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Chinese Workers' Rising Rights-Consciousness

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Chinese workers have increasingly been taking grievances to the Chinese courts, which are having difficulty handling them. The numbers may continue to grow, as Chinese employers delay improving working conditions and as more workers seek to vindicate their rights under Chinese law. Worker discontent was expressed by an outbreak of strikes at foreign-invested production facilities earlier this year that attracted much attention abroad. Little has been written, though, about the limits of the institutions that the party-state has established for the resolution of workers' disputes with their employers.

Almost 700,000 workers brought claims [to](#) special labor arbitration committees in 2008; 295,000 brought their cases [to the courts](#) in the same year. The workers' reasons are well-known: A spokesman for China's Supreme People's Court was recently quoted as saying that "A lot of enterprises, especially export companies, are unable to satisfy workers' requirements for higher wages... Some enterprises tend to ignore the protection of workers' rights in order to maximize profits and minimize labor costs, with illegal unemployment and violations of employees' legitimate rights being common"

The courts stand at the top of a three-stage system for handling labor disputes -mediation, arbitration, litigation - - established in its current configuration by legislation in 1987 and refined in recent years. Some workers have expressed dissatisfaction with problems in the functioning of the system, according to foreign scholars. One of the party-state's motives for establishing the system for labor disputes was to provide workers an alternative to collective representation, and in this manner prevent disruption of Chinese Communist Party-dominated social stability. As rights-consciousness increases, however, could worker resentment over the operation of the institutions be translated into demands for the very collective representation that the Party opposes? Further, if workers demand institutional reform, might they be joined by similar complaints from farmers and property owners whose rights are insufficiently protected by the legal apparatus?

Mediation and arbitration are done by labor dispute arbitration committees (LDACs) established by provincial, municipal and local governments and affiliated with the corresponding labor bureaus. The committees include labor bureau officials and representatives of enterprises and local branches of the All-China Federation of Trade Unions (ACFTU). Mediation is optional, but arbitration is mandatory to make a labor dispute appealable to the local court. The LDACs appoint single arbitrators or panels, which may attempt conciliation or mediation; if these fail, the arbitrator will issue a decision. Either party may appeal to the local court, which usually will try to mediate the case; if that fails, it will issue a decision.

Analysis suggests that at each stage, many workers who try to use the system to resolve such issues as unpaid wages, medical expenses due to work injuries or disputed severance payments encounter severe obstacles. A major constraint on the ability of these institutions to settle disputes in a manner that inspires workers' confidence in them is, as UCLA Professor Ching Kwan Lee has put it her 2007 book "Against the Law," that "local officials' overriding concern to develop the local economy easily fosters a procapital regulatory environment detrimental to labor protests and rights." Writing in the Berkeley Journal of International Law, Aaron Halegua similarly reports that many local officials "are not concerned with conducting business in accordance with law, but focus merely on economic development and advancing their personal interests."

Professor Lee found that Labor Bureau officials are often passive, especially when single employees or small groups come to them. Some arbitrators are poorly trained and inadequately supervised, and in addition local LDACs in townships that depend on local employers for their revenue are influenced by powerful "local protectionism." Furthermore, worker's representatives often perceive that the government has "an overwhelming priority of reaching a mediated agreement even at the expense of the law." The labor officials are also focused on defusing tension and reducing costs of dealing with individual cases. Halegua reports that local labor bureaus, which house the LDACs, have such a heavy burden of routine investigations that they have little time to handle disputes.

As noted above, right-conscious workers have been increasingly using the courts. Mary Gallagher of the University of Michigan, in the

2005 book "Engaging the Law in China," observed that the number of cases has risen because the arbitration system is "overburdened, understaffed, and suffers from a lack of independence from local governments and powerful employers."

Litigation, however, brings its own disappointments, described by Lee. Employers can delay long enough to cause "litigation exhaustion" in the workers. In court proceedings, workers are often confused by legal terminology and technicalities and ill at ease in the presence of authoritative judges. Judges are often poorly trained and also manifest, sometimes blatantly, their commitment to protecting local employers and, therefore, their local government from loss of revenue. Halegua notes that arbitral awards and court judgments are difficult to enforce.

Some workers did report encountering "fair and helpful" labor arbitrators and judges. At the same time, Lee stresses that workers' dissatisfaction with their treatment leads not only to anger and frustration but, in turn, to precisely the kind of mass protests that the dispute settlement system is intended to prevent. Notably, she goes as far as to say that "Legal injustice experienced during the processes of mediation, arbitration and litigation often fuels as much unrest as the original workplace disputes."

The increase in cases taken to court reflects a growing rights consciousness among workers. How far could this go? The party-state has gambled that using legal institutions to deal with labor disputes is worth the risk of energizing citizens to protest not only violations of their rights but defects in the institutions supposed to protect them. Mary Gallagher says that workers have been enabled to use the legal institutions put within their reach to "take the state at its word and use the law as their weapon." But in a China convulsed by economic and social change, new forces have been stirring. Besides workers, farmers' rights-consciousness is increasing because of illegal expropriation of their land, and the urban middle class is also resisting the violation of its property rights by alliances between local officials and powerful developers. Will demand for increased legality grow?

Suggestively, a recent comment in the Financial Times [observes](#) that pressure for reform is coming not from dissidents, "but from a broader range of sources. There are the well-to-do suburban residents who happily organizes large protests when their property rights are affected and make sure television cameras are there to watch them," as well as "a fast-growing legal community... trying to build more independent courts."

This observation, expressed just when Beijing's attention is focused on the award of the Nobel Peace Prize to the dissident Liu Xiaobo, suggests evidence of a desire for a strengthened rule of law in Chinese society, which Liu wanted Charter 08 to stimulate among other incremental reforms. The party-state might find it harder in the future to suppress pressure for legal reform if labor disputes and labor activism increase in the midst of other social tensions.

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