

National People's Congress approves new Labour Contract Law

The Labour Contract Law approved by the Standing Committee of the National People's Congress today is a laudable attempt to protect the rights of individual workers. The majority of workers in the private sector (especially migrant workers) do not have any kind of contract with their employer and as such are subject to whatever terms and conditions the employer imposes. Management regularly (in violation of the existing Labour Law) withholds wages, demands excessive overtime, and can dismiss workers almost with impunity.

A great many migrant workers are not officially employed by the enterprise they work for and only have contracts, valid for a few months, with a labour supply or labour service company (see [The True Story of Migrant Workers at Dongfeng Auto](#)). Although these workers will remain formally employed by the labour service company, the new law seeks to limit abusive practices by eliminating short term contracts and giving supplied workers basically the same rights as regular workers, including the right to join or organize a trade union at their place of work.

The new law confirms that all individual workers have the right to negotiate their own written employment contract with their employer, specifying terms, conditions and benefits. It enhances specific individual rights by establishing a statutory probationary period for a fixed term contract, improving health and safety regulations, requiring redundancy payments to be made after the termination of a contract, and generally making it more difficult for employers to terminate contracts, especially those of long serving workers.

Collective or Individual Rights?

Overall, the law tends to prioritize individual rights over collective rights. Nevertheless, it does allow workers' representatives to negotiate collective (factory or workplace-wide) contracts through the official union monopoly, the All-China Federation of Trade Unions (ACFTU), which is still a permanent fixture in state-owned enterprises. And according to the final draft of the law, in enterprises where the AFCTU has not established a branch (and this includes the great majority of enterprises in the private sector) workers may elect their own representatives to negotiate a collective contract with management but only under the "direction" or "guidance" (zhidao) of the ACFTU. This represents a significant climb down from provisions in the second draft of the new law which allowed workers representatives to independently negotiate with management.

This revision is in the interests of the ACTFU, which has been steadily losing its influence and becoming more anachronistic as the private sector expands. It also reflects the concerns voiced by

foreign chambers of commerce who (in CLB's view, unjustifiably) claimed the draft was too restrictive and could lead to foreign companies moving operations out of China.

In this regard, as in many others, foreign companies and the ACFTU are natural allies. The ACFTU and retail giant Wal-Mart famously went to war in 2004 over the right to set up union branches in its China stores. Last summer Wal-Mart capitulated and allowed the ACFTU to set up branches in all its mainland stores. But in reality Wal-Mart now benefits from having the ACFTU in-house because the ACFTU, unlike a genuinely representative union, is more interested in collecting its legally mandated two percent of monthly payroll, than actually representing the fundamental rights and interests of its members.

Workers need to be granted genuine freedom of association, not just the "privilege" of joining the ACFTU. They should be given the right to strike, and allowed to freely and democratically elect their own representatives who can negotiate a collective and mutually beneficial contract with management, without the interference of third party vested interests.

The need for legal enforcement

Above all, the contracts that are negotiated either collectively or individually need to be legally enforced. All too often in China, employers can disregard the terms and conditions of the contracts they have signed with their workers and impose their own terms and conditions as and when it suits them. And because workers have no genuine right of association, they have little or no ability to fight back except through (effectively illegal) strike action or other confrontational tactics that sometimes turn violent. By contrast, if workers could organize genuine democratic unions, such confrontational and disruptive disputes could mostly be solved through negotiation and mutual compromise.

The resolution of protests

Everyday, there are large scale labour protests in towns and cities across China, and it is difficult to see how the new Labour Contract Law can help reduce such protests unless it is rigorously enforced and workers are given the genuine right to collective bargaining. Simply adding a new layer to the existing labour legislation that is routinely ignored by employers and not enforced by local authorities will not help protect labour rights, no matter how laudable the new legislation may be.

Earlier this month, for example, several hundred workers at a shoe factory in Dongguan, Guangdong Province, staged a highway blockade protesting low wages, poor conditions and wage arrears. The protest was broken up by over a hundred riot police, leaving one worker badly injured. The local

government labour bureau then colluded with management to dismiss 70 of the protest organizers as a condition for the payment of back wages to the remaining workers. According to existing provisions in the 1994 Labour Law, the company should have met the workers' demands for the legally mandated minimum wage and overtime payments and had no right to sack the workers. Moreover the company should have been legally sanctioned for promoting such abuses of labour rights in the first place.

Unless, the government takes real steps to ensure the new Labour Contract Law is properly enforced, it is unclear how it will help prevent similar abuses in the future.

For a full report on the shoe factory dispute [listen here](#) to the Radio Free Asia broadcast in Mandarin.