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## Labor conflict and its management in China A systematic literature review

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## Abstract

This study systematically reviews the extant literature on labor conflict and its management in China. It reveals that there have been widespread labor disputes, especially collective disputes, resulting from the violation of worker's rights in every aspect of employment relations. While labor disputes in state-owned enterprises (SOEs) are mainly caused by insolvency and bankruptcy, those in foreign-invested enterprise (FIEs) and privately-owned enterprise (POEs) are caused by managements seeking quick profits by sacrificing workers' rights. China has developed a third labor dispute management system with Chinese characteristics, which is different from the old systems, that is, resolving labour disputes via the state administration, and Western practices, eg collective bargaining. The third way is characterized by reliance on labor arbitration and judicial channels and management-state bipartism for resolving labor disputes. Contribution to theory and implications for practitioners and research are discussed.

## Introduction

The nature of industrial relations (IR) is determined by the interactions between employers and employees and the power of their collective organizations and the state. China's transformation from a centrally planned economy to a much-lauded 'socialist market economy' has now fundamentally changed the way that China conducts its industrial relations. As one major process of corporatization or marketization, China has conducted personnel reform, the so-called 'three systems reform' (san xian gai ge) (Ng and Warner, 1998, Zhu and Warner, 2005). The essence of the three systems reform lies in, firstly, replacing the so-called 'three old irons' that existed in Communist China of 1) life-time employment (the 'iron rice bowl'); 2) centrally administered wages and the cradle-to-grave state welfarism (the 'iron wage'); and 3) state-regulated appointments and promotions of managerial staff (the 'iron chair') with labor contracts that emphasize greater productivity and flexibility. Secondly, the reform gives managers almost unlimited autonomy, particularly over employment relations, such as hire, fire and pay (Ding and Warner, 2001; Ng and Warner, 1998).

The changes in IR have been accelerating since 1997 when Jiang Zemin, the then president, endorsed the sale of state enterprises. As a result, the state-owned share of industry output dropped significantly, from 73.4 per cent in 1983 to 11.1 per cent in 2003 (China Statistical Yearbook, 2004). Industrial relations was never the Chinese government's concern during the planned economy, but now the old harmonic workers (masters)- the state relations have long gone and, instead, there are considerable tensions and conflict between employees and managers. The situation has become critical with the emergence of labor conflict accompanied by inadequate social security, income inequality and high unemployment (Zhu and Warner, 2005). How labor disputes are handled has a significant influence on the stability and healthy development of the Chinese economy. Apart from considerable pressure from its own people, the Chinese Government is now under great pressure from outside, particularly the US and the European Union, to protect workers' rights. 'Labour issues are no longer in the domestic terrain, but are now linked with international trade and international political relations' (Zhu and Warner, 2005: 359).

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 economy' (Ng and Warner, 1998: 77). The framework, which is shown in Figure 1, is centered on the legal and contractual regulation of labor relations, including labor arbitration and courts, accompanied by trade unions, tripartite coordination and collective contracts (Chen, 2004; Clarke, Lee and Li, 2004; Fox, Donohue and Wu, 2005; Shen and Leggett, 2004; Zhu and Warner, 2005).

### Trade union

Domination of the trade unions by the State is effected significantly through the official 'umbrella' organization All-China Federation of Trade Unions (ACFTU, Zhonghua Quanguo Zong Gonghui). While in excess of 90 per cent of SOEs are unionized (Benson and Zhu, 1999), just 4 per cent of privately-owned enterprises (POEs) have unions (Chang, 2000). According to its constitution, the ACFTU represents the interests of its members - workers. Since the economic reform, the Chinese government has defined the ACFTU as an intermediary with two roles: firstly, to link workers and the state bureaucracy by playing the role of a 'transmission belt'; and secondly, to link workers and enterprise management or employers by acting as a mediator in disputes (Zhu and Warner, 2005).

### Collective contract

The collective contract system was initiated in 1992 and has grown in strength since 1994, when its processes were detailed in the Labor Law. Such a system has developed as a means of attempting to secure harmonious labor relations within the framework of the workers' democratic participation in management (Clark et al., 2004). According to the Labor Law, employees in an enterprise may sign collective contracts regarding wages, working hours, breaks and vacations, occupational health and safety, insurance and welfare. The draft of a collective contract has to be approved by a meeting of employees' representatives or by all employees after a discussion. In an unionized enterprise, the union represents employees and will sign the collective contract with the enterprise on their behalf, whereas in enterprises that do not have a trade union, employee representatives (elected by the employees themselves) sign the collective contract. An important feature of collective labor contracts in China is the 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 union based on such a criterion. Therefore this type of administrative promotion makes signing collective contracts a kind of 'movement' (Kai, 2004).

### Tripartite coordination

China started experimenting on establishing tripartite institutions as part of the system of mediation and arbitration for labor disputes in 1986. In November 1990 China ratified the International Labor Organization (ILO) Tripartite Consultation Convention 144. By August 2002, more than twenty provinces, autonomous regions and cities directly administrated by the central government established a tripartite system of coordination for labor relations. The Ministry of Labor and Social Security (MOLSS) and ACFTU also launched a campaign to extend tripartite coordination to municipalities, counties and townships across the country. The three parties involving in the tripartite coordination include: 1) the government's administrative department of labour and social security; 2) the trade unions; 3) and the enterprise's representative. The tripartite coordination committees (TCC) are set up above the enterprise.

## Labor arbitration and court

The 1994 Labor Law first introduced a labor arbitration system. Arbitration is compulsory and is the preliminary procedure for bringing a labor dispute lawsuit (Cheng, 2004). Labor dispute arbitration committees are usually composed of representatives of the labor administrative departments, representatives of the trade unions above the enterprise and representatives of the employers. By the end of 2001, the government had established about 3,300 labor disputes arbitration committees at the city level (Fox et al., 2005). The court is usually the final resort for resolving labor disputes.

Parallel to the impressively growing literature on China's human resource management, scholarly analysis is increasingly being applied to examining China's changing industrial relations. However to date, a systematic review that assesses and generalizes the findings of the existing but scattered empirical research is lacking, particularly in regards to how effective the existing mechanisms are with forestalling increasing labor disputes. This review study is yet another step toward this direction by posing the following major research questions. By answering these questions we shall also discuss the direction of labour disputes in the future and the prospect of their management in China. The research questions include:

- 1) What are the nature and causes of labour disputes?
- 2) How are labour disputes being managed?
- 3) How effective are the current mechanisms for resolving labour disputes?

## Methodology

This study is a systematic literature review complying with the rules set by Cochrane Library. The databases searched include Academic Search Elite, Business Source Premier, Econlit and MasterFile Elite, IBSS, ProQuest, ScholarGoogle, Ingenta, Synergiey, Emerald and EBSCO. These are databases that, combined cover virtually all areas of academic study, economics and peer-reviewed business and scholarly publications in English. The period chosen was 1995-2005 as this represents the period when the early 1990s economic restructuring in China began to make itself felt, and research on the topic flowed as a result. The major inclusion criterion for literature was scholarly publications derived from empirical research, either quantitative or qualitative, during the specific period. Studies that did not indicate robust research methodology, such as data collection method and date, and were reference-led reviews were excluded. The search terms included human resource management, personnel management, industrial relations, labor disputes, labor confrontation, labor conflict, trade union, workers' councils, workers' congress, workers' rights, employment contract, collective contract, collective/tripartite consultation/negotiation/coordination, labor arbitration, labor court and labor dispute settlement/resolution. These terms were all combined with China when being searched. The titles and abstracts, where available, were screened to identify the potential relevant publications. Two reviewers independently identified the publications and extracted the findings of the studies included. Differences were resolved through discussions.

## Results

Of the 7955 publications identified in our search, twenty six met our inclusion criteria. The findings were classified into labour disputes, trade union,

## Labour Conflicts

collective agreement, tripartite negotiation and labour arbitration and labour court categories. We tabulated the major findings to record common themes or threads in the empirical research. Those studies that dealt with multiple issues of labor disputes are listed in more than one table where appropriate.

There are twelve studies discussing labour conflicts in China and all point to widespread labour disputes. To emphasize their points on the rise in number of conflicts, statistical figures are invoked. For example, the number of dispute cases that applied for mediation and arbitration increased nationally from 117,988 in 1997 to 162,320 in 2001 (Cheng, 2004). In the mid-1990s, labour protests increased by quantum leaps. The number of people involved in labour-related demonstrations increased from over 1.1 million in 1995 to 3.6 million in 1998 (Chen, 2000). 216,750 strikes and demonstrations took place in 1998 (Mok et al., 2002). The number of labour protests in FIEs and POEs drastically increased from 1,370 to 41,068 in 2000 (Choi, 2003). However, all these figures are derived from the official statistics, such as the China Statistical Yearbook and the China Labour and Social Security Statistical Yearbook. There is a lack of empirical data showing labour disputes in particular enterprises.

The common features of labour unrest in China are: it is spontaneous; ranges from passive resistance such as declining labour enthusiasm to active protests, for example strikes and demonstrations; is unorganized and economic demand-oriented. There has been a very substantial increase in levels of collective labour disputes. The annual collective labour disputes increased 31 per cent and involved above 60 per cent of the total employees involving in labour disputes from 1994 to 2002. Due to a lack of collective power, labour conflicts that do occur tend to be sporadic and isolated (Chen, 2000; Choi, 2003; Mok et al., 2002; Morris et al., 2001). Labour disputes, especially collective disputes, are anticipated to continue to increase in the future (Cheng, 2004).

The review reveals that wage payments are infringed upon, beatings are common, verbal abuse is widespread, and freedom of movement is restricted (Chan, 1998; Choi, 2003; Lau, 1997; Yu, 2005; Zhu, 2004). Based on the official statistics, Cheng (2004) reported that the causes of labour disputes include, deducting or delaying paying wages, pension and welfare, modification and termination of labour contract, and a lack of production protection. Morris et al. (2001) argue that workforce reduction resulting from the corporatization of SOEs is a major source for labour unrest. The issue of bankruptcy, particularly in SOEs, is a notable trigger of these sources of labour unrest and rioting, as noted in seven studies: Blecher (2002), Cai (2002), Chen (2000), Chen (2004), Lee (1999), Mok et al. (2002) and Morris et al. (2001). They all agree that: firstly, bankruptcies threaten the SOEs more than any other enterprise type because they are in the process of being increasingly subjected to market forces, redistributing workers and different production practices; and secondly, affected employees feel much anger and anxiety. There is a consensus that the occurrence of labour disputes is attributed to the lack of clear regulations on and unlimited power granted to management over employment relations, e.g. firms have their own discretionary authorities to regulate workers (see, for example, Ding and Warner, 2001; Lau, 1997; Warner and Zhu, 2005; Yu, 2005).

All these papers investigate how such disputes have been differentially affected by the interplay between organizational characteristics (particularly whether SOE, JV, FIE) and the level of foreign ownership, which has an impact on how labour conflict starts; institutional structures; actual working conditions of people;

and the characteristics of the labour force. Most large-scale protest actions are launched by workers in SOEs (Chen, 2000) due to these enterprises not being able to afford to pay wages, pensions and other welfares, and more often due to their bankruptcies.

While labour conflict and real antagonism characterize the SOEs, industrial unrest is becoming increasingly prevalent in FIEs, particularly those under East Asian ownership and labour intensive in nature, or joint-ownership and situated in the south of China. Ding and Warner (2001) and Zhu and Fahey (2000) made only a cursory reference to FIEs that are run by Hong Kong or Taiwanese that lack formal industrial relations, proper HRM procedures and are “paternalistic” towards workers. From 1991 to 2000, the number of labour protests in FIEs increased from 1,370 to 41,068 respectively (Choi, 2003). Yu (2005) notes that labour disputes (per 100,000 employees) in FIEs from 1998-2001 numbered 384–301, while in SOEs for the same period it was 25-56. Lau (1997) refers to workers in FIEs as struggling ‘against Dickensian conditions’. The studies cited here agree that labour unrest in East Asian-invested FIEs generally involve migrant workers from rural areas. Importantly, FIEs located closer to Beijing are monitored more closely in terms of compliance to labour laws that have been formally extended to all FIEs in the wake of many Chinese and international media reports on abuses resulting in turmoil (Chan, 1998; Choi, 2003; Lau, 1997). Choi (2003) and Yu (2005) move away from macro-level, structural and institutional factors by focusing on the subtleties of workers’ migrant/peasant/gender backgrounds.

The review has identified sets of countervailing forces that dampen effective working class and particularly urban collective action. Chen (2000) and Cai (2002), for example, note the structural opportunities for protest provided by workers’ and local leaders’ knowledge that workers can appeal to local leaders’ superiors for relief, and the state’s (and its representatives’ ability) to disperse workers’ shock over time by phasing in lay-offs. They also suggest that disputes differ in terms of whether those agitating are current employees (who have not been paid wages), retired workers (waiting for pensions) or the laid-off (wanting their rights to subsistence in the form of unemployment benefits). Cheng (2004), Blecher (2002) and Mok et al. (2002) refer to the repressive apparatus of the state and its denial in society for working-class self-organization and the atomizing effects of a transition to the market economy, which holds out the prospect of individual rather than collective solutions to workers’ problems. These conditions have also resulted in workers forming their own informal associations (again because their formal union is ineffective or non-existent) and engaging in ‘wildcat’ strikes that have increased and have wider social and political implications for the state (Morris *et al.*, 2001).

**Table 1: Findings of studies on labour disputes**

<i>Study</i>	<b>Methodology</b>	<b>Findings</b>
China: Labour Reform and the challenge facing the working class (Lau, 1997)	Almanac of China’s Labour Statistics and China’s Labour and Wage Statistics (1987-1993)	Labor disputes become endemic in SOEs since 1980s and rife in FIEs on large scale since mid-1990s
Labor Standards	Informal interviews with	Tens of millions of workers

and Human Rights: The Case of Chinese Workers Under Market Socialism (Chan, 1998)	managers, workers, officials; survey of 1,531 staff and workers in 50 factories in five cities throughout China	become victims of labour rights violations in Taiwan and Hong Kong-owned FIEs
From organized dependence to disorganized despotism: Changing Labour regimes in Chinese factories (Lee, 1999)	Interviews with workers and managers from several large factories and mills in Guangzhou	Labour disputes common, fragmented in SOEs largely due to bankruptcy. Collusion between foreign owners and local officials causes labour disputes
Subsistence Crises, Managerial Corruption and Labour Protests in China (Chen, 2000)	The ACFTU statistics 1994-96, and interviews with a dozen workers at the WTC factory in Henan province in 1998	Bankruptcy and managerial corruption are the causes of SOE workers' unrest. In mid-1990s, scale of labour disputes rose in quantum leap
From Dependency to defiance? Work-unit relationships in China's state enterprise reforms (Morris et al., 2001)	Interviews with 40 directors and senior managers in 10 SOEs across China between 1995-2000	SOE workers increasingly using strikes and organizing own trade unions. Unrest is largely localized and sporadic in nature
Hegemony and Workers' politics in China (Blecher, 2002)	Interviews with several dozen workers in Tianjin SOEs, JVs, or other private firms 1995-99	<i>Collective or individual protests are spasmodic, numerous and widely distributed in 1980s and 1990s.</i>
The Resistance of Chinese laid-off workers in the reform period (Cai, 2002)	Interviews with 77 laid-off workers from SOEs in three unspecified eastern Chinese cities during summers of 1998 and 1999	Economic restructuring has provoked workers' resistance due to tens of millions of workers have been thrown out of their jobs.
The challenges of global capitalism: unemployment and state workers' reactions and responses in post-reform China (Mok et al., 2002)	A survey of 647 state workers and focus group interviews in 11 SOEs three cities between 1996 and 1999	Restructuring of SOEs and bankruptcy, mismanagement have caused far more frequent workers' unrest in terms of protests, strikes, direct attacks
Managerial Styles, Workforce Composition and Labor Unrest:	Survey of 39 managers and 291 workers in 39 East Asian-Invested Enterprises factories in	Enterprises located closer to Beijing have been under more scrutiny than those in the south, so labour relations

East Asian-Invested Enterprises in China (Choi, 2003)	coastal cities during 2000-1	are more stable. Japanese, Hong Kong, Taiwanese FIEs prone to labour conflicts
The Development of labour disputes and the regulation of industrial relations in China (Cheng, 2004)	China Labour and Social Security Statistical Yearbook	Bankruptcy and inappropriate management decisions trigger industrial unrest and collective action
Workers, unions and the state: Migrant workers in China's labour-intensive foreign enterprises (Zhu, 2004)	Research of migrant workers in labour-intensive FIEs in Shanghai, Shenzhen, Hong Kong in 2001	Labour intensive FIEs have poor labour relations and workplace practices that encouraged disputes to occur and the ACFTU has not been able to look after migrant workers in FIEs
State-intervened legal activism: case studies of labor unrest at foreign invested enterprises in south China (Yu, 2005)	Field data from 2 FIEs in Shenzhen and Guangzhou; China Statistics Yearbook 2002, China Labour Statistics; Yearbook 1999-2000, and China Labor and Social Security Statistics Yearbook 2001	Since mid-1990s, labor unrest in South Korean and Hong Kong FIEs has increased, particularly among migrant workers, leading to wildcat strikes, stoppages, demonstrations, sit-ins

## Trade Unions

Eleven studies dealt with the role of trade unions in industrial relations. One crucial point is that in the transition to a market economy and contractual employment relations, workers need trade unions that are constitutionally supposed to speak for them in protecting their interests from the management's encroachment (Ding, Goodall and Warner, 2002; Zhu, 1995). Yet, the state has effectively retreated from direct administration of enterprises and required trade unions to act as a counterbalance to management and share the burden in mediating labour-management conflicts, stipulated in Trade Union Law and Labour Law (Zhang, 1997). Accordingly, eight of these studies explicitly state that this contradiction in purpose permeates the trade unions at the workplace level, no matter what sort of enterprise (Baek, 2000; Chen, 2003; Ding et al., 2002; White, 1996; Zhu, 1995). Chinese trade unions have organizationally and traditionally run on enterprise union lines rather than industrial ones as recognized in the West. They are in essence organized from above – not by the rank-and-file and this point is made in four articles: Baek (2000), Cheng (2004), Lee (1999), and Zhu (2004).

Studies have discussed the ACFTU in terms of its role, current problems and future scenario in labour conflicts. There is a general consensus that union leadership during protests, strikes, etc. is curiously lacking (Cai, 2002; Chan, 1998; Chen, 2000; Choi, 2003; Mok et al., 2002; Zhu, 2004). If the ACFTU prioritizes the workers' interests over national production, it experiences pressure from the CCP. On the other hand if it subordinates the needs of workers to

production interests, it becomes alienated from its constituency. Prior to the reforms the ACFTU was intricately part of the CCP state apparatus and acted mainly to ensure productivity, educate workers in patriotism, collectivism, socialism, etc. in SOEs and COEs throughout China (Lau, 1997; Taylor, 2000; Zhang, 1997). At the national level there is a form of state-union bipartism, but one whereby the ACFTU-guided union movement is subservient. Trade unions above enterprises directly deal with labour disputes when workers appeal to them. However, as trade unions are not authorized to make decisions, they mainly play a role of 'mediator' between workers and enterprises (Clark et al., 2004). Currently, when it comes to Chinese workers trying to resolve disputes through collective action, effective union leadership is missing. In most cases, unions acted in ambiguous ways: supporting workers and management at the same time. While unions do play a welfare role within SOEs and more 'enlightened' FIEs, they predominantly act as organizational instruments of managerial or party priorities, not as autonomous agents for workers' interests (for example, Chen, 2003; Chen and Chan, 2005; Ding et al., 2002; Pun, 2005; White, 1996; Zhu, 2004). Trade unions at the enterprise level generally play three roles in resolving labour disputes: suppressing workers as a part of management; being the 'messenger' between workers and employers; being the 'mediator' between workers and employers.

Will the ACFTU be able to exist with other competing workers' organizations, which would signal the end of its corporatist character? Throughout the history of the ACFTU there has been pressure within the organization and from the workers for a more independent role regarding the Party-state, so as to prioritize workers' interests. Surveys are increasingly showing that the ACFTU has been taking a more assertive stance, having had some influence on national policy-making, helping to shape the 1994 Labour Law, for example (Baek, 2000; Chan and Chen, 2005; Ding and Warner, 1999; Taylor, 2000; White, 1996). In particular, the ACFTU has been campaigning since the mid-1990s to unionize the entire FIE/JV sector and implement tripartite coordination and collective contracts nationwide. However, the 'top-down' strategy of unionizing workers and channeling their complaints into official ACFTU institutions actually relies on the ACFTU soliciting employers' agreement in permitting unions in their enterprises. This, in turn, only aggravates workers' complaints and is bound to intensify the conflict between labour and capital/management in this irreversible shift to a capitalist economy. Given the existence of the current political frame, it is impossible for the ACFTU to change its subordinate position by completely severing its ties to the CCP. However, one study (Shen and Leggett, 2004) points to the emergence of regional unions or work congresses established by the union council, coordinating labour relations in all enterprises in the region. Due to the fact that those unions or congresses are not set and funded by management; they are more likely to stand as the 'rival' of enterprises. While such 'rival' unions will increasingly become a counterbalance to management, overall, it is the dependent trade unions that will continue to be endorsed by the CCP even though their existence is becoming more irrelevant to workers.

A factor that stands out in the literature is that many FIEs and POEs do not have, and are unwilling to establish, unions (Lau, 1997; Lee, 1999; Shen and Leggett, 2004 and Taylor, 2000). However, there are contradictory reports on the role of trade unions in FIEs. Pun (2004) argues that those that do exist (for example in Dongguan, Zhongshan and Shenzhen), act poorly to protect members from low wages, long working hours, lack of safe and hygienic working environments, etc. However, Taylor (2000) holds a different view by arguing that unions in FIEs operate in a more optimistic climate and played a major part in settling collective

disputes on behalf of the members.

**Table 2: Findings of studies on trade unions**

Study	Methodology	Findings
Major changes under way in China's industrial relations (Zhu, 1995)	Apply the author's earlier empirical data	Trade unions play dual roles: campaign for improving production; protect workers' interests
Chinese trade unions in the transition from Socialism: towards Corporatism or Civil Society? (White, 1996)	Interviews with 1680 workers in Shenyang and Nantong in 1992 and with workers and officials (1992-95)	Unions have contradictory political role of obeying the CCP and members' demands
'Re-inventing' China's industrial relations at enterprise-level: an empirical field-study in four major cities (Ding and Warner, 1999)	<i>Interviews with enterprise directors, personnel managers and union officials in 24 enterprises in Shanghai, Nanjing, Guangzhou and Chongqing in 1996</i>	The unionization in SOEs is higher than in JVs. Unions are mainly responsible for welfare.
The changing trade unions in China (Baek, 2000)	Survey of union cadres in Zhejiang Province in 1996	Union cadres have closer relationship with managers than union members. In FIEs tension between labour and management is prominent
Trade unions and social capital in transitional Communist states: The case of China (Taylor, 2000)	Draws on the author's earlier empirical research	Although the unionization rate in FIEs is low, unions play a more active role in settling collective disputes representing members. Overall, trade unions are unable to represent and protect workers' rights.
The impact of economic reform on the role of trade unions in Chinese enterprises (Ding et al., 2002)	Survey of 62 enterprises in both SOEs and JVs. Interviews with factory directors, union representatives, personnel directors, technicians, workers in each sample firm	ACFTU plays a part in finding new functions for unions, yet also part of state apparatus Trade unions support managerial interests FIEs and JVs discourage unionization
Between the state and labour: The conflict of Chinese	Interviews with union cadres from varied levels of trade unions in	ACFTU is a state tool rather than serving workers' interests

trade unions' double identity in market reform (Chen, 2003)	1998-2000	
Employee and union inputs into occupational health and safety measures in Chinese factories (Chen and Chan, 2004)	The ACFTU 1997 survey data	Unions' officials are appointed by management. The ACFTU advocates greater powers to workers' congresses in reluctant enterprises
Workers, unions and the state: Migrant workers in China's labour-intensive foreign enterprises (Zhu, 2004)	Based on author's research of migrant workers in labour-intensive FIEs in Shanghai, Shenzhen, Hong Kong in 2001	Difficult to establish tripartite industrial relations and that pluralistic labour organizations will not develop easily
The Moral Economy of Capital: Transnational Corporate Codes of Conduct and Labour Rights in China (Pun, 2005)	Interviews with workers from five FIE companies (2 in Dongguan, 1 in Zongshan and 2 in Shenzhen) between 2001-2003	There is a high percentage of rural migrants in FIEs that create and control workers' unions. Most workers not confident in union's ability to represent their interests
Signs of Industrial Relations Transformations in China: Precursors in Shanghai (Shen and Leggett, 2004)	Based on the Shanghai Municipal Trade Union Council (SHMTUC) 2001 survey	Unionization rates in FIEs lower than in SOEs. Unions are eager to participate in labour disputes management, they generally do not play an active role. Emergence of regional unions or work congresses established by the union council as the 'rival' of enterprises

Collective contracts

labour

Seven studies have focused on the development and role of collective labour contracts in solving labour disputes. Warner and Ng (1999) argue that collective contracts continue the traditional administrative regulation of labour relations by the state: 'the state is anxious to reinstate indirect control from the political centre through such an entrusted agency as the ACFTU' (Warner and Ng, 1999, p. 306). Clarke et al.'s (2004) study holds a different view by arguing that the collective contract system represents neither a reinstatement of state control, nor the establishment of a system of collective bargaining, but that such a system has developed as a means of attempting to secure harmonious labour relations within the framework of the workers' democratic participation in management. Four studies, including Cheng and Darimont (2005), Clarke et al. (2004), Ding and Warner (1999) and Shen and Leggett (2004), reveal that the labour law with regard to collective contracts is not enforced in some parts of China, particularly in POEs and FIEs. Moreover, rural itinerant workers are usually excluded from collective contracts.

Clarke et al. (2004) argue that the collective contract system does not define a new framework for IR in China because it is not based on the negotiated regulation of labour relations. The contents of the collective contracts usually repeat some regulations of the law on labour relations and exclude the items that might provide grounds for labour disputes. The collective contract system is also built on the assumption of the unity of interests of employees and employers. Gallagher (2004) and Shen and Leggett (2004) argue that collective contracts have had a negligible impact on resolving labour conflicts, even in regions where the implementation of collective contracts has been pushed. Ding and Warner (1999) and Pun (2005) argue that, contrary to the Labour Law, some collective labour contracts have been employer-designed and never resulted from a collective bargaining process. Pun's (2005) and Warner and Ng's (1999) research reinforces Chan (1998), Choi (2003), Zhu (1995) and Zhu (2004) in that labour-intensive FIEs are able to exploit collective bargaining processes because they mainly employ rural migrant workers who are generally uneducated, submissive to authority, female, and young and unmarried (thus not having to pay maternity leave).

**Table 3: Studies on collective labour contracts**

Study	Methodology	Major findings
'Re-inventing' China's industrial relations at enterprise-level: an empirical field-study in four major cities (Ding and Warner, 1999)	<i>Interviews with enterprise directors, personnel managers and union officials in 24 firms in four cities in 1996</i>	Collective labour contracts do not necessarily result in collective bargaining processes; very difficult to police Labour Law outside large urban conurbations
Collective Contracts in Chinese Enterprises: A New Brand of Collective Bargaining under Market Socialism (Warner and Ng, 1999)	<i>Interviews of officials in labour bureaux, trade unions, ministries, and a survey of 62 firms in 1996</i>	Collective contracts are the continuity of traditional administrative regulation of labors by the state
Time is money, efficiency is life: the transformation of labour relations in China (Gallagher, 2004)	Interview with managers of enterprises in Hebei Province (No. and positions of interviewees unknown)	Collective contracts have had a negligible impact on the legal resolution of labour conflicts
Collective Consultation and Industrial Relations in China (Clarke et al., 2004)	Case studies of 19 enterprises and interviews with officials of the ACFTU, the CEC	The collective contract system has developed as a means of attempting to secure harmonious labour relations within the framework of the

	and the MOLSS in 1998-9, 2002	workers' democratic participation in management; it does not play a role in solving labour disputes.
The signs of industrial relations transformation in China: Precursors in Shanghai (Shen and Leggett, 2004)	SMTUC survey on industrial relations conducted in 2002	Collective agreements are very popular, but do not play an active role in solving labor disputes
Occupational accident and insurance reform legislation in China (Cheng and Darimont, 2005)	State documents on the implementation of Occupational Accident Insurance Rules since 2001	Difficult for migrant workers to obtain evidence of collective contracts
The moral economy of capital: transnational corporate codes of conduct and labour rights in China (Pun, 2005)	Interviews with workers from five FIEs between 2001-2003	FIEs' collective contracts are formality and they contain collective bargaining through their control of union

**The tripartite coordination system**

Three studies explored the factors of tripartite coordination. The ACFTU has been the most active proponent of tripartite consultation, which is seen as a means for it to influence government decisions (Clarke and Lee, 2002). The review shows that this system is confined to minor labour disputes, rather than complex ones. Due to the fact that a labour TCC is a kind of autonomous body that abides by the voluntary principle (Cheng, 2004), complex disputes, such as collective disputes, can hardly be resolved through mediation. Mediation works only when both parties accept the ruling. Both the number of labour dispute cases dealt with, and the number of labour dispute cases resolved successfully by the tripartite mediation system have been rapidly decreasing. The cases for mediation dropped from 54,689 in 1997 to 31,193 in 2000. In 1994, 52 per cent of disputes were settled by mediation. This figure had fallen to 29 per cent by 2001. The successfully resolved cases only accounted for 2 per cent (Cheng, 2004).

Clarke and Lee (2004) argue that some disputes are beyond labour relations and can not be resolved within the terms of reference of the TCC. The TCC is used only as a channel through which it can consult the social partners, rather than a decision-making body able to resolve labour disputes. Also, the China Enterprise Confederation (CEC) and trade unions are not independent parties representing their own membership, but subordinate to the Party and the government. Shen and Leggett (2004) argue that to a large extent trade unions are weak in mediation and have lost workers' trust. Table 4: Studies on the tripartite mediation system.

**Table 4: Studies on the tripartite mediation system**

Study	Methodology	Major findings
The significance of tripartite consultation in China (Clarke and Lee, 2002)	Interviews with officials from the ACFTU, MOLSS, CEC and TCC in 2002	The ACFTU has been the most active proponent of tripartite consultation, which does not play an effective role in solving labour disputes
The Development of labour disputes and the regulation of industrial relations in China (Cheng, 2004)	China Labour and Social Security Statistical Yearbook (various years)	There is decrease in labour disputes settlement by tripartite coordination
Signs of Industrial Relations Transformation in China: Precursors in Shanghai (Shen and Leggett, 2004)	The survey on industrial relations by SMTUC in 2002	Extensive tripartite negotiations have been conducted since 1997, but played a limited role in dealing with labour disputes

**The labour arbitration system**

Four studies have dealt with the labour arbitration system. Fox et al. (2005) discuss the definition and the characteristics of labour arbitration. By using official statistics, Cheng (2004) analyses the growing role of labour arbitration in resolving labour disputes. The number of dispute cases dealt with by labour arbitration increased from 19,098 involving 77,794 employees in 1994 to 184,000 involving 608,000 employees in 2002. In 2002 disputes settled by arbitration exceeded those settled by mediation in 27 provinces, autonomous regions or municipalities in the whole country.

Shen and Leggett (2004) argue that that labour dispute arbitration organizations and worker legal assistance centers (at least in Shanghai) are widespread. Significantly, they find that workers would rather seek redress through these mechanisms than through their unions. Lee and Lim (2001) have noted that the Labour Law's reforms on compulsory labour contracts, minimum wages, working hours, mandatory leave, unemployment insurance, workers' compensation, etc., are profoundly difficult to enforce at the labour arbitration level when disputes arise. This is because the 'law' is articulated in terms of socialist ideology and government directives, and lacks any sense of legal reasoning. This means that labour arbitration tribunals have to reconcile their decisions with statutes and regulations (Lee and Lim, 2001).

Table 5: Findings of studies on labour arbitration

Study	Methodology	Major findings
Progressive capitalism or reactionary socialism? (Lee and Lim, 2001)	Analysis of 9 case summaries of workers' contracts conducted at labour tribunal level in Beijing in 1997	There is a lack of legal reasoning in labour tribunals
The Development of labour disputes and the regulation of industrial relations in China (Cheng, 2004)	China Labour and Social Security Statistical Yearbook (various years)	Collective disputes are difficult to solve via arbitration. Arbitration has been used more than mediation in settling labour disputes
Signs of Industrial Relations Transformation in China: Precursors in Shanghai (Shen and Leggett, 2004)	Empirical survey on industrial relations conducted by SMTUC in Shanghai in 2002	Dispute arbitration organizations have been widely established and played an effective role in resolving labour disputes
The Arbitration of Labor Disputes in China Today: Definition and Implications (Fox et al., 2005)	<i>Official documents, such as the 1994 Labour Law</i>	The labour arbitration is regulated by laws.

**Labour court**

There is no study specifically devoted to the role of labour court in dealing with labour disputes. However, studies, such as Cheng (2004), Shen and Leggett (2004), presented the statistics of labour dispute cases dealt with through lawsuits, indicating that labour court is the main channel for resolving labour disputes. The number of lawsuits between employers and employees in courts has increased by 31.4 per cent, from 15,500 in 2001 to 22,600 in 2003 (People's Daily, 27 October 2004). From 1996 to 2001, 92 per cent of the dispute cases were appealed by employees. Lawsuits won by employees accounted for 52 per cent, those won by employers accounted for 16 per cent and those partly won by both parties accounted for 29 per cent on average (Cheng, 2004).

**Discussion conclusion**

and

Given the widespread labour disputes in contemporary China and the significant academic and practitioners' attention paid to the issue, this paper systematically and critically reviews the extant studies in order to assess the evidence regarding the nature and the causes of labour disputes, the effectiveness of the institutional channels available to workers for resolving labour disputes and what should be the appropriate resolution model in the future. China's economic reform has greatly increased the labor productivity, but has also lead to other consequence. There is evidence showing that since the mid-1980s labor disputes are widespread, perennial and are becoming more

complex due to the rising number of collective worker actions, expressed in forms previously unknown, from peaceful demonstrations to 'wildcat' strikes.

Labor disputes involve all aspects of employment relations, with a strong focus on wage, dismissal, insurance, pension, enterprise mismanagement, compensation for lay-offs, medicare welfare and employment contract. Some labor disputes involve issues that are beyond the scope of labor relations, such as allegations of management corruption and the creation of more jobs for laid-off workers. The following factors contribute considerably to the rising occurrence of labor disputes:

- enterprises' insolvency or bankruptcy, which mainly occur in SOEs;
- the lack of clear regulations on employment relations. POEs and FIEs are more likely to mismanage their employment relations;
- the state's granted unlimited power to and lost influence on enterprise management over employment relations;
- the lack of workers' representative organizations give rise to unorganized, isolated and sporadic collective actions.

The causes of labor disputes differ between the different economic ownerships. While labor disputes in SOEs have been mainly caused by insolvency and bankruptcy, in FIEs and POEs they are mainly due to substandard working environment, unfair treatment and no pay or a delay in the payment of wages because management are seeking quick profits. Taiwanese, Korean and Hong Kong invested enterprises have been the focuses of labor disputes. Labor disputes, especially collective disputes are expected to increase in the future due to deepening corporatization of SOEs and rapid growth of non-SOEs. A major structural contradiction has emerged in that while the Party-state retreats from socialist paternalism, sacrificing workers' interests for the sake of restructuring the economic system; it institutionalizes conflict resolution through legislation and government-sanctioned institutions and does not allow labor protests, demonstrations, stoppages, etc. to be solved in a pluralist way. Such contradiction only contributes to more spontaneous protests, militant unrest and underground workers' organizations.

Since the 1980s there have been many studies on trade unions' relevance and prospect in China's modernizing and increasingly globalized economy. The role of trade unions in China is encouraging and resolving disputes can be an ambiguous task. In the transition to the socialist market economy the ACFTU has been redefining its role as 'representative of workers' to respond to the constituents' cry for protection. It has been trying to expand its representation in FIEs and POEs, assuming that the lack of union existence is a factor of increasing labor disputes. However, an intrinsic weakness of China's trade unions is their traditional subservience to the party-state in general and enterprise managements in particular as the government resists any attempts to independently organize workers across the industrial sectors and cities. They operate as enterprise unions rather than industrial unions, and, thus, as Baek (2000) notes, obscure the differentiation of interests between labor and management. Trade unions cannot mobilize workers to strike against rights abuses by enterprise management as this may disturb industrial peace, scare foreign investors and ultimately endanger social stability. While there is scope for official unions to move into a state-driven framework, it is also clear that workers want their unions to be autonomous organizations and truly represent them. Trade unions at higher levels are the major proponent of establishing the tripartite coordination and collective contract systems in order to reposition the ACFTU and legitimize its continuing existence in the socialist market economy when its traditional role, for example as production campaigner and welfare

benefit distributor, diminishes. The higher level unions also deal directly with labor disputes when workers appeal to them. However, due to the fact that trade unions are not independent and decision-making bodies, they play only a 'mediator' or 'moral supporter' role in resolving labor relations.

Trade unions within the enterprise mainly act as part of management distributing fringe welfare or dealing with workers. They sometimes act as the 'messenger' or 'mediator' between workers and management. Therefore, trade unions that are constitutionally supposed to represent its members have lost their faith and trust. In labor-intensive FIEs, where few real trade unions or only 'sham' unions exist, there is no reliance on trade unions at all. The review indicates that trade unions' subordination to the CCP will inevitably continue as it will be reluctant for the ACFTU to cede the advantages stemming from political access and the monopoly of representation. Any enhanced autonomy that it would enjoy in the new system of 'tripartism' (discussed below) would be curtailed due to the ACFTU's continued association with and reliance on the Communist Party. Nevertheless, the regional unions set up by higher level union councils might be able to counterbalance enterprise management in the region.

Since 1992 the collective contract system has been widely established in SOEs, although with little enforcement in FIEs and POEs. The review presents debates on the objective of developing such a system. We are inclined to agree with Clarke et al. (2004) who argue that the collective contract system has developed as a means of attempting to secure harmonious labor relations within the framework of the workers' democratic participation in management. This is because there is no reason for the Party-state to maintain any form, either direct or indirect, of administrative control over enterprises given the deepening corporatisation and marketisation. However, the collective contract system functions as 'window-dressing' as contracts are not a result of collective bargaining, rather usually a repeat of some regulations of the law on labor relations and exclude the items that might provide grounds for labor disputes. Such a system has hardly played an effective role in alleviating labor conflict.

Tripartite consultative bodies are being established throughout China in the hope that such consultation will forestall or resolve increasing instances of labor disputes. It is concluded that apart from believing that tripartism resolves labor disputes, the ACFTU tries to legitimize its continuing existence by representing its members during the new era of reform when its traditional roles, such as production campaigner and welfare distributor, are diminishing. The ACFTU also hopes to institutionalize and consolidate its influence on legislation and policy formation. The Chinese tripartite coordination system, at first, looks like a trilateral consultation mechanism. In fact, due to the trade union's subordination to management priorities and to the labor administration organizations, this system has normally become bilateral negotiation between the labor administration organizations and enterprises. The former tries to represent the interests of both the employer and employees, but it is the latter that actually represents the interest of the employer. Institutionally, the major role of the tripartite coordination is confined to analyzing situations and putting forward suggestions on labor relations. The labor administration departments chair TCC at various levels. Also, since the enterprise is responsible for its profits and, more importantly, is no longer subordinate to the labor administration organization, the labor administration organization is unable to make the enterprise follow its orders, e.g it cannot do much if management are not willing to make deals. Therefore, the tripartite coordination system is nothing like collective bargaining, and TCC is not a decisive authority in solving labor disputes.

The two limitations of the Chinese current legislation on tripartite coordination and collective contracts are: firstly, the legislation is based on the traditional assumption of the unity of interests of employers and employees,

which is very different from the reality that employers have always had an opposite stance to employees; secondly, the legislation is also based on the assumption that trade unions represent and can protect the interests of workers, which is also different from the reality that trade unions are subordinate to, or a part of, government administration and management of the enterprise.

Labor arbitration and labor court are being widely implemented and have become relatively more effective mechanisms for resolving labor disputes. This is reflected in the growing number of cases they have dealt with in which workers have won. The reason labor arbitration has proven to be effective is because the arbitration committee is a decision-making body and arbitration is compulsory and regulated by law. However, the effectiveness and fairness of labour arbitration and labour court are to a certain extent constrained by a lack of detailed legislative regulations on employment relations.

### Contribution to theory

Trade union-led collective bargaining is the main resolution mechanism for labor conflict in Western industrialized countries. For historical reasons such a system is irrelevant and alien to China (Ding and Warner, 1999; Ding et al., 2002; Shen and Leggett, 2004). Is it likely for China to develop a 'third way' of labor conflict management that differs from the other two systems, i.e. resolving labour disputes via the state administration, and Western practices? This review study confirms that a third way exists and that it is characterized by reliance on labor arbitration and judicial channels and management-state bipartism for resolving labor disputes. Two workplace models of industrial relations are competing for dominance in China: firstly, collective bargaining, which will require unions to be independent and conduct real social dialogues; and secondly, a management-state bipartite model, which exercises direct dialogues between management and the Party-state due to the dominant influence of the Party-state and a weak union. Collective bargaining is unlikely to succeed because the current political framework will not allow the ACFTU to have a truly independent status and to separate its interests from management, the state and their members. Political reform would not accompany economic change and the unions will be retained as political instruments of party rule. As long as autonomous institutions representing both employers and employees' interests are lacking, the collective contract and tripartite coordination systems won't work. The judicial channels, labor court, together with labor arbitration, have been effective in resolving labor disputes and will continue to be the main labor dispute resolution mechanism. The Chinese practice indeed shows the significance of the rule of law as the basis of rational social order and the foundation of a market economy.

### Implications for practitioners

Trade unions that are not actually representative of their members cannot facilitate in resolving labor disputes. Even though China's laws and constitution define the role of trade unions as representing and protecting the legal rights and interests of workers independently and autonomously, constrained by its organizational structure, China's political framework and socialist ideology of the unity of the interests of workers and employers in the development of the enterprise, the ACFTU has not been able to play an active role in resolving labor disputes. It is unlikely that the ACFTU will gain an independent status by severing its ties with the CCP as long as the current political framework continues to exist. In the long term, the ACFTU will be stuck in an awkward position: it is not structured and empowered to perform what it is

constitutionally required. However, it might be practical for the Party-state to consider separating the interests of workers from that of employers and instituting trade unions to represent only workers. Setting up regional unions (also industrial unions) to be a 'rival' stance to management (found in Shen and Leggett's (2004) findings) may be a right step towards this.

Industrial conflicts will only decline if there are well-regulated employment relations and autonomous institutions representing workers and employees ready to channel labour grievances. Labour disputes will continue to increase as China is not even close to having these two factors in place. Labor disputes concern not only employees' complaints with enterprises' management, but also those people who have been laid-off, are retired, had accidents at work, etc. They engage in protests and demonstrations that are distinct from strikes, go-slows, industrial sabotage or stoppages. China's legal system may not take into account how these subtle differences in unrest arise and are carried out, so this will have implications for how the state maintains social stability in an economy where employment security is increasingly obsolete. Practitioners thus need to work on the policies beyond employment relations, such as unemployment insurance and social security systems, and reemployment projects. Now that many SOEs have been restructured, how in this decade (and given the demands of WTO membership and globalization) will the state lay-off millions of workers sequentially and not simultaneously in order to defuse community worries?

China is embracing privatization and market liberalization through encouraging more FIEs and joint ventures, but this factor conflicts with the ACFTU's request for those places to form unions of vulnerable workers. POEs and FIEs are two arenas of 'sweatshops' where labor disputes are commonly occurring, therefore special measures are needed in order to prevent further labor conflicts emerging from these two sectors. Is the regional union or industrial union also relevant in the solution to this problem? Detailed regulations on employment relations in POEs and FIEs are also urgently needed.

As pointed out earlier, labor arbitration and court are currently the most effective labor dispute resolution channels and this is likely to continue in the future. However, the fairness of these two systems is always in question due to a lack of detailed policy on employment relations to use as a guide for settling labor dispute cases. In many cases, the rulings have been reached through negotiations and bargaining between two parties, and under many circumstances, workers who are at a weak position have to compromise. Moreover, retaliation of employers by sacking 'trouble makers', especially those who have won arbitration or court cases, are common and are threatening the legitimacy of labor arbitration and court resolution systems. Therefore, the measures on anti-retaliation are necessary in order to effectively protect workers' rights.

This review points to a growing literature on labor disputes and their management in China, but most of them only interpret official statistics. There is a general dearth of solid evidence derived from empirical studies. There is a great need for studies that look at labor disputes and their management from both the worker and employer perspectives, i.e. the workers' and employers' perception of the advantages and disadvantages of labor dispute resolution channels. Such research would contribute to projecting the future development direction of dispute resolution. Moreover, the process of exploring China's labor

**Implications for  
research**

conflicts will never be complete, and its effects, which are being reported virtually daily in the Chinese and international press, will only be seen over a longer period of time.

We consider the following main avenues worthy of further empirical investigation: firstly, our analysis has concentrated on labor conflicts with a distinctly urban feel, since that is where the mass of industrialization (and subsequent problems) has occurred in China. Labor conflicts happening in the rural areas and migrants working in the cities need more research attention. Secondly, there are rising tensions between the central government and local authorities, for example: where the state goes 'over the head' of local officials who are in collusion with business enterprises to create an investment-friendly environment and intervene to pay withheld wages, pensions, insurance benefits, etc. Further research should look at the regional differences in labor disputes and their management and the factors associated. Finally, research should explore the solution to the problem of effective representative organizations of workers. Since trade unions do not effectively represent workers, the potential of workers' informal (i.e. illegal) organizations, congresses, associations, etc. challenges unitary unionism and advocating pluralism, particularly in FIEs where the official unions do not satisfy migrant workers' demands. This also has implications for SOEs and cannot be underestimated.

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<sup>i</sup> “Guanyu jianli jianquan laodong quanxi sanfang xietiao ji zhi de zhidao yijian” (Guiding Opinion on Tripartite Coordination), published by the Ministry of Labor of the PRC, available at [www.molss.gov.cn/trsweb\\_gov/mainframe.htm](http://www.molss.gov.cn/trsweb_gov/mainframe.htm).