

Collective Consultation and Industrial Relations in China

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Abstract

Economic reform in China has seen the replacement of the administrative regulation of labour relations by their contractual regulation, with an increasing emphasis on the role of the collective contract system. Studies of the introduction of the system emphasized the determining role of the state. In this paper we examine the more recent development of the collective contract system and conclude that it is primarily the continued integration of the trade union into management at the workplace that prevents collective consultation from providing an adequate framework for the regulation of labour relations.

1. Introduction

The transition towards a market economy and the integration of China's economy into the global market system has led to radical changes in the labour relations environment in China (Chan 2001; Chiu and Frenkel 2000; Ng and Warner 1998; O'Leary 1998; Warner 1995, 2000; Zhu and Warner 2000). In the planned economy, the reconciliation of the interests of workers, managers and the state was achieved within an administrative framework guaranteed by the government and the Communist Party. With integration into the world market economy, these guarantees have gone. The development of the enterprise, and consequently the jobs and living standards of the employees, is subordinate to market pressure on management to be competitive in both domestic and global markets, and to secure increasing profits. The growing divergence of interests between employers, employees and the state has been expressed in a dramatic increase in the number of formally registered individual and collective labour disputes (the number of registered labour disputes increased from 33,000 in 1995 to 155,000 in 2001: State Statistical Bureau 2002) and, more worryingly for the government, in the growth of spontaneous strikes and mass social protest.

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The dismantling of the administrative regulation of labour relations by the Party-state has been accompanied by the introduction of a new institutional framework for the regulation of industrial relations, often drawing on the example of developed market economies (Ng and Warner 1998: 77). This new framework has centred on: the legal and contractual regulation of labour relations; a system for the tripartite resolution of labour disputes; the development of workplace 'collective consultation' between trade unions and employers; and, most recently, a system of 'tripartite consultation'. The central question raised by commentators on these developments is whether they mark the introduction of an industrial relations system in some way comparable with those in the capitalist world, or merely represent an adaptation of the former system of state regulation of labour relations to new economic conditions. The limitations of the juridical regulation of industrial relations are well known, so the system of collective consultation should in principle have a key role to play in these reforms. In this paper we will address this issue by looking at the implementation of the collective contact system.

2. Research questions

Although at first sight the new institutions appear much like those familiar to industrial relations specialists, the Chinese authorities have been anxious to play down any suggestion that they might be a means of reconciling conflicting interests. This immediately suggests that familiar industrial relations concepts are not applicable to the Chinese situation: 'collective consultation' does not represent the codification of the terms and conditions of employment on the basis of the negotiated settlement of conflicts of interest between employers and employees.

The introduction of employment contracts, in place of the lifetime state employment guarantees, transformed the relationship between the enterprise and its labour force into one between employer and employees. However, neither the enterprise director nor the trade union was free to represent the interests of employer and employees in contract negotiations. Both continued to be subject to the direction of the Party, both directly and through higher trade union and state bodies. Wage and employment decisions of enterprise management continued to be constrained by guidelines issued by local government and Party authorities. The introduction of collective contracts was a very bureaucratic process, directed by local Party-state bodies rather than responding to initiatives from below. Warner and Ng asked whether the introduction of the collective contract marked a convergence with either Western or Japanese models of industrial relations, but concluded by emphasizing the continuity of the collective contract system with the traditional administrative regulation of labour relations by the state: 'It is understandable that the state is anxious to reinstate indirect control from the political centre through such an entrusted agency as the ACFTU' (Warner and Ng 1999: 306).

China is going through a period of rapid social and institutional change. In this paper we will review the introduction and development of the collective contract system to assess the extent to which it has matured in the years since its introduction. We will suggest that the determining role of the state was largely confined to the introduction of the system. We will argue that the collective contract system represents neither a reinstatement of state control, nor the establishment of a system of collective bargaining (even with 'Chinese characteristics': Zhu and Warner 2000), but that the collective contract system has developed as a means of attempting to secure 'harmonious labour relations' within the framework of the workers' 'democratic participation in management'. The system is based on the continuing assumption of a unity of interest between the enterprise, traditionally 'owned by the whole people', and the workers, traditionally the 'masters of the enterprise', expressed in a common commitment to the observance of legal norms.

Ng and Warner have noted the 'intense role conflicts' between the democratic management system, which presumes the unity of interests, and the newly emphasized collective consultation system, which presumes the separation of interests (1998: 84–5), but these conflicts remain hypothetical. The subordination of the trade union to management priorities, institutionalized in its central role in the system of 'democratic participation in management', discourages the development of the collective consultation system as a system of collective bargaining. Because management is reluctant to codify the agreed terms and conditions of employment and the trade union is reluctant to challenge management, collective contracts remain largely formal documents, which rarely do more than reproduce the existing legal obligations of management and so do not provide a supplementary form of regulation of labour relations. The new institutions being introduced in China are, at best, a system to contain industrial conflict within juridical channels, with only a very limited role to play in the regulation of labour relations.

This paper is based on Li's doctoral research on the introduction of the collective contract system (Li 2000) and Clarke and Lee's findings from their field research in China in May and June 2002. Li's research was based primarily on a review of documentary sources and detailed case studies of seven SOEs in Beijing (a cement factory, a brewery and a printworks) and Zhangjiakou (a large post office, and mining machinery, pharmaceutical and leather manufacturing enterprises), involving observation and interviews with workers, managers and trade union officials, in 1998–9. Clarke and Lee's findings are based on their discussions with national and local officials of the ACFTU, the China Enterprise Confederation and the Ministry of Labour and Social Security (MOLSS) and on case studies of 12 enterprises (six former SOEs and six joint ventures), four each in Beijing (automobiles, steel, electronics and a department store), Dalian (shipbuilding, construction, steel fabrication and the harbour) and Chengdu (electronics, construction machinery, cigarette papers and aircraft), visited in the course of a three-week field trip to China in May and June 2002.¹ In each enterprise the research group met for half a day with senior managers and trade union representatives, in

most cases separately. We did not have a strict agenda for these meetings, but covered the same ground in each one and sought, where appropriate, to verify information provided by one party against that provided by the other.

The enterprises studied by Li were just introducing the collective contract system, while the majority of the enterprises visited by Clarke and Lee had re-negotiated their collective contract at least once since its original introduction, and in Beijing and Dalian had also adopted the 'wage consultation system', bringing wages into the framework of collective bargaining. The wage consultation system is only in the initial stages of introduction in Chengdu.

Although the findings of the research are based on a limited number of case studies, supplemented by a review of existing research, the case studies cover a range of branches and geographical locations. In each case, the processes described were sufficiently common to all the enterprises that we are fairly confident in our ability to generalize from these studies. The 12 enterprises visited by Clarke and Lee were selected by the local labour bureau and were all, for one reason or another, model enterprises. These were obviously not typical enterprises, but the manner of their selection means that we can be fairly confident that our account captures typical best practice of social dialogue in Chinese SOEs and joint ventures.

3. The development of the labour contract system

The growing incidence of open conflict accompanying the abandonment of the administrative regulation of labour relations raised the question of the form of regulation appropriate to the emerging market economy and, in particular, the balance between the legal regulation of individual labour contracts and the regulation of labour relations on the basis of collective contracts negotiated between employers and trade unions.

The 1994 Labour Law formalized the contractual regulation of labour relations. Following the enactment of the Law, individual labour contracts, in place of guaranteed state employment for life, became the norm for all employees; by the end of 2001, 120 million employees had signed such contracts. Employment conditions are regulated by national laws and regulations which set the minimum labour standards, implemented through and supplemented by provincial and municipal laws and regulations appropriate to local conditions.

Legislative foundations for the application of collective contracts were first laid down in the 1992 Trade Union Law, while the 1994 Labour Law provided more detailed specification of the character of such collective contracts (Warner 1995). The Law was supplemented by the 'Provisions on Collective Contracts' issued by the Ministry of Labour on 5 December 1994, which stressed that the collective contract should be concluded on the basis of 'equality and unanimity through consultation' (cited Ng and Warner 2000:

105) and a process of 'collective consultation' rather than 'collective bargaining' (Warner and Ng 1999: 303–4), and that disagreements should not provide the pretext for any disruption of production (Li 2000: 224).

The Ministry of Labour favoured the regulation of labour relations on the basis of individual contracts and had no plans for the comprehensive implementation of the collective contract system. Zhu Jiazhen, the then Vice Minister of Labour, emphasized the subordinate character of collective contracts:

[T]he labour contract system defines a legal labour relationship; it establishes a labour relationship between two parties, and so it takes the first place. The collective contract system is to adjust labour relations on the basis of the labour contract; therefore, it takes second place. (Zhu 1996)

The ACFTU, on the other hand, saw collective contracts as an extension of the system of 'democratic participation in management' and the principal means of regulating labour relations in the emerging market economy. ACFTU President Wei Jianxing described the implementation of the collective contract system as 'the crux of implementing the Labour Law' (*Workers' Daily*, 13 December 1994) and the ACFTU Executive declared the implementation of collective contracts as one of the focal points of trade union work (Li 2000: 208).

The ACFTU initially launched a campaign to encourage primary trade union organizations to sign collective contracts on their own initiative, with little reference to the government, but progress was slow because enterprises were reluctant to sign collective contracts without authorization from their superior state bodies, forcing the ACFTU to enlist the support of the Party and the state administration at local level; and the campaign only really gained momentum when it finally secured the endorsement of the Party–state. On 17 May 1996, a joint circular endorsing the implementation of collective consultation and the contract system was issued by the Ministry of Labour, the ACFTU, the State Trade and Economic Commission (STEC), the body responsible for SOEs, and the China Enterprise Management Association (CEMA), the official employers' organization, in which these four bodies required their own subordinates at all levels to follow the united leadership of local governments and Party committees, closely co-ordinating and jointly ensuring the implementation of the collective contract system. The collective contract campaign would now be a joint effort, under the name of the unions but backed by the authority of the Party and government, with a uniform model of application. The ACFTU issued model contracts to enterprises through the local unions and put intense pressure on its lower-level organizations to achieve their targets (Li 2000: 212–17).

The concerted efforts of the trade unions and Party and government bodies led to an initial rapid increase in the number of collective contracts signed, although the campaign had little impact in non-state enterprises (Warner and Ng 1999: 297), but thereafter the pace of the campaign slowed. According to MOLSS figures, in 2001 there were 270,000 collective contracts registered at

the local labour bureaus, covering 400,000 enterprises and 76 million workers. The collective agreement campaign gained a further boost at the end of 2001 with the passage of a new trade union law, a joint conference of the MOLSS and the ACFTU in Nanjing and the introduction of a national system of tripartite consultation, which made promoting the collective agreement system one of its main priorities for 2002 (Clarke and Lee 2002).

The rapid introduction of collective contracts on the basis of a bureaucratic campaign organized from the centre, employing the authority of the Party-state to provide model contracts and to induce enterprises to sign collective contracts, made its mark on the character of the collective contract in the first stage of its implementation. Warner and Ng surveyed the incidence and content of collective contracts in 62 medium and large SOEs and JVs. They found that, at least in Shenzhen, most firms closely followed the model supplied to them, making only minor modifications, and that collective bargaining in China 'betrays a meticulous degree of state intervention and control' (Warner and Ng 1999: 305). On the basis of fewer, but more detailed, case studies, Li also emphasized the continuing role of the Party-state in regulating labour relations and found a very high degree of formalism in the signing of collective contracts in order to achieve the targets set by the ACFTU, with management remaining reluctant to make any specific commitments and the trade union reluctant to press employees' demands, in the interests of maintaining harmonious labour relations (Li 2000: chapter 7). He found that the collective contract was widely regarded as a requirement imposed from above, and that higher trade union bodies and the Party organization played the dominant role in their initial introduction (cf. Ding *et al.* 2002: 444). Negotiation was dominated by management and the Party, with the trade union role being primarily to propagandize the agreement among the work-force.

Such formalism is to be expected of a system introduced on the basis of directives from above and in accordance with the strategy described by Wei Jianxing as 'instituting the system firstly and improving it secondly' (*Workers' Daily*, 20 December 1995: 1). While the emphasis was on unanimity and conflict avoidance, with a bureaucratic reconciliation of any differences, the intention was still that the trade unions should represent the interests of their members. The new Trade Union Law, adopted in October 2001, enjoined the ACFTU to 'take economic development as the central task', but also emphasized that 'the basic duties and functions of trade unions are to safeguard the legitimate rights and interests of workers and staff members'. In the remainder of this paper we will consider the extent to which the collective contract has developed as a means of regulating labour relations and, correspondingly, what progress the ACFTU has made in improving the collective contract system, to safeguard the legitimate rights and interests of its members.

4. Collective consultation in the enterprise

The State Supervision of Collective Consultation

In the enterprises visited by Clarke and Lee, the collective contract system had originally been introduced with the support of higher trade union bodies, which provided training and model contracts, but it did not seem that either higher trade union bodies or the local labour bureau subsequently played a particularly active role in collective consultation. Collective contracts were drawn up taking into account guidelines, for example on wages, issued by the local labour bureau and government directives, and the labour bureau checked the legality of the agreements concluded, but each enterprise had developed its own practices and procedures. Similarly, in accordance with the hopes of the government, collective consultation was consensual in all of the enterprises that we visited; but this was not imposed on the enterprise trade union by higher ACFTU or state bodies, but rather derived from the role of the trade union in the enterprise. The common features of collective consultation reflected not so much a uniformity imposed from above as the common social structure and institutional arrangements of the enterprises themselves. We therefore reject the hypothesis that the system of collective consultation is essentially a means of indirectly imposing state control of enterprise management.

The Trade Union in the Structure of Management

The ACFTU has been required to play a dual role in the transition towards a market economy. On the one hand, as a trade union, its role is to defend the rights and interests of employees, who increasingly come into conflict with the interests of employers, as the latter place productivity and profitability over the jobs, wages and welfare of the former. On the other hand, the ACFTU has a responsibility, assigned by the Party, to promote reform and to maintain social stability. The more progressive elements in the ACFTU do not see a contradiction between these two roles, since they believe that social stability can best be maintained if the trade unions can effectively defend the rights of their members; but the more conservative elements in the trade unions and the Party are cautious about the trade unions' engaging in activities that might encourage increased labour unrest. Nevertheless, the collective regulation of labour relations depends on the trade union in the enterprise acting as the representative of the employees, rather than fulfilling its traditional role as a branch of enterprise management. It is the dependence of the trade union on management, rather than its dependence on the Party, that is the main barrier to the development of an industrial relations system in China.

Within the state socialist system, the interests of both management and the trade union were supposed to be identical and their identification was reinforced by the subordination of both to the Party-state. With the transition

to a market economy, the interests of the parties diverge: the key interest of the employers is in maximizing their profits. The prosperity of the enterprise is no longer a sufficient condition for the prosperity of its employees (or of the national economy): management may, and increasingly does, seek to secure the prosperity of the enterprise by closing or selling off facilities, holding down or not paying wages and social insurance benefits, compromising workers' health and safety, laying off workers, intensifying labour and extending the working day. During the 1990s the leadership of the Party-state was reluctant to unleash the managers of state enterprises for fear of consequent social unrest, and reform was regularly checked by 'repairing measures' to keep management in check (Li 2000). However, by the end of the decade, particularly in anticipation of WTO membership, the government sought to abdicate from its responsibility for state enterprises, transforming most of them into joint-stock companies, and transferring responsibility for the protection of the welfare of employees (and avoidance of social unrest) to the trade unions.

In spite of some shift of emphasis in the designated primary role of the trade union, the predominant functions of the trade union at the workplace still tend to be management functions (Biddulph and Cooney 1993; Chan 2000: 39; Ding *et al.* 2002: 445–7; Li 2000: 192; Zhu 1995; Zhu and Campbell 1996). Formally, the principal function of the trade union was 'to take economic development as its central task', encouraging workers to increase productivity, enforcing labour discipline and conducting extensive propaganda on behalf of management. 'Protecting the rights and interests of employees' is at best interpreted as monitoring managerial practice to ensure that it conforms to all the relevant laws and regulations, and implementing the social and welfare policy of the enterprise — visiting sick workers, dealing with personal problems, distributing benefits, organizing picnics and arranging celebrations. For most trade union cadres at the workplace, the idea of representing and protecting the legitimate rights and interests of their members in opposition to those of the employer is something unfamiliar, if not entirely alien, to their traditional practice and to their traditional conception of their role. It is not so much that the trade union is subordinated to management as that the trade union is an integral part of the management apparatus, 'just a branch of management', as it was described to Clarke and Lee by a senior officer of the Chinese employers' confederation (Cooke 2002: 21; Ding *et al.* 2002: 447).

This situation can be attributed to a number of factors. Trade union officers are drawn largely from the ranks of management. A full-time trade union president is paid by the employer and normally enjoys the status (and salary) of a deputy general director of the company; the personal careers of union leaders revolve around the positions of party cadre, union leader and enterprise manager (Baek 2000); they are usually members of the Board of Directors and/or the Supervisory Board of the company; and they (rightly) regard themselves as members of the senior management team. Whether or not there is a formal election of the trade union chair, the latter is normally appointed

by management (Li 2000: 190). The majority of trade union representatives at every level similarly tend to be managers or team leaders. As one regional industry trade union leader explained to Clarke and Lee to justify the practice, 'workers normally nominate the person who can best represent them'.

In the past, the Party organization played an important role in ensuring that management and the trade union pulled in the same direction. Enterprise reforms have led to some reduction in the formal authority of the Party over management (Li 2000: 105–7), but the Party can compensate by exerting its influence through the trade union (Chan 2000: 44; Warner and Ng 1999: 306). The Party played a very important role in inaugurating the system of collective consultation, but once the process is set in motion its implementation seems to be left largely to the initiative of management and the enterprise trade union. Nevertheless, although 'the trade unions accept the ideological and political leadership of the Party but are independent in their activities', as a senior ACFTU official put it to Clarke and Lee, they still benefit from the Party's support at enterprise, as at national, level. For example, where there is a Party organization, it will review the collective agreement and may persuade a reluctant management to accept the union's proposals. Although we might expect the Party equally to persuade the union to moderate its excessive demands, the official quoted above did not know of any case of the Party opposing the trade union's proposals for the collective contract. This is probably more an indication of the self-moderation of the trade union than of any predisposition of the Party to oppose management.

It was clear in the enterprises that Clarke and Lee visited that Party office could have a considerable influence on the power relationship between trade unions and managers — at least five of the 12 trade union presidents also held the post of party secretary or deputy party secretary. In one enterprise, in which the general manager was the party secretary and the trade union president his deputy, the former commented that 'having the general manager as party secretary and trade union president as deputy party secretary produces balance'. In the two enterprises (both joint ventures) in which the trade union president was also the party secretary, it was obvious that this gave him considerable authority to ensure that the management respected all the relevant laws and regulations. In at least one of these cases, the trade union president had clearly been drafted in to keep a check on the foreign partners.

The identification of trade unions with management priorities is institutionalized in the Workers' Congress system and is reinforced by the widespread practice of substituting a meeting of the Workers' Congress for the trade union members' congresses that are required by the Trade Union Law (cf. Goodall and Warner 1997: 586). The Staff and Workers' Congress (*Zhigongdaibiaodahui*) is a body that was re-established in 1981 to institutionalize workers' participation in management (and to enhance, but also constrain (Ng and Warner 1998: 82–4), the role of the workplace trade unions); and in state enterprises it has extensive formal powers to approve (or reject) management's plans and managerial appointments. The Congress

usually meets between one and four times a year, with the trade union committee serving as its executive body between meetings. The Congress representatives are predominantly managers, team leaders and the most loyal workers, selected through various forms of 'managed elections' (Goodall and Warner 1997: 586; Ng and Warner 1998: 81–94; Warner 1995: 30). Although the electoral processes are usually separate, there is a considerable overlap between worker representatives and trade union representatives. While the constituency of these bodies is virtually identical in traditional enterprises that have full union membership, their functions and powers are very different. The Congress of Worker Representatives is not a trade union body, but an instrument for the participation of workers in the management of the enterprise. As such, the Congress expresses the unity of the enterprise as a whole and does not accommodate separation, let alone conflict, of interests between the management and workers. Moreover, decisions of the Congress are not binding on the trade union. Indeed, one enterprise trade union chair told Clarke and Lee that he simply ignored recommendations that he judged to be 'unreasonable'.

The close integration of the trade union into the structure of management, and the identification of trade union officers with the priorities of management, underlies a tendency for the trade union to seek to reconcile any differences of interest between employees and management within its own structures and so guarantee that its negotiations with management will be consensual. When employees appeal to the trade union or make suggestions through the consultation process, the trade union officers themselves decide whether or not to respond to the complaint or suggestion, depending on whether or not they regard it as 'reasonable', i.e. likely to be acceptable to management. To this extent, the trade union could be said to 'mediate' between workers and management (Li 2000: chapter 6; Zhang 1997), but this mediation does nothing to challenge the asymmetrical power relationship between the two parties. It should not be surprising, therefore, that workers are more inclined to take their problems to their line managers than to their trade union representatives (Li 2000: 198).

Trade Union Representation

The trade unions are required not only to 'safeguard', but also to 'represent', the legitimate rights and interests of workers and staff members (1994 Labour Law, article 7, and 2001 Trade Union Law, article 6). The traditional means of ensuring that the rights and interests of workers and staff members were represented by the trade union was by consultation, whereby the proposals of management or the trade union were referred to lower levels for discussion, and their comments and recommendations were reported back to the enterprise trade union for its consideration. This process may go through several iterations ('downs and ups') before the trade union position is finally determined. Clarke and Lee found that this was still the method employed in all of the enterprises that they visited.

The process of 'consultation' with the members is more of an exercise in propaganda and persuasion than of active participation of the membership (Li 2000: chapter 7). Nevertheless, our impression was that, when properly implemented, the existing system provides an effective method of soliciting the reactions of employees to management proposals, although its effectiveness depends on the diligence of the trade union officers and representatives. However, the system is much less effective in providing a channel through which employees can articulate their own aspirations. The main limitation of the system is that the enterprise trade union representatives at each level decide which suggestions to take into account and ignore any that they consider to be 'unreasonable'.

The weakness of the structures of trade union representation is compounded by the fact that the trade union committee is not, in general, constituted on a representative basis. Nominations for office are filtered and candidates are elected not by their own departments, but by a general conference of trade union members. This means that members of the trade union committee are not accountable to any constituency other than the trade union members' conference, which may be held only once every five years. These limitations of the system of trade union representation are manifested in the negotiation of the collective contract.

Negotiation of the Collective Contract

The weaknesses of the collective contract system identified by Li (2000) and Warner and Ng (1999) could derive from their recent introduction. Almost all of the enterprises that Clarke and Lee visited had accumulated a lot of experience of the system,² which leads us to conclude that the limitations that we identify below in the negotiation of collective contracts are not just a result of limited experience.

The general features of the negotiation of collective contracts identified by Clarke and Lee are as follows.

1. The trade union prepares the first draft of the collective contract on the basis of the previous contract or, in enterprises just beginning the practice, on the basis of a model collective contract provided by the Labour Department or higher trade union body.
2. The collective contract generally includes only a rather general specification of the terms and conditions of labour, largely confined to an obligation to observe relevant labour laws and regulations, with at most one or two items that go beyond a specification of the existing legal rights of the workers. These included such items as annual medical examinations for women workers; contributions by employers and employees to a housing provident fund (a savings and loan institution) and the provision of breakfast for night-shift workers. Most of these provisions were already established practice. As one trade union chair commented, echoing the vice minister of labour quoted above, 'the collective contract sets the minimum standards for individual

labour contracts', and in most cases this minimum corresponds to the legal minimum. We were informed by the Ministry of Labour that some enterprises sign more detailed collective agreements, but we believe that these are still the exception rather than the rule.

3. The trade union committee sends the draft of the collective contract to members, who make comments and suggestions which are referred back to the trade union committee. This may lead to some minor modification of the draft. For example, in one enterprise consultation led to the request to increase the number of picnics organized by the enterprise and to provide annual medical examinations for female employees.

4. The trade union discusses the draft collective contract with management in a consultation committee in which each party is represented by an equal number of representatives. This appears to be more a process of consultation than negotiation, with the trade union deferring to management on any contentious issues. We found no cases of conflict between trade union and management in the process of collective consultation. As the ILO Multi-Bilateral Technical Co-operation Document noted, actual bargaining over interests rather than collective agreement on rights remains rare (ILO 2000: para. 19). In some enterprises senior members of management participated in the negotiations on the trade union side. In one enterprise the finance director was a member of the trade union team in the consultation committee; in another a senior financial manager participated on the trade union side in an advisory capacity. At the same time, the trade union president, as a member of the Board of Directors or Supervisory Board, usually participates in the formulation of management's response to the trade union proposals for the collective contract.

5. The agreed version of the collective contract is endorsed by a meeting of the Workers' Congress. This is generally a formal process, without discussion or debate, but often with much ceremony. In some cases grumbling from the floor was reported, but we did not identify any cases in which the collective contract was amended as a result of this process. One enterprise general manager reported that in 1986, prior to the introduction of the collective contract system, the Workers' Congress had rejected management's proposals for a wage increase; he had simply ignored the decision of the Workers' Congress and submitted revised proposals a couple of years later, which were accepted. To be valid, the collective contract also has to be registered with the local labour bureau, which checks its conformity to the law. None of our informants reported this is as a significant part of the process and no cases of referral of the contract back by the labour bureau were reported to us. However, it is not uncommon for the labour bureau to refuse registration of collective contracts that provide terms inferior to the legal norms.

6. Both management and trade union are reluctant to include items in the collective contract that might subsequently provide grounds for a grievance or dispute. The collective contract does not usually include any detailed specification of the terms and conditions of labour, and often does not include

reference to many of the benefits that are in fact provided by the enterprise. The fact that these are not included in the collective contract considerably reduces the effectiveness of the collective contract as a means of regulating labour relations.

7. Wage negotiation is usually conducted separately from the collective contract, although some agreement on wages, usually specifying only the minimum wage to be paid in the enterprise, and sometimes the total wage fund, may be appended to it. This is partly because the collective contract normally runs for two to three years, while the revision of wages is often considered annually. Unlike the collective contract, we found that the lead in wage negotiations was generally taken by management, following the national regulations and the guidelines of the local labour bureau. The practice in enterprises that had introduced the system of wage consultation did not seem to differ significantly from the practice of those (in Chengdu) that had not, with the role of the trade union being primarily to communicate the response of employees to management proposals and to convince employees of the justice of management's final decision. Wage increases seemed to reflect labour market pressures (particularly in Beijing and Dalian) and labour bureau guidelines. We found no evidence to support the suggestion that the decentralization of wage determination has led to any significant wage bargaining, though it may be that 'wage consultation' is an effective way for the authorities to moderate wage increases (Ng and Warner 2000: 106–7, 114), with the union justifying such moderation to its members.

8. A number of enterprises visited by Clarke and Lee that had been going through more difficult economic times had imposed wage freezes on their employees, sometimes for as long as six years, so that wages lagged behind those paid by competitors. Such freezes had been met with understanding by the trade union, which had not pressed any wage demands, in recognition of management's financial difficulties. Pressure to increase wages generally came not from the trade union, but from the personnel department, when it was experiencing problems of recruitment and retention, particularly of more highly skilled employees.

9. Clarke and Lee found that the most difficult issue in wage consultation was not so much the overall size of any increase in wages as the increased differentiation of wages. In a number of enterprises, management, with the full support of the trade union, wanted to provide substantial increases to the wages of technical and managerial staff, primarily in response to labour market pressures, at the expense of first-line workers. In several enterprises such a proposal had provoked a certain amount of discontent among first-line workers, particularly where it would have implied a reduction in their wages. In one case the trade union successfully proposed to management that no wages should be reduced, increasing the overall cost of the wage reform from 5 to 8 per cent. In another case the affected workers received an individual guarantee that their earnings would not be reduced. In a third case the foreign management already had a company policy that wages would never

be reduced. In all cases, the trade union endorsed the widening of differentials and took it upon itself to persuade the first-line workers of the need for increased inequality and their restraint in the interests of the enterprise.

10. In the joint ventures that Clarke and Lee visited, the trade union tended to take a position a little more independent of management than did the trade union in the SOEs (although Ding *et al.* 2002: 445 report that the union role in joint ventures is, in general, less significant than in SOEs). This was primarily because of its role in ensuring that management adhered to the provisions of labour laws and regulations (cf. Chan 2000: 43–4), of which the foreign partners in joint ventures were often ignorant. In all the joint ventures, the union's primary commitment was to the welfare of the enterprise, and there had been no cases of conflict between management and the trade union. In only one of the six joint ventures visited by Clarke and Lee did the foreign managers play any role in the industrial relations system, apart from sanctioning any proposed wage increases (cf. Ng and Warner 1998: 99; Taylor 2001: 612).

Collective Consultation in Private and Foreign-invested Enterprises

The collective contract system is largely confined to SOEs and joint ventures and has made only limited progress in foreign-invested, township and village (TVEs) and private enterprises. The ACFTU has placed great importance on organizing workers and protecting workers' rights and interests in FIEs (Ng and Warner 1998: 113–16), but the priority of the Party–state is not so much to protect workers' rights as for the unions to provide a channel for conflict resolution (Lau 2001: 617).

At the end of September 2001, the ACFTU claimed to have 7.4 million members in 78,000 overseas-funded enterprises (*ACFTU News*, no. 11/12, 2001),³ but very few such enterprises have an effective trade union organization. The trade union president is typically a manager, and the trade union is not able to control those employers who exploit their favourable labour market situation to impose low wages, long working hours and punitive disciplinary systems on their employees, often in violation of the relevant laws (Chiu and Frenkel 2000: 37–42; Chan 1998: 140; Chan 2000: 45–6; Chan 2001; Chang *et al.* 1995). Despite the often gross exploitation of employees in overseas-funded enterprises, local government, and correspondingly the local trade union organization, has generally been reluctant to intervene in such cases for fear of frightening off foreign investors and losing jobs (Howell 1998). Nevertheless, it seems unlikely that the low incidence of the signing of collective contracts is an indicator of a reluctance of foreign employers to submit themselves to the power that such contracts supposedly give to the trade union, as Warner and Ng imply (Warner and Ng 1999: 311), so much as an indicator that the employers see collective contracts as irrelevant, while the labour administration and the Party do not have the leverage that they have over SOEs and joint ventures to induce them to sign agreements.

Trade union membership is much lower in private enterprises, particularly in the smaller private enterprises that have grown very rapidly over the last few years, and in township and village enterprises (Ding *et al.* 2001). Many of these enterprises offer very poor wages and working conditions; often they do not provide their employees with labour contracts and frequently they violate other aspects of labour legislation (Chan 2000: 45–8). While they may provide employment for laid-off workers and new entrants to the labour force, they act as a drag on economic development, and their widespread violation of labour legislation brings the law into disrepute. Because of the difficulties of establishing trade union organizations in small private enterprises, the ACFTU has sought to establish local trade union organizations covering all of the private enterprises in one district or one industrial sector, which then sign collective contracts with employers' associations at the industrial or local level (Chan 2000: 49). According to the ACFTU, such local agreements now exist in 25 provinces.

It might be expected that such an approach would be formalistic, providing a substitute for trade union organization at the enterprise level, and with no means of enforcing the agreements reached, since the signatories on behalf of the employers are usually enterprise associations established under the relevant government departments rather than genuine employers' organizations. However, we were informed by the ACFTU in Chengdu, where a provincial law makes these agreements enforceable on all employers in the relevant locality or sector, and where about thirty such agreements have been signed, that the signing of these agreements had been followed by an increase in membership of the private enterprise trade union, and that workers, with the support of the city ACFTU, had successfully been taking cases to the City Arbitration Committee when employers had failed to abide by the agreement.

The limitation of such agreements is that they are between the trade unions and the local authority responsible for supervising local private business, not between the trade unions and the employers, and so depend on state rather than voluntary regulation of labour relations. One of the items under consideration by the new National Tripartite Consultative Committee is more active collaboration between the labour inspectorate and the ACFTU with a view to making the system of labour inspection more extensive and more effective.

5. Conclusion

The development of the system of collective consultation does not seem to bear out Warner and Ng's (1999) expectation that it would primarily provide a means by which the state could intervene, through its control of the trade union, in nominally independent enterprises. But nor is the collective contract system, at least at its present stage of development, defining a new framework for industrial relations in China, because it is not based on the

negotiated regulation of labour relations. The following main conclusions can be drawn from our research.

1. The process of collective consultation has not introduced a new system for negotiating the terms and conditions of employment between the employer and the trade union in the enterprise, because it has been integrated into the traditional system of consultation, formalizing elements of the existing 'democratic participation of staff and workers in the management of the enterprise' on the basis of the supposed identity of interests of management and employees.

2. There is no significant negotiation of the collective contract between the two sides independently representing the interests of employer and employees. There is little active participation of the trade union membership in the consideration of proposals for the collective contract that are put forward by the trade union. On the basis of self-censorship, the trade union only makes proposals that it regards as acceptable to management, and if management does not accept those proposals the trade union defers to management's judgement in the name of the interests of the enterprise. The approach of the trade union to collective consultation was well characterized by a trade union president interviewed by Li, who endorsed the concept of 'the director safeguarding the interests of workers and staff members while the union safeguards the interests of the director' (Li 2000: 237), with the union committing itself (and its members) to the development of production and the profitability of the enterprise while relying on the director to distribute some of the benefits to the employees.

3. Employers remain reluctant to incorporate any substantive detail in the collective contract, so that the contract adds little or nothing to the existing legal regulation of the terms and conditions of employment. At best, the collective contract provides a means of reminding employers of their legal obligations and monitoring the implementation of labour legislation in the workplace. In the cases studied by Li, the 'consultation' was more like 'a training course for both sides to learn labour law' (Li 2000: 236). Any additional benefits due to employees, as well as details of the payment and bonus systems, are not subject to negotiation, but remain at the discretion of management.

4. In principle, the collective contract provides a basis on which the trade union can initiate a collective labour dispute with an employer who does not observe his or her commitment to observe the law (although we know of no examples of such disputes), but the requirement to observe the law is not conditional on the employer's signing a collective contract. The new Trade Union Law requires the trade union to provide 'support and assistance' to an employee who 'believes that the enterprise infringes upon his labour rights and interests' if the employee applies to labour arbitration or the courts (Art. 21); but in practice it appears to be very rare for the trade union to provide advice or representation for employees, either in the informal resolution of grievances or in formal dispute procedures. In the reports of strikes and

social protests publicized by monitoring organizations like the *China Labour Bulletin* and *China Labor Watch*, it is generally the case that the grievance has been festering for a number of years, suggesting that the enterprise trade union has turned a blind eye to blatant violations of the rights and interests of employees, perhaps hoping to resolve the problem, or more likely to contain the complaints, within the enterprise.

5. The trade union does not provide an effective channel through which members can articulate their aspirations and express their grievances. The failure of the trade union in this respect is reflected by the continued increase in work stoppages and social protests that bypass the trade union and by the frequent use made of social surveys to tap the opinion of workers both by managers and by higher-level trade union bodies.

6. The system of collective consultation has made little headway in the non-state sectors of the economy, in which there is the greatest potential for unregulated conflict because it is here that employers show the most disregard for the law and contempt for the rights and interests of their employees.

The role of collective consultation in the Chinese enterprise is not to negotiate the terms and conditions of employment between the employer and the representative of the employees, but at best to monitor the enforcement of labour law and the implementation of labour regulations. In this sense, even though the system of collective consultation may not provide a channel for state intervention in enterprise industrial relations, the enterprise trade union is still performing, however ineffectively, what are essentially state functions as part of a system of juridical regulation of labour relations. While there is certainly a progressive minority of officers within the ACFTU who recognize the need to develop more active primary trade union organizations that are able to play an effective bargaining role, it is significant that the dominant strategy being pursued by the ACFTU to secure the more effective implementation of labour legislation is not a strengthening of its own organization, but closer collaboration with a strengthened state labour inspectorate.

Our conclusion is that the system of collective consultation is not merely a means for the state to intervene in enterprises, but nor does it provide the framework for a new industrial relations system in China. At the present stage of its development, it is essentially a development of the anachronistic system of 'workers' participation in management' and a (rather ineffective) adjunct to the juridical regulation of labour relations, providing a means to remind employers and trade union officers of their legal obligations and, in principle though not in practice, a means by which industrial conflict can be defused by channelling it into juridical procedures.

Although primary trade union organizations may no longer be subject to the routine intervention of the Party-state, the social and institutional structures within which labour relations are regulated have not changed radically, and they will not change until the enterprise trade union develops into an

organization that, in its structure and practices, disengages from management to represent the interests of its members. Such a change is not likely to occur spontaneously, even under the pressure of growing conflict between employees and management, unless unions at a higher level recognize the need for the change and develop their capacity to support genuine collective bargaining at the enterprise level.

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Notes

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2. All but two of the 11 enterprises with collective contracts had renegotiated the contract at least once. Two of the enterprises had concluded five collective contracts since 1984 and 1987, respectively.
3. At the end of May 2001 there were reportedly 21 million people employed in 180,000 overseas-funded enterprises (*ACFTU News*, no. 6, 2001), but the official figures are considered to be a substantial underestimate (Chiu and Frankel 2000: 23).

References

- Baek, S. (2000). 'The changing trade unions in China'. *Journal of Contemporary Asia*, 30(1): 46–66.
- Biddulph, S. and Cooney, S. (1993). 'Regulation of trade unions in the People's Republic of China'. *Melbourne University Law Review*, 19: 253–92.
- Chan, A. (1998). 'Labour relations in foreign-funded ventures, Chinese trade unions, and the prospects for collective bargaining'. In G. O'Leary, *Adjusting to Capitalism: Chinese Workers and the State*. Armonk, NY: M. E. Sharpe.
- (2000). 'Chinese trade unions and workplace relations in state-owned and joint-venture enterprises'. In M. Warner, *Changing Workplace Relations in the Chinese Economy*. Basingstoke: Macmillan, pp. 34–56.
- (2001). *China's Workers under Assault*. Armonk, NY: M. E. Sharpe.
- Chang, K. et al. (1995). *Laodong Guanxi, Laodongzhe he Laoquan Dangdai Zhongguo de Laodong Wenti* (Labour Relations, Labourers, Labour Rights: Problems of Labour in Contemporary China). Beijing: China Labour Publishers.
- Chiu, S. W. K. and Frenkel, S. J. (2000). *Globalization and Industrial Relations and Human Resources Change in China*. Bangkok: ILO Regional Office for Asia and the Pacific.

- Clarke, S. and Lee, C.-H. (2002). 'Towards a system of tripartite consultation in China?' *Asia-Pacific Business Review*, 9(2): 61–80.
- Cooke, F. L. (2002). 'Ownership change and reshaping of employment relations in China: a study of two manufacturing companies'. *Journal of Industrial Relations*, 44(1): 19–39.
- Ding, D. Z., Lan, G. and Warner, M. (2001). 'A new form of Chinese human resource management? Personnel and labour–management relations in Chinese township and village enterprises: a case-study approach'. *Industrial Relations Journal*, 32: 328–43.
- Goodall, K. and Warner, M. (2002). 'The impact of economic reform on the role of trade unions in Chinese enterprises'. *International Journal of Human Resource Management*, 13: 431–49.
- Goodall, K. and Warner, M. (1997). 'Human resources in Sino–foreign joint ventures: selected case studies in Shanghai, compared with Beijing'. *International Journal of Human Resource Management*, 8: 569–94.
- Howell, J. (1998). 'Trade unions in China: the challenge of foreign capital'. In G. O'Leary, *Adjusting to Capitalism*. Armonk, NY: M. E. Sharpe, pp. 150–72.
- ILO (2000). *Multi-bilateral Technical Co-operation Project Document*. Bangkok: ILO.
- Lau, R. W. K. (2001). 'Socio-political control in urban China: changes and crisis'. *British Journal of Sociology*, 52: 605–20.
- Li, Q. (2000). 'A study of labour relations in state-owned enterprises in China: the continued dominance of the state and the failure of the collective contract system'. PhD thesis, City University of Hong Kong.
- Ng, S. H. and Warner, M. (1998). *China's Trade Unions and Management*. London/New York: Macmillan/St Martin's Press.
- and — (2000). 'Industrial relations versus human resources management in the PRC: collective bargaining with "Chinese characteristics"'. In M. Warner, *Changing Workplace Relations in the Chinese Economy*. Basingstoke: Macmillan, pp. 100–16.
- O'Leary, G. (ed). (1998). *Adjusting to Capitalism: Chinese Workers and the State*. Armonk, NY: M. E. Sharpe.
- State Statistical Bureau (various years). *China Labour Statistical Yearbook* (Zhongguo Laodong Jingji Tongji Nianjian). Beijing: China Statistical Publishing House.
- Taylor, B. (2001). 'The management of labour in Japanese manufacturing plants in China'. *International Journal of Human Resource Management*, 12: 601–20.
- Warner, M. (1995). *The Management of Human Resources in Chinese Industry*. Basingstoke: Macmillan.
- (2000). *Changing Workplace Relations in the Chinese Economy*. Basingstoke: Macmillan.
- and Ng, S. H. (1999). 'Collective contracts in Chinese enterprises: a new brand of collective bargaining under market socialism'. *British Journal of Industrial Relations*, 32: 295–314.
- Zhang, Y. (1997). 'An intermediary: the Chinese perception of trade unions since the 1980s'. *Journal of Contemporary China*, 6: 139–52.
- Zhu, J. (1996). 'Zai laodong guanxi xietiao gongzuo zuotanhui shang de jianghua' (Speech given at the Working Forum of Co-ordinating Labour Relations). In J. Wang *et al.* (eds.), *Zhongguo Laodong Nianjian: 1995–1996* (Chinese Labour Yearbook: 1995–1996). Beijing: Zhongguo Laodong Chubanshe, p. 99.

- Zhu, Y. (1995). 'Major changes under way in China's industrial relations'. *International Labour Review*, 134: 37–49.
- and Campbell, I. (1996). 'Economic reform and the challenge of transforming labour regulation in China'. *Labour & Industry*, 7(1): 29–49.
- and Warner, M. (2000). 'An emerging model of employment relations in China: a divergent path from the Japanese?' *International Business Review*, 9: 345–61.