signed by the All China Federation of Trade Unions, the World Federation of Trade Unions, the Organisation for African Trade Union Unity, the International Confederation of Arab Trade Unions and the General Confederation of Trade Unions.

## Wal-Mart

THE multinational giant Wal-Mart, which is now running some 37 stores and employing more than 19,000 people in 18 Chinese cities, sparked a confrontation with ACFTU this year, when it confirmed that it was refusing to accept trade union organisers into these stores. Wal-Mart's strategy appears to have shocked the ACFTU which issued a series of increasingly assertive statements. Shortly after ACFTU announced it would sue Wal-Mart for violation of the labour law, the superstore chain announced a reversal of its policy: in future it claimed that its Chinese stores would allow access to union organisers.

## Health and safety

IN ITS most recent report on safety levels in China's mining sector, the *China Labour Bulletin* noted 15 reported accidents during June 2004. Several cases showed that government safety officials took action to suspend production, and sent teams of safety officials to inspect mining regions, but other cases show poor provision of safety equipment and demonstrate that the sector

remains highly dangerous. There were as many as 95 confirmed deaths and up to 60 others injured in total during June, although the real figures may be higher; CLB is aware of at least one case in which managers conspired to cover up deaths from mining accidents. In October one of the worst mining disasters in recent history killed at least 56 miners, with a further 92 missing and feared dead.

## AFL-CIO

A COALITION of business organisations and trade unions filed a petition with the US Trade Representative calling for sanctions to be imposed on China unless the country re-valued its currency. The petition was rejected. Explaining the action, AFL-CIO's Secretary Treasurer Richard Trumka said that the AFL-CIO had identified Chinese producers as having an 'unfair advantage of 40 per cent' which was causing a trade imbalance and leading to US job losses. The unfairness was due, he said, to the Chinese government's manipulation of its currency.

## Interventions

*China Labour Bulletin* reported the arrest and detention on 1 November of

more than 20 worker activists from the former Tianwang Textile Factory in Xianyang City, Shaanxi Province. ICTUR understands that those arrested were protesting against changes to employment conditions announced following a transfer of factory ownership. According to the *China Labour Bulletin*, the strike, which began on 14 September, had been continued for around seven weeks and had as many as 6,800 supporters at the factory.

■ Guilty verdicts and prison sentences were handed down against five workers from the Stella International Xing Ang shoe factory in Guangdong. The five were accused of damaging property during a thousand-strong protest over wages and conditions at the factory.

■ Ding Xiulan and Liu Meifeng, labour organisers from the Zhongheng textile factory in Jiangsu are accused of disturbing social order following their role in strike action and worker protests.

■ Up to 1,000 police officers forcibly evicted workers from the Shanhua Special Vehicle Factory, Chongqing, China on 30 August. ICTUR understands that workers had occupied this factory on 18 August in protest at its sale to a private company and remained in occupation and in negotiations with the authorities up until the evictions.

## Resources

■ THE OFFICIAL trade union confederation ACFTU offers a regular English language newsletter/bulletin, information about Chinese union structures, reports from ACFTU Congress, and briefings on issues such as the labour law and international relations. See: [www.acftu.org.cn/index2.html](http://www.acftu.org.cn/index2.html)

■ CHONGQING-BASED lawyer Zhou Litai has won an international reputation for his work to prosecute claims on behalf of workers who have suffered industrial injuries. Litai has clearly irked the authorities, who have threatened to shut down his practice in the past, but he dismisses these threats as having 'no basis in law'. Visit: [www.zhuolitai.com/english/index2.html](http://www.zhuolitai.com/english/index2.html).

■ *China Labour Bulletin* no longer appears in print format but this excellent online resource provides research, up to the minute news and labour commentary. CLB is at: [www.china-labour.org.hk/iso/](http://www.china-labour.org.hk/iso/)

■ THE GLOSSY website of the New York-based China Labor Watch is daunting in scale, but thorough investigation reveals some detailed reports and strong news coverage, although readers should be aware that some sections carry dated headline news reports. See: [www.chinalaborwatch.org](http://www.chinalaborwatch.org)

■ THE ICFTU and the Global Unions run a liaison office in Hong Kong. Their new and detailed report *Chinese Labour and the WTO* is recommended reading. The 59-page report examines unemployment, labour disputes, signs of change in the ACFTU and more. It is available for download from: [www.ihlo.org](http://www.ihlo.org).

■ A USEFUL round-up of news stories from across Asia appears at [www.asianlabour.org](http://www.asianlabour.org) and on the Asia Monitor Resource Centre's website at: [www.amrc.org.hk](http://www.amrc.org.hk).