

There Are No Strikes in Taiwan: an Analysis of Labor Law in the Republic of China on Taiwan

Jane Kaufman Winn

Follow this and additional works at: <http://digitalcommons.law.umaryland.edu/mjil>



Part of the [International Law Commons](#)

Recommended Citation

Jane K. Winn, *There Are No Strikes in Taiwan: an Analysis of Labor Law in the Republic of China on Taiwan*, 12 Md. J. Int'l L. 35 (1987).
Available at: <http://digitalcommons.law.umaryland.edu/mjil/vol12/iss1/4>

This Article is brought to you for free and open access by DigitalCommons@UM Carey Law. It has been accepted for inclusion in Maryland Journal of International Law by an authorized administrator of DigitalCommons@UM Carey Law. For more information, please contact smccarty@law.umaryland.edu.

THERE ARE NO STRIKES IN TAIWAN: AN ANALYSIS OF LABOR LAW IN THE REPUBLIC OF CHINA ON TAIWAN

JANE KAUFMAN WINN*

I. INTRODUCTION	35
A. ROC Government Policy on Labor	36
B. Authority and Law in Chinese Culture	40
II. LABOR LAW IN THE REPUBLIC OF CHINA	42
A. Labor Union Law	43
B. Labor Disputes Law	46
C. Collective Agreement Law	50
D. Factory Law and Labor Standards Law	51
III. RECENT DEVELOPMENTS	58
IV. CONCLUSION	62

[The labor force in Taiwan] is the best bargain in Asia, if not the world, when efficiency as well as cost is taken into account. And the island's workers are well disciplined; there is practically none of the costly labor strife that characterizes industries in many parts of the world. There are no strikes.

(From advertisement: "Free China Salutes America's Bicentennial," New York Times, July 4, 1976, at 20).

I. INTRODUCTION

The economic "miracle" experienced in the Republic of China ("ROC") on Taiwan is an outstanding example of the successful pursuit of export-oriented economic growth. Taiwan's gross national product ("GNP") increased by an average of almost 10 percent a year from 1961 to 1981.¹ In spite of a recession in the early 1980s, the rate of growth averaged 8.5 percent for the decade, and returned to 10 percent in 1987. This high rate of economic growth produced a U.S. \$19 billion trade surplus in 1987, with total foreign exchange reserves in excess of

* Jane Kaufman Winn is currently an associate with Shearman and Sterling in New York City. She served as a law clerk in Taipei, Taiwan in 1986 and received a J.D. from Harvard Law School in 1987. The author would like to thank the Harvard Club of the Republic of China for the fellowship which made the research for this article possible.

1. S. KUO, THE TAIWAN ECONOMY IN TRANSITION 137 (1983).

U.S. \$75 billion by early 1988.² Even more remarkable than the record of Taiwan's national aggregate economic development is the fact that this development has been achieved with increased equality in the distribution of income.³ Unlike in its neighbor South Korea, industrialization in Taiwan has not been accompanied by violent repression of labor movements or clashes between workers and the authorities.⁴ Nevertheless, the Nationalist Party ("Kuomintang" or "KMT") regime in Taiwan has relied upon authoritarian, paternalistic industrial policies to exclude workers from the political process. As a result, workers are denied the opportunity to form free trade unions while working to maximize export-led growth and overseas investment in Taiwan.

A. ROC Government Policy on Labor

The export-oriented growth policies followed in countries like Taiwan, South Korea, Hong Kong and Singapore in their successful pursuit of rapid industrialization are often contrasted with the import-substitution policies pursued in Latin American countries which are now notable for their lack of success.⁵ The import-substitution policies of the Latin American nations, however unsuccessful they have been in achieving the economic transformation of the nations pursuing them, do not require internationally competitive labor costs as a basis for growth. Nations which pursue economic growth by stimulating consumption in their domestic markets have an incentive to maintain the purchasing power of the working class.⁶ In countries pursuing export-oriented growth policies, like Taiwan, the connection between domestic purchasing power and industrial production was not present. In the newly industrialized countries of East Asia, economic development was

2. FAR E. ECON. REV., Feb. 11, 1988, at 48, 73.

3. KUO, RANIS AND FEI, *THE TAIWAN SUCCESS STORY: RAPID GROWTH WITH IMPROVED DISTRIBUTION IN THE ROC 1952-1979* (1981).

4. FAR E. ECON. REV., Apr. 3, 1986, at 46.

5. BALASSA, BUENO, KUCZYNSKI AND SIMONSEN, *TOWARD RENEWED ECONOMIC GROWTH IN LATIN AMERICA* (1987).

6. This corresponds to the philosophy underlying the National Labor Relations Act, 29 U.S.C. § 151-166 (1982), as stated in § 1:

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and *tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.* [emphasis added]

29 U.S.C. § 151 (1982).

based on exports of inexpensive manufactured goods, which in turn depended on a low cost, disciplined, politically quiescent workforce.⁷

Control over the industrial workforce of Taiwan has been achieved and maintained by various techniques. In 1949, when civil war was raging on mainland China between the Communists and the KMT, martial law was declared in Taiwan. Following the Communist victory in 1949, the KMT regime fled from the mainland to Taiwan, bringing with it a body of repressive labor legislation enacted in the 1930s. The regulation of the labor market in Taiwan, however, has not been achieved by direct central government control or repression. ROC authorities control the labor market indirectly, by supporting the authority of management at the enterprise level.⁸ Control over the industrial workforce in Taiwan has been facilitated in part because of structural characteristics of the labor market. Many of the light industrial jobs in the export sector pay low wages, provide minimal job security, require low skill levels and offer little possibility of advancement. Many of these jobs are filled by young, unmarried women who participate in the industrial workforce for only a few years.⁹

Since 1949, the United States has exercised considerable influence over ROC economic policies. Taiwan was seen as significant for U.S. military policies aimed at controlling Communist expansion in the Far East. Following the outbreak of the Korean War and throughout the 1950s and 1960s, the U.S. provided the KMT regime on Taiwan with enormous amounts of military and economic aid, and pressed for the adoption of export-oriented economic policies.¹⁰ While U.S. foreign policy toward the ROC on Taiwan tended to support the economic prosperity of the island, no effort was made to prevent the exploitation of the workers. The high level of investment by multinational corporations in Taiwan's export industries, including many U.S. companies, has been motivated in large part by investors' desire to exploit the plentiful cheap labor in an atmosphere of political stability which is guaranteed by an authoritarian regime. It was not until 1984 that official U.S. policy addressed the issue of the exploitation of workers in developing

7. Deyo, *State and Labor: Modes of Political Exclusion in East Asian Development*, in *THE POLITICAL ECONOMY OF THE NEW ASIAN INDUSTRIALISM* 183 (F. Deyo ed. 1987).

8. *Id.* at 187.

9. Galenson, *The Labor Force, Wages and Living Standards*, in *ECONOMIC GROWTH AND STRUCTURAL CHANGE IN TAIWAN* 391 (W. Galenson ed. 1979); Deyo, *supra* note 7, at 194.

10. GOLD, *STATE AND SOCIETY IN THE TAIWAN MIRACLE* 67-73 (1986).

countries like Taiwan, which received substantial U.S. economic aid.¹¹

The system of government of the ROC on Taiwan is only nominally democratic. Soviet support given to the KMT in the early 1920s is still visible in the authoritarian, one-party state in power on Taiwan today. Winckler, a political scientist, characterized the KMT rule through the early 1980s as "gerontocratic-authoritarian" because the reigns of power are firmly held by an aging technocratic and military elite of KMT members who fled mainland China following the Chinese Communist Party ("CCP") victory in 1949.¹² Winckler believes this regime is slowly being modified into a "softer" authoritarian rule which allows younger technocrats and Taiwanese greater participation in the ruling elite.¹³ Within such a regime, political institutions serve to co-opt politically active members of society into the party machine and repress any agitation which cannot be co-opted.¹⁴ Economic and political leadership within Taiwan is concentrated in the hands of a limited number of party members whose legitimacy, in theory, depends on their oft-stated intention to recover mainland China from Communist control. In practice, however, their legitimacy depends in large part on the successful economic policies they have pursued for the past thirty years.

Dr. Sun Yat-sen, considered the father of the modern Chinese nation, believed a period of tutelage would be necessary to prepare the Chinese people for full democracy.¹⁵ This theory provides one justification for the paternalism of ROC leadership. Paternalism is further justified by the preoccupation of Chinese governments since the 1911 Revolution with achieving rapid economic development to safeguard China's national integrity against foreign encroachments. The interest of individual workers in the development of independent labor organizations is repeatedly subordinated to the national economic goals of reconstruction and development. "Harmonious" labor-management relations are seen as a necessary contribution by working people to the larger national good.¹⁶ Independent labor organizations and genuine

11. See *infra* notes 144-164 and accompanying text.

12. Winckler, *Institutionalization and Participation on Taiwan: From Hard to Soft Authoritarianism?* 99 CHINA Q. 481 (1984).

13. *Id.* at 482. In 1949, about 1.5 million refugees came to Taiwan from the mainland. Today, approximately 85% of the 19 million people living on Taiwan are native Taiwanese and the majority of the remainder are from the mainland. Originally, Taiwanese and mainlanders were sharply divided by differences in dialect and occupation. These distinctions are fading but remain important. *Id.*

14. *Id.* at 481.

15. FEURWERKER, MODERN CHINA 73 (1964).

16. LIANG YUNG-CHANG, THE KUOMINTANG AND THE CHINESE WORKER 6 (1954).

collective bargaining are inconsistent with these policies. The policies also presuppose a degree of direct government involvement in labor-management relations, a concept which is foreign to the traditions of organized labor in countries such as the United States.

The aging KMT leaders who came to Taiwan from mainland China in 1949 perceive several potential threats to their continued control. One possible challenge to their authority is the desire of the native Taiwanese for self-determination. Following the transfer of Taiwan from Japanese to Chinese control after World War II, the Taiwanese staged an uprising against the corrupt, repressive wartime KMT administration. The uprising, violently suppressed, sowed the seeds of Taiwanese resentment for mainlander rule. Taiwanese also resent the monopolization of higher social and political positions by mainlanders.¹⁷

The possibility of a Taiwanese independence movement is perceived as a serious threat to ROC security because it threatens KMT rule. The People's Republic of China ("PRC") continues to press its intention to reunite Taiwan with mainland China, by force if necessary. The PRC announced its intention to retake Taiwan by force if any one of several circumstances arises; one of which would be a declaration of independence from China by the people of Taiwan.¹⁸ ROC leadership is therefore constrained not only by its policy of military preparedness in order to retake the mainland, but also by the possibility of intervention by the CCP should the political situation in Taiwan slip out of its control. This concern is reflected in the National Security Law, which replaced martial law, and includes a provision prohibiting any person from advocating the division of the national territory.¹⁹

The KMT pursues a variety of strategies to maintain domestic political stability. The administration of martial law by security forces was an important technique for maintaining control. KMT strategy does not, however, rely on repression alone. Taiwan's highly successful land reform in the early 1950s legitimated KMT rule among the peasant farmers. Since the 1970s, Taiwanese party members have been

17. Ya-Li Yu, *Future Domestic Developments in the Republic of China on Taiwan*, 25 *ASIAN SURV.* 1075, 1086 (1985).

18. Among the other circumstances that could provoke a Communist invasion are a KMT alliance with the Soviet Union or the KMT waiting "too long" to begin negotiations on reunification.

19. National Security Law, art. 2 provides in part that the constitutionally guaranteed right of freedom of assembly will not include the right to violate the Constitution, advocate communism or the independence of Taiwan. *FAR E. ECON. REV.*, July 30, 1987, at 30.

gradually introduced into the government bureaucracy, although mainlanders unquestionably remain in control. While mainlanders predominate in the government bureaucracy and academia, Taiwanese entrepreneurs willing to accept KMT rule are allowed considerable economic freedom, and many have amassed considerable wealth. However, while Taiwanese entrepreneurs enjoy much freedom, the KMT remains intolerant of any organized activity, such as labor organization, which might coalesce into a political activity.²⁰

B. *Authority and Law in Chinese Culture*

The formal legal system of the ROC does not enjoy the same prominent position within Taiwanese society that, for example, the legal system enjoys in the United States. Laws and regulations often seem only marginally relevant to developments in Taiwan. Actual conduct and events refer instead to social norms and political power which exist outside the formal legal system. The interpretation of any statute in the ROC is therefore subject to qualification because of the diminished authority of the legal system in general. The problem is particularly pronounced in the field of labor law, however, where many political and social factors combine to undermine the authority of the statutory law.

The KMT brought to Taiwan a body of repressive labor legislation, including a prohibition on striking, enforceable under martial law and by a statutory provision requiring all labor disputes to be mediated and placing unions under government control and supervision. KMT penetration of unions is important in controlling political dissent, but direct KMT intervention in labor disputes is minimal. Conditions in the labor market in Taiwan depend more on the management of small enterprises which make up a substantial part of Taiwan's industry.

20. In 1950, two labor union activists were imprisoned for allegedly conspiring to overthrow the government and engaging in pro-communist activities. They were not released until 1984. There was no evidence that either man had advocated or engaged in violence, although both had protested the suppression of the 1947 uprising. In 1980, a Chinese sociologist trained in the U.S. and interested in labor problems received a fourteen year sentence for allegedly being a Communist spy. There was no evidence that she engaged in espionage, but she was an outspoken critic of KMT policies and a supporter of the unofficial opposition. Asia Resource Center, Petition to the G.S.P. Subcommittee of the Office of the U.S. Trade Representative, at 4 (June 1, 1987) [hereinafter Asia Resource Center Petition]. The Asia Resource Center Petition and the International Union of Electronic, Electrical, Technical, Salaried and Machine Workers, Petition (June 1, 1987) [hereinafter IUE Petition] describe several recent cases of attempts by ROC authorities to discourage the establishment of independent unions by various forms of intimidation.

Certain traditional Chinese values complement and reinforce KMT rule and the authority of management in labor relations in Taiwan. The Confucian tradition emphasizes respect for authority and hierarchy and is actively promoted in ROC schools. Confucian classics emphasize the authority of parents, teachers and national leaders as well as the duty of subordinates such as wives, children and subjects to obey. Corresponding to the duty of obedience imposed on subordinates, persons in positions of authority are expected to rule by virtuous example and are expected to dedicate themselves to the paternalistic care of their subordinates.

Confucian thought also emphasizes the importance of family and personal relationships. Maintenance of harmonious family and social relationships is considered the greatest virtue, while resort to formal laws to maintain the social order is decadent and vulgar. Persons in subordinate positions should be guided in their conduct by their sense of "shame" while persons in positions of authority should be guided by their education and highly developed sense of personal virtue. Even the "Legalist" school of philosophy, which radically opposed the "Confucian" school, emphasized law as a mechanism of social control which could be used to increase the power of the state and to weaken feudal opposition to a centralized monarchy. There is little or nothing in Chinese tradition which corresponds to the modern Western preoccupation with individual rights and the idea that law can be used to safeguard the liberty of citizens against the tyranny of rulers. Even Dr. Sun Yat-sen felt that in a Chinese form of democracy the Chinese ideas of obligation and duty should be substituted for the Western liberal idea of individual rights.²¹

Although legal codes existed in China for hundreds of years, codified law contained little more than a summary of criminal penalties for highly antisocial acts. The substance of what might be considered civil law was provided by local customary law. Formal law was used to control criminal behavior and reinforce the control of the central government over the Chinese empire, but the family and personal relations embodied in customary law were used as the primary basis for the social order. Law and punishment were applied primarily to the common people, to supplement and reinforce their sense of "shame" and their desire to follow the virtuous example set by their leaders. This combination has been called the "Confucianization" of the law.²²

21. SUN YAT-SEN, *THE THREE PRINCIPLES OF PEOPLE* 51 (China Cult. Serv. trans. 2d ed. 1981).

22. T'UNG-TSU CH'U, *LAW AND SOCIETY IN TRADITIONAL CHINA* 267 (1961).

The idea that legal regulations are vulgar and punitive and are applicable only to the common people still seems to have influence in Taiwan today. Furthermore, the traditional hierarchy which allowed superiors complete discretion and required docile submission from inferiors complements the authoritarian style of KMT rule on Taiwan. The generally underdeveloped state of the legal system in the ROC, reinforced by a concentration of political power within a single political party, a judiciary hemmed in by martial law and a shortage of lawyers and enforcement personnel, guarantees that the legal system will not provide a basis for challenging the existing distribution of power either in government or in the work place. Although the legal system does not effectively constrain the discretion of persons in positions of authority, legal regulations in the ROC today still serve an important function: controlling persons in subordinate positions.

The traditional Chinese contempt for legalism and preference for informal personal relations is a factor contributing to the harmoniousness of labor and management relations in the ROC. ROC officials (who concede that the prohibition on striking had by no means eliminated all labor disputes in Taiwan) feel that the practice of informally resolving labor disputes without reference to the statutory mechanisms for mediation and arbitration of such disputes is due in part to the Chinese preference for informal dispute resolution.²³ This is a social value which is often advanced as a major difference between Chinese and Western attitudes toward dispute resolution. Moser, an American anthropologist, questioned its validity when he found that the Taiwanese villagers he observed were quite happy to litigate their disputes as soon as a forum that was perceived as fair and neutral was made available.²⁴ He felt that the historical Chinese preference for informal dispute resolution could reasonably be considered making a virtue of necessity because of the inhospitable character of Chinese justice.²⁵ Similarly in the labor context, the potentially severe penalties for violating the restrictions on labor activities are clearly calculated to increase the preference of workers for informal dispute resolution.

II. LABOR LAW IN THE REPUBLIC OF CHINA

Adopted in 1946, the present ROC Constitution provides a bill of rights and guarantees several substantive economic rights and obliga-

23. Telephone interview with Fusen Hu, Labor Officer of the Coordination Council for North American Affairs ("CCNAA") (August 1987).

24. MOSER, *LAW AND SOCIAL CHANGE IN A CHINESE COMMUNITY* 178 (1981).

25. *Id.*

tions. Freedom of speech, freedom of association and the right to organize are protected.²⁶ Also guaranteed are the right to work and the right of women and children to special protections while working, such as restrictions on working at night or in dangerous places.²⁷ Labor and management are required by law to mediate disputes.²⁸

A. *Labor Union Law*

The Labor Union Law ("LUL") was promulgated in 1929 and revised in 1975, although all major provisions remain intact.²⁹ Article 1 of the 1975 LUL makes the following statement of policy concerning labor unions: "[T]he purposes of a labor union shall be to protect the rights and interests of workers, to advance the knowledge and skill of workers, to develop productive enterprises and to ameliorate the livelihood of workers."³⁰ In fact, unions are able to provide their members little more than supplementary social services. In Taiwan, unions do not represent their members in genuine bargaining with their employers.³¹

The right of unions to exist is explicitly recognized in the LUL.³² Government and defense industry employees, however, are prohibited from forming a union.³³ Unions are authorized to conclude, revise or cancel collective agreements; to render vocational and educational assistance and medical services to members; to support cooperative activi-

26. ROC CONST., arts. 8, 11 and 14 *reprinted in* REPUBLIC OF CHINA: A REFERENCE BOOK 425 (1983).

27. *Id.*, arts. 15 and 153.

28. *Id.*, art. 154.

29. Labor Union Law (1929) [hereinafter LUL] *reprinted as amended in* MINISTRY OF INTERIOR, LABOR LAWS AND REGULATIONS OF THE REPUBLIC OF CHINA, 101-120 (1987) [hereinafter LABOR LAWS].

30. LUL, *supra* note 29, art. 1.

31. BUREAU OF LABOR STATISTICS, REPORT NO. 268, LABOR LAW AND PRACTICE IN TAIWAN, at 40-41 (1964); FAR E. ECON. REV., Feb. 26, 1987, at 56. *See also*, Galenson, *supra* note 9, at 428.

Even in Japan, where the Labor Division of the Supreme Command of the Allied Powers made great efforts after World War II to establish vigorous and independent unions, the present situation is not much better. Japanese workers in practice have little freedom to organize unions without a prior determination by management that a union would be appropriate for the company. Union leadership is so closely integrated into management that unions are unwilling to confront management on many issues. Japanese union activities are concentrated more on recreational activities for workers than on improving working conditions or raising wages. FAR E. ECON. REV., Apr. 3, 1986, at 45.

32. LUL, *supra* note 29, art. 2.

33. *Id.*, art. 4.

ties by members; and to help resolve labor-management disputes and disputes between members and between unions. Unions are also required to compile statistical information about members.³⁴

Workers employed by enterprises with more than thirty workers may form a union.³⁵ Businesses with thirty or fewer employees account for 95% of the total in Taiwan and employ 70% of the work force.³⁶ Thus, only a small proportion of Taiwan's workers have a right to form a union.

Any worker who is not in a supervisory or administrative position representing management may join a union.³⁷ The LUL provides for the election of officers, the conduct of meetings and the proper use of operating funds.³⁸

Unions are divided into industry and craft unions. The appropriate type of union for a work place is determined by the "authority in charge."³⁹ The jurisdiction of a union coincides with the relevant administrative jurisdiction, and only one labor union for each category of activity may be organized in one jurisdiction.⁴⁰ This is one indication that unions in Taiwan have been reduced to the equivalent of government agencies. These LUL provisions are reinforced by the Law Governing the Organization of Civic Bodies During the Extraordinary Period, enacted in 1942, which permits only one organization per

34. *Id.*, art. 5.

35. *Id.*, art. 6.

36. *Id.*, art. 6. Art. 8 provides that workers at two or more small enterprises may join together to form a union; however, in practice the authorities do not permit the formation of such joint unions. DEP'T OF STATE, REPORT SUBMITTED TO THE COMMITTEE ON FOREIGN AFFAIRS, HOUSE OF REPRESENTATIVES AND COMMITTEE ON FOREIGN RELATIONS, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES IN 1986, at 709 (1987) [hereinafter COUNTRY REPORTS].

37. *Id.*, art. 13. Workers interviewed by an American anthropologist knew they belonged to a union because union dues were deducted from their pay. None of them, however, took any interest in the union or what it did. Kung, *Perceptions of Work Among Factory Women*, in THE ANTHROPOLOGY OF TAIWANESE SOCIETY 184, 190 (Hearn and Gates, eds. 1981).

38. LUL, *supra* note 29, chs. IV, V and VI.

39. *Id.*, art. 6. "Authority in Charge" is a term of art which eliminates the need to make explicit that national, provincial and municipal authorities are all covered by a statute. In the labor context in Taiwan, national unions are regulated by the national government in Taipei and include the Seamen's, Railway Workers', Postal Workers' and Miners' Unions. These unions form the Chinese Federation of Labor. The provincial government of Taiwan is located in Taichung City and regulates the numerous unions in the Taiwan Federation of Labor. Municipal and county authorities have control over unions with strictly local jurisdiction.

40. *Id.*, arts. 7 and 8.

associational function.⁴¹

Promulgation of the LUL followed closely the KMT purge of militants and communists from Chinese labor organizations, which began in 1927. Its provisions represent the assertion of control by the authorities over virtually every aspect of union organization and operation. The original text of the LUL provided explicitly that no union could be organized without application for permission from the competent authority. Once permission to organize was granted, the union was required to report the names, addresses and a brief personal history of its members to the authorities. The authorities had the power to review, and if necessary, alter any part of a union's constitution, resolution or election which the authority determined to be unlawful. The authorities also had the power to dissolve any union which committed an unlawful act or disturbed the peace.⁴² With only minor modifications, the amended LUL contains the same provisions.⁴³

The LUL not only subjects unions to unlimited government interference and supervision, it contains severe limitations on the right of unions to undertake collective action to further their members' interests. Workers are formally given the right to strike, but only when mediation has failed and a majority of members vote for a strike by secret ballot in a general meeting of the union.⁴⁴ However, the labor dispute legislation discussed *infra*, makes this "right to strike" meaningless. Unions are forbidden to disturb the public peace or cause harm to others during strikes.⁴⁵ More significantly, unions are forbidden to demand an increase in wages in excess of the current "standard wage".⁴⁶ Because the "standard wage" has never been defined, it is not clear under what circumstances a union could legitimately strike to achieve an increase in wages for its members.⁴⁷ Wage demands have not been a major issue in labor relations, however, because wages have risen in line with the very substantial real economic growth Taiwan has experienced for the last thirty years.⁴⁸

41. COUNTRY REPORTS, *supra* note 36.

42. Former LUL (1929), arts. 5, 28, 29 and 37 reprinted in A. WAGNER, LABOR LEGISLATION IN CHINA 161 (1980).

43. LUL, *supra* note 29, arts. 3, 9, 30, 31 and 40.

44. *Id.*, art. 26.

45. *Id.*

46. *Id.*

47. A. WAGNER, *supra* note 42, at 112.

48. Manufacturing wages in Taiwan rose at an average rate of 16% a year for the decade ending in 1984. This was made possible by an economy growing at a rate in excess of 10% a year for the same period. The experience of workers in Taiwan contrasts with the experience of workers in Japan, who have suffered a loss of real income

The LUL provides some protections for workers against discrimination for union activities. The original text of the LUL provided that an employer or his agent could not discriminate against a worker or applicant based on union affiliation.⁴⁹ An employer or his agent could not require that members of a union give up their membership as a condition of employment, nor dismiss employees during mediation or arbitration.⁵⁰ Following the 1975 amendments, the LUL now has provisions governing how much time off with pay union directors are entitled to take in order to handle union affairs.⁵¹ A new provision states that an employer may not make it a condition of employment that a worker will not hold office in a union.⁵²

Most unions in Taiwan are used by the government to convey social and economic policies to workers and management, in which case these protections are not very significant.⁵³ Furthermore, as employers often take the initiative in organizing unions and selecting leadership, the statutory protections have not kept unions free from management domination.⁵⁴ Official unions are not completely controlled by the government, however, and have recently voiced criticisms of the inability of official unions to effectively represent their members in dealings with management. Statutory protections are generally not extended to workers who attempt to organize independent unions as an alternative to official unions.⁵⁵

B. *Labor Disputes Law*

Promulgated in 1928, the Labor Disputes Law ("LDL") was the first major piece of labor legislation passed after the KMT split from

in recent years. FAR E. ECON. REV., Apr. 3, 1986, at 43.

49. Former LUL, *supra* note 42, art. 31.

50. *Id.*, arts. 32 and 33.

51. LUL, *supra* note 29, art. 35.

52. *Id.*, art. 36.

53. BUREAU OF LABOR STATISTICS, *supra* note 31, at 40-41; FAR E. ECON. REV., Feb. 26, 1987, at 56. According to one estimate, over 50% of union officials were KMT members. Galenson, *supra* note 9, at 426.

54. Galenson, *supra* note 9, at 431.

55. AFL-CIO, Petition to the GSP Subcommittee of the Office of the U.S. Trade Representative (June 1, 1987) [hereinafter AFL-CIO Petition]. The Asia Resource Center Petition describes the prosecution of the representative of a non-KMT affiliated union for trespassing when the representative entered the employer's premises on union business. Both the Asia Resource Center Petition and the IUE Petition cite specific instances of representatives of official unions assisting in government crackdowns on independent labor activities.

the Communist Party.⁵⁶ That split permitted a shift to the right in KMT policies. The LDL's provisions are generally interpreted to make strikes impossible. Subsequent amendments in 1930, 1932 and 1943 have not substantially changed the LDL. In 1987, some further proposed minor revisions are currently before the ROC Legislature.

The LDL applies only to private sector employees and employers where there is a union or more than fifteen employees.⁵⁷ In the event of a labor dispute, the authority in charge has the power to call for a mediation board to settle the dispute, acting at the request of one or both parties, or on its own initiative.⁵⁸ Thus, if there is any indication that a labor dispute might escalate into an undesirable confrontation, the government authorities may intervene to compel mediation.

If mediation fails, the dispute goes to arbitration.⁵⁹ The LDL originally provided that if neither party disputed the arbitral award, it would have the effect of a contract between the parties, or if labor was represented by a labor union, a collective agreement.⁶⁰ The LDL now provides simply that no party to a labor dispute may take exception to a decision of an arbitration board.⁶¹

Mediation boards include representatives from management and labor, as well as from the authority in charge.⁶² Arbitration boards include one representative each from management and labor, two representatives from the competent authority and one from the local district court.⁶³

Workers and their organizations were, and still are, subject to a blanket prohibition against closing factories, taking or damaging goods or equipment at the work place, or "compel[ling] other workers to strike."⁶⁴

The original text of the LDL provided that during mediation and arbitration, employers could not suspend business operations or fire workers.⁶⁵ Current Article 36 provides that employers and workers at non-state-owned public utilities may not suspend business or strike

56. The Settlement of Labor Disputes Law (1928) [hereinafter LDL] *reprinted as amended in LABOR LAWS, supra* note 29, at 143.

57. *Id.*, art. 1.

58. *Id.*, art. 3.

59. *Id.*, arts. 4 and 7.

60. Former LDL (as amended through 1930), art. 5 *reprinted in A. WAGNER, supra* note 42, at 180.

61. LDL, *supra* note 56, art. 7.

62. *Id.*, art. 9.

63. *Id.*, art. 15.

64. Former LDL, *supra* note 60, art. 34; LDL, *supra* note 56, art. 37.

65. Former LDL, *supra* note 60, art. 33.

under any circumstances. Other private sector employers and employees may not suspend business or call a strike while mediation or arbitration is in progress or during a national emergency.⁶⁶ It is unclear whether, in spite of the repeal of martial law, it would still be possible for a court to find that a "national emergency" exists. There has not been a strike *per se* in Taiwan since 1949, so there is no evidence of how a court would interpret this statutory provision.⁶⁷

The LDL can be interpreted as prohibiting strikes because, in effect, it makes arbitration mandatory and binding, and forbids strikes during mediation and arbitration. The prohibition on striking does not rest, however, on this statutory construction alone. Article 14 of the National General Mobilization Law gives authorities discretion to issue orders to prevent or settle labor disputes, and to prohibit lockouts, strikes, sitdowns or any other action prejudicial to production. The penalty for failure to respect such orders is up to seven years imprisonment and a fine.⁶⁸

The Measures for Handling of Labor Disputes during the Period of National Mobilization for the Suppression of Communist Rebellion ("Measures"), promulgated by executive order under the authority of the National General Mobilization Law, also reinforce the anti-striking interpretation of provisions of the Labor Disputes Law. All disputes must be submitted to binding arbitration, and workers and employers are forbidden to engage in strikes, lockouts, or work slowdowns.⁶⁹ The purpose of the Measures is to maintain production during the period of "suppression of the Communist rebellion." The oppressive effects on workers of this blanket restriction on organized activity is modified by the Labor Dispute Arbitration Boards' authority to investigate workers'

66. LDL, *supra* note 56, art. 36.

67. Although officially there have been no "strikes," there have been significant organized activities by workers seeking improved pay or working conditions. Galenson, *supra* note 9, at 428. The situation had apparently changed by early 1988 when there was a three day strike at Ford Liao Liao Ho in Taiwan. Sunday Morning Post (Hong Kong), Feb. 14, 1988, at 7. One problem in trying to determine the degree of worker discontent is the reluctance of the press in Taiwan to cover such events. For discussion, see *infra* notes 144-164 and accompanying text.

68. Provisional Statute for Punishment of Offenses Against National General Mobilization, art. 5. ROC authorities emphasize that no administrative order suppressing a strike has ever been issued by government authorities under this or other laws. This assertion, even if true, does not address the question of whether this and similar statutes, combined with Martial Law, are successful in suppressing labor unrest by their chilling effect.

69. Measures for Handling of Labor Disputes During the Period of National Mobilization for the Suppression of Communist Rebellion (1947), art. 7 and 8 *reprinted in* A. WAGNER, *supra* note 42, at 158.

living and working conditions. The authorities may "adjust[]" conditions so that both production and the workers' standard of living are maintained and disputes prevented.⁷⁰ Both the Measures and the National General Mobilization Law have remained in effect after the repeal of Martial Law, but it is possible they will be formally repealed in the course of the present review by the government of all existing labor legislation.

In 1986, proposed amendments to the LDL were drafted by the Ministry of the Interior ("MOI") and approved by the Executive Yuan. The proposed amendments are currently before the Legislative Yuan and it is not clear how long it may take before they become law.

The proposed amendments make several procedural and formal changes.⁷¹ First, labor disputes would be divided into disputes over "rights" and disputes over "readjustments." "Rights" are defined by law or contract, while "readjustments" are disputes which arise out of working conditions not covered by law or statute.⁷² Disputes over readjustments are subject to compulsory mediation and arbitration.⁷³ Disputes over rights may be litigated in court, but only after compulsory mediation and arbitration and after one party to arbitration has failed to honor the terms of the arbitral agreement. The proposed amendments authorize the creation of special labor courts, but these courts would be limited in jurisdiction to the enforcement of terms of arbitration agreements.⁷⁴ There is no change in the existing LDL provision that there shall be no strikes during mediation or arbitration, or that the results of arbitration are binding on the parties. The proposed amendments do not seem to represent any progress towards granting ROC workers the right to strike.

The express denial of civil court jurisdiction over labor disputes before arbitration is completed and an arbitration agreement has been implemented seems to be a response to increased litigation by workers following promulgation of the Labor Standards Law in 1984.⁷⁵ The

70. *Id.*, arts. 2 and 6.

71. The following discussion of the proposed amendments is based on an English translation of the draft bill submitted to the Legislative Yuan on March 12, 1986, provided by the CCNAA (the institution which represents ROC interests in the U.S. which does not have diplomatic relations with the ROC).

72. *Id.*, art. 4.

73. *Id.*, art. 5.

74. *Id.*, arts. 37 and 38.

75. For example, the Baker & McKenzie Taiwan Newsletter (April-June 1986) mentions litigation in which an employee claimed he was due over five times as much in pension benefits as his employer had paid him. Baker & McKenzie, Taiwan Newsletter, Apr.-June, 1986, at 12.

1984 general review of the Generalized System of Preferences by the Office of the U.S. Trade Representative found that this simplified method of executing on labor obligations could be considered "taking steps" towards increased recognition of labor rights in Taiwan.⁷⁶ This interpretation of the proposed provisions overlooks the possibility that arbitration proceedings, and hence arbitration awards which would be enforced by summary proceedings in a labor court, are biased in favor of management.

C. *Collective Agreement Law*

Promulgated in 1930, the Collective Agreement Law ("CAL") provides that all collective agreements must be submitted to the competent authority for approval.⁷⁷ The competent authority can cancel or amend any provision which is unlawful or "incompatible with the progress of the employer's business or is not suited to maintenance of the workers' normal standard of living."⁷⁸ A collective agreement is defined by the act as a written contract between an employer or employers' association and a labor organization.⁷⁹

Although the CAL purports to allow unions a say in the employer's choice in hiring, that privilege is effectively destroyed by the exceptions to it. The result is that the closed shop is impossible in Taiwan.

A collective agreement may specify that the employer hire only members of a particular workers' organization; however, under specified circumstances, the employer is not bound by this provision in the collective agreement.⁸⁰ A collective agreement may not require the employer to hire workers according to a rotation-hire list provided by the workers' organization.⁸¹ Finally, the collective agreement may not restrict the employer's discretion in hiring or refusing to hire workers

76. See Office of the U.S. Trade Representative, General Review of the Generalized System of Preferences - Worker Rights (undated memo). For a discussion of the role of the U.S. Trade Representative in monitoring labor rights in Taiwan, see *infra* notes 144-164 and accompanying text.

77. Collective Agreement Law (1930) [hereinafter CAL] *reprinted as amended* in LABOR LAWS, *supra* note 29, at 132.

78. *Id.*, art. 4.

79. *Id.*, art. 1.

80. *Id.*, art. 8. Some of these situations include dissolution of the workers' organization or inability of the workers' organization to provide the employer with sufficient qualified personnel.

81. *Id.*, art. 9.

recommended by the workers' organization for employment.⁸²

D. *Factory Law and Labor Standards Law*

In the early twenties, both the warlord controlled government in Peking and the KMT government in Canton made several attempts to regulate working conditions in factories in response to political agitation for reform. Even though these regulations were beyond the ability of either government to enforce when they were issued, they later formed the basis for the Factory Law ("FL"), promulgated in 1929.⁸³

The FL addresses many types of issues: regulation of child labor, health and safety standards, rates of insurance and disability compensation, provisions for the creation of factory councils of management and labor representatives, and terms and conditions of apprenticeship. Minimum standards are set for the terms and conditions of employment for all covered workers.

The provisions of the FL were expanded by the Labor Standards Law ("LSL"), promulgated in 1984 after ten years of debate and consideration by legislators and despite vocal opposition from employers.⁸⁴ The promulgation of the LSL is an example of KMT technocrats' ability to diffuse popular discontent by making real concessions when necessary. Despite ROC government intervention in labor relations to suppress the formation of independent labor organizations, KMT economic policy makers also show their willingness to intervene to give workers formal guarantees of minimum conditions of employment. In effect, the FL and the LSL supply basic terms for employment contracts which might have been reached in a collective bargaining process if independent labor unions existed and could bargain with employers.⁸⁵

One of the greatest shortcomings of the LSL is that its guarantees remain largely formal. The official policy encourages voluntary compliance by management. Enforcement staff are too few to effectively police the large number of small manufacturing firms in Taiwan, and penalties for violations are too light to intimidate recalcitrant employers. The problem is serious considering Taiwan's poor record for occupational health and safety conditions.⁸⁶

82. *Id.*, art. 10.

83. Factory Law (1929) [hereinafter FL] *reprinted as amended in* A. WAGNER, *supra* note 42, at 170.

84. Labor Standards Law (1984) [hereinafter LSL] *reprinted in* LABOR LAWS, *supra* note 29, at 1.

85. The FL and LSL in some respects resemble the Fair Labor Standards Act, 29 U.S.C. §§ 201-219 (1982).

86. COUNTRY REPORTS, *supra* note 36, at 710; FAR E. ECON. REV., Sept. 6, 1984,

The LSL was intended to modernize the outdated FL. The target date for the nullification of the FL was June 30, 1986. Following the enactment of the LSL in 1984, however, the transition from the FL to the new statute proved more difficult than originally expected. In particular, the MOI and employers conflicted in their interpretation of the scope of the new retirement provisions of the LSL. As a result, in 1987 the FL still had not been repealed and it is unclear when it will be.

The scope of the FL was originally restricted to all factories using mechanical power and regularly employing more than thirty workers.⁸⁷ The more than thirty workers requirement excluded most factories and the term "mechanical power" was never clearly defined.⁸⁸ While factories operating in foreign concessions often employ hundreds of workers, native owned industry is usually undercapitalized and operates on a much smaller scale.⁸⁹

One issue hotly debated prior to adoption of the LSL was how far to expand the scope of the FL. The LSL covers agriculture, mining, construction, utilities, transportation and communication industries without specifying a minimum number of employees.⁹⁰ According to MOI estimates, 3.26 million employees, out of a work force of over seven million, are now covered by the LSL. The manufacturing industry is an important addition to the list of industries covered.⁹¹ Manufacturing in Taiwan is primarily conducted by small family businesses which previously escaped any extensive regulation. Office workers and catering industries are excluded from the scope of the law. In 1986, the MOI proposed further expansion of the scope of the LSL to cover workers in department stores, insurance companies and financial institutions. In 1987, this proposal remained before the Executive Yuan for consideration and had not yet been submitted to the Legislative Yuan.

at 109. The shortage of legal and administrative agency personnel assigned to the enforcement of existing laws and regulations is compounded by a lack of effective tools for enforcing regulations outside of specific provisions for fines. There is nothing in ROC law which corresponds to the U.S. administrative law "cease and desist" order which allows agency personnel to identify violations, issue warnings and prosecute those failing to comply with the order.

87. FL, *supra* note 83, art. 1.

88. A. WAGNER, *supra* note 42, at 130-31.

89. *Id.* at 22.

90. Precisely which companies are covered by the LSL is determined by reference to the authorized scope of business activities of a company which must be specified in the certificate of incorporation. In the ROC, unlike the U.S., companies applying for incorporation must request permission to engage in specified activities and must limit their activities to those for which they have received authorization.

91. LSL, *supra* note 84, art. 3.

The FL prohibited the employment of any children under the age of fourteen. The law attempted to regulate the work that women, and children aged fourteen to sixteen, could perform by forbidding work that was dangerous or hazardous to health, including night work.⁹² The LSL forbids employment of children under age fifteen and considerably expands protections for pregnant female workers.⁹³

The FL provided that authorities would set a minimum wage based on conditions where the factory was located.⁹⁴ By the time the new LSL was promulgated, a minimum wage for Taiwan as a whole had been set by the MOI. In 1987, the rate was set at NT\$6,900 a month, based on a 48 hour week.⁹⁵

The FL provided for the creation of factory councils containing equal numbers of workers' and management representatives. The councils were supposed to promote efficiency, improve labor-management relations, mediate disputes informally, improve safety precautions and assist in the enforcement of collective agreements and factory rules.⁹⁶ The factory councils have been replaced by labor-management conferences under the LSL.⁹⁷ Labor-management conferences should occur regularly and provide a substitute for adversarial collective bargaining. The LSL includes several provisions which explicitly require that labor and management agree on certain terms and conditions of employment.⁹⁸ Labor-management conferences provide the forum for these negotiations.

Labor-management conferences are not, however, an adequate substitute for free, adversarial collective bargaining. In a recent newsletter published by the Chinese Federation of Postal Workers, the union president called for an end to one-sided labor-management relations. The union president claimed that part of the reason the labor union was not effective in representing its members was that labor-management conferences were rarely held.⁹⁹

Adult workers under the FL were not required to work more than

92. FL, *supra* note 83, arts. 5, 6 and 7.

93. LSL, *supra* note 84, ch. V.

94. FL, *supra* note 83, art. 20.

95. This was up from NT\$6,150 a month. China Post, Oct. 23, 1986, at 12. In August 1987, the official rate of exchange was approximately New Taiwan \$31 = US\$1.

96. FL, *supra* note 83, ch. X.

97. LSL, *supra* note 84, art. 83.

98. *Id.*, arts. 32, 33 and 39.

99. AFL-CIO Petition, *supra* note 55, at 20. The U.S. State Department reported that collective bargaining, although legal, does not take place in Taiwan. COUNTRY REPORTS, *supra* note 36, at 705.

eight hours a day, unless "local conditions or the nature of the work" required it, in which case the limit was ten hours.¹⁰⁰ The LSL now provides that an employer may exceed the normal working hours only after agreement with the labor union or if a majority of the workers consent.¹⁰¹ If circumstances such as seasonal variations, changing shifts, or preparatory or supplemental activities require the normal workday to be extended, the union or workers must also consent.¹⁰² The provisions dealing with rest and leave similarly reflect improved conditions for workers and increased participation by unions and workers with a corresponding reduction in management discretion.¹⁰³ The LSL also explicitly requires that labor and management agree on the issue of wages.¹⁰⁴

The FL prohibited employers from deducting from workers' wages insurance against damages or breach of contract.¹⁰⁵ This refers to a practice which was common during the twenties and thirties when many workers were peasants unaccustomed to factory industry.¹⁰⁶ The LSL retains the provision.¹⁰⁷

The FL further provided that men and women performing the same work with equal efficiency must be paid the same wage.¹⁰⁸ The LSL now also provides that an employer may not discriminate against any worker because of sex.¹⁰⁹ Recent research indicates that this statutory mandate bears little relationship to actual working conditions. In 1982, the average pay for female employees in Taiwan was only two thirds the average pay for male employees.¹¹⁰ While many factors contributed to this difference, such as different job descriptions and qualifications, men still received more than women even for approximately equivalent work for equal productivity.¹¹¹

100. FL, *supra* note 83, art. 8. One observer found that employees were routinely required to work overtime without compensation. Galenson, *supra* note 9, at 407.

101. LSL, *supra* note 84, art. 30.

102. *Id.*, art. 32.

103. FL, *supra* note 83, ch. IV; LSL, *supra* note 84, ch. IV.

104. LSL, *supra* note 84, art. 22.

105. FL, *supra* note 83, art. 25.

106. A. WAGNER, *supra* note 42, at 22; FL, *supra* note 83, art. 25.

107. LSL, *supra* note 84, art. 25.

108. FL, *supra* note 83, art. 24.

109. LSL, *supra* note 84, art. 25.

110. Gannicott, *Women, Wages and Discrimination: Some Evidence from Taiwan*, 34 ECON. DEV. AND CULTURAL CHANGE 721 (1986).

111. *Id.* See also, Kung, *supra* note 37, at 184 (discussion of the cultural factors discouraging Chinese women from seeking participation in the work force on equal terms with men).

Chapter II of the LSL has many new provisions setting out standard terms of a labor contract. Temporary and permanent employment are distinguished.¹¹² Chapter II also provides for the conditions under which an employer may dismiss an employee, as well as the amount of notice and severance pay to which the dismissed employee is entitled.¹¹³ For example, a worker employed for less than one year is entitled to ten days notice; a worker with more than one and less than three years is entitled to twenty days notice; and with over three years, thirty days notice.¹¹⁴

Chapter II also enumerates the types of misconduct for which an employer may terminate the employee without advance notice. These include damage to facilities or tools, excessive absences, violent or abusive behavior, or violation of the labor contract.¹¹⁵ Conditions under which an employee may terminate employment without advance notice are also specified. These include violent or abusive behavior by the employer, work assignments detrimental to the worker's health, or failure to pay wages according to the terms of the labor contract.¹¹⁶ All these provisions enlarge upon provisions of the FL.¹¹⁷

Under the LSL, employers are not required to give advance notice of termination and severance pay regardless of employee performance if certain conditions arise. These include dissolution of the business, running the business at a loss, or changing business conditions which require workers to be laid off.¹¹⁸ However, companies merely transferring ownership or in court-ordered reorganization must give the requisite advance notice and severance pay listed in Articles 16 and 17 of the LSL to any employees terminated as a result of the transfer or reorganization.¹¹⁹ This provision was introduced following a period of unprecedented business failures and company reorganizations in the early 1980s, in which unpaid wage claims were a major issue.

The original FL contained provisions dealing with "workers' welfare" and apprenticeship revealing the paternalistic attitudes government and management had towards labor.¹²⁰ Employers were exhorted

112. LSL, *supra* note 84, arts. 9 and 10.

113. *Id.*, arts. 11, 12, 13, 15, 16, 17 and 18.

114. *Id.*, art. 16.

115. *Id.*, art. 12.

116. *Id.*, art. 14.

117. FL, *supra* note 83, ch. VI.

118. LSL, *supra* note 84, art. 11. Art. 27 of the FL required that employers always give advance notice and severance pay to employees, but there is no evidence of how rigorously this provision was enforced.

119. LSL, *supra* note 84, art. 20.

120. FL, *supra* note 83, ch. VII.

to assist workers in cooperative ventures, encourage saving, teach illiterate workers to read and provide for "wholesome entertainment."¹²¹ Apprentices had a legal duty to be obedient and faithful to their instructors and diligent in their work.¹²² The LSL contains no corresponding provisions.

As the first major piece of legislation regulating terms and conditions of industrial employment, the original FL contained a chapter on safety and health and a chapter on medical, disability and death benefits.¹²³ These were preempted in 1958 by the Labor Insurance Act ("LIA") which set up a form of workman's compensation.¹²⁴ As amended through 1979, the LIA provides both ordinary health insurance and occupational health insurance.¹²⁵ The scope of coverage of the LIA in some areas exceeds either the FL or the LSL. Although government workers are covered under a government plan, the LIA includes workers on contract to the government, office workers and employees of non-profit enterprises with at least five employees.¹²⁶

One new provision in the LSL is the creation of an Outstanding Wage Settlement Fund ("OWSF").¹²⁷ In response to the large number of business failures in the early 1980s, legislators created the OWSF as an insurance fund to pay up to six months of back wages if a business fails.¹²⁸ The rate of contribution set by the authorities is 0.005% of workers' salaries.¹²⁹ The first contributions were made in November 1986, and in February 1987, workers were entitled to make the first claims on the OWSF.¹³⁰

A controversial provision of the LSL deals with pension benefits, which are to be provided at the employers' expense.¹³¹ The attempt to establish pensions for a large proportion of the work force in Taiwan was one of the most radical changes introduced with the LSL. Before the promulgation of the LSL and subject to an exception for the civil service, very few employees in Taiwan were covered under any formal pension plan. The traditional Chinese family is a close knit economic

121. *Id.*, arts. 36, 38 and 39.

122. *Id.*, art. 60.

123. *Id.*, chs. VIII and IX.

124. Labor Insurance Act (1958) [hereinafter LIA], *reprinted as amended in LABOR LAWS*, *supra* note 29, at 167.

125. *Id.*, art. 2.

126. *Id.*, art. 6.

127. LSL, *supra* note 84, art. 28.

128. *Id.*

129. *Id.*; China Econ. News Daily, Sept. 27, 1986, at 3.

130. China Econ. News Daily, Dec. 16, 1986.

131. LSL, *supra* note 84, ch. VI.

and social organization. Children are expected to provide for their parents in their old age and most workers in Taiwan relied on these family ties instead of pensions.

Employer contributions to pensions and the OWSF are paid into six designated local banks, which then transfer the assets to the Central Trust of China.¹³² Some of the funds are used as capital for public construction projects.¹³³ The authorities' decision to retain the pension assets within the central government is a reflection of the underdeveloped state of Taiwan's capital markets and official mistrust of equity investments.

Before 1984, retirement benefits required by law were covered by the Regulations Governing the Retirement of Factory Workers in Taiwan Province ("Regulations"). Employers previously exempt from pension requirements under the Regulations but now covered by the LSL vigorously resisted the MOI's interpretation of the new pension benefit provisions of the LSL.¹³⁴ The MOI's interpretation of the LSL required that pension benefits be calculated as of the date of employment, regardless of whether or not the employee had previously been covered by the Regulations.¹³⁵ Employers felt they would be unable to pay potentially enormous pension liabilities for which they had made no provisions at all.¹³⁶ Employees challenged the MOI's interpretation in the Courts. In March 1986, the ROC Supreme Court found the MOI interpretation invalid in its retroactive application of the LSL.¹³⁷

Employers objected not only to the MOI's extremely broad interpretation of the LSL provisions, but also protested that they would become uncompetitive in international markets if they were forced to finance pensions and other benefits called for by the LSL. These claims gained credence during the recession Taiwan experienced in the early 1980s. As a result, the authorities delayed implementation of the pension provisions as well as the OWSF until late 1986.¹³⁸ The Executive Yuan also issued a ruling exempting most bonus and subsidy payments from wages for purposes of calculating pension contributions.¹³⁹ Management resistance to paying the new benefits is so great that some observers express concern that workers will be fraudulently deprived of

132. China Econ. News Daily, June 17, 1986, at 2.

133. *Id.*

134. Baker & McKenzie, Taiwan Newsletter, Apr.-June 1986, at 11.

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.* at 12.

139. FAR E. ECON. REV., Oct. 17, 1986, at 68.

their benefits.¹⁴⁰ Observers anticipate that some employers will terminate their employees who would be covered by the LSL and rehire only temporary employees.¹⁴¹ Another concern, which is justified given the state of accounting practices in Taiwan, is that employers will simply evade making the contributions at all.¹⁴² The fundamental problem with the generous new pension provisions of the LSL is the same as that with the occupational health and safety provisions: ineffective enforcement.¹⁴³

III. RECENT DEVELOPMENTS

The formation of an officially recognized opposition party has been a major political issue in Taiwan for over a decade. The formation of new opposition parties is officially prohibited and this prohibition has not been lifted with the repeal of martial law. However, a Civic Organizations Law has been proposed which would allow new opposition parties to form and is expected to become law before the end of 1988.

In 1977, notwithstanding the prohibition, an informal opposition party formed. This informal opposition was known as the "Tangwai," which literally means "outside the party" (*i.e.*, outside the KMT). In spite of several periods of suppression since its formation, the Tangwai continues to grow.¹⁴⁴ In recent elections, the Tangwai received 25-30% of the popular vote and several seats in the Legislative Yuan.¹⁴⁵

In 1986, the government and the Tangwai began tentative negotiations which would have resulted in recognition of the opposition as a political party. Although the talks broke down, the Tangwai formed a party named the Democratic Progress Party ("DPP"). The DPP won several seats in the November 1986 elections. In particular, the DPP won two seats reserved to represent organized labor as a group rather than a particular geographic district.

The KMT authorities were surprised at the upset of the two official KMT candidates (who were also the leaders of the Chinese Federation of Labor and the Taiwan Federation of Labor). The election of opposition candidates to these positions was seen as a direct expression of the discontent of workers with the structure of organized labor in

140. Asia Resource Center Petition, *supra* note 20, at 8.

141. *Id.*

142. China Econ. News Weekly, Nov. 10, 1986, at 4. Fraudulent accounting practices are widespread in Taiwan and reflect endemic corporate tax evasion.

143. COUNTRY REPORTS, *supra* note 36, at 710; AFL-CIO Petition, *supra* note 55, at 21.

144. GOLD, *supra* note 10, at 116-20.

145. Ya-Li Yu, *supra* note 17, at 1090.

Taiwan.

The authorities responded in several ways. One was the announcement that labor affairs would be taken out of the MOI and a new Labor Council, directly under the Executive Yuan, would be formed to handle them. This Labor Council was established on August 1, 1987. There is also discussion of rewriting existing labor laws and possibly granting workers the right to strike.

A foreign journalist residing in Taipei noted another response. In January 1987, pro-KMT newspapers in Taiwan began carrying stories of labor disturbances for the first time.¹⁴⁶ Observers of the Taiwan domestic situation agree that there have always been minor labor disturbances in Taiwan, in spite of any prohibition on striking.¹⁴⁷ However, no disturbances ever reached proportions where they might be called a strike, or at least, no such disturbances have been covered in the pro-KMT press.¹⁴⁸

In 1986, as the opposition formally organized as a political party in spite of the official prohibition, President Chiang Ch'ing-kuo moved to deflate public support for the opposition by announcing his intention to repeal martial law.¹⁴⁹ Although it has been the subject of heated disagreement within the KMT, enlightened progressives within the government managed to push through the repeal on July 15, 1987.¹⁵⁰ Even though repeal of martial law was a major party platform of the DPP in the November 1986 elections, DPP legislators strenuously objected to the KMT's proposal for the repeal. In particular, the DPP objected that repeal of martial law was simultaneous with the promulgation of the National Security Law. According to the DPP, the National Secur-

146. Although the press in Taiwan is formally independent of KMT control, the authorities keep the press on a tight reign. The Taiwan Garrison Command actively suppressed opposition publications under Martial Law. Publishers of the two largest newspaper conglomerates in Taiwan sit on the Central Standing Committee of the KMT and their publications are relied upon to reflect the official party line. In 1988, this situation showed signs of changing. FAR E. ECON. REV., Feb. 11, 1988, at 12.

147. Letter from Fusen Hu, Labor Officer of CCNAA, to Chairman of GSP Subcommittee, Office of the U.S. Trade Representative (July 7, 1987) (enclosing the CCNAA response to the unfavorable representation of labor rights in the ROC) (available from CCNAA). The CCNAA response to the unfavorable representation of labor rights in the ROC, dated June 29, 1987, at 2, included the following statement: "Strikes do take place from time to time though all parties concerned may even choose not to call them so. Call it a strike or not, workers involved were not working, and production stopped."

148. Interview with Carl Goldstein, Taiwan correspondent for FAR E. ECON. REV. (March, 1987).

149. FAR E. ECON. REV., Oct. 30, 1986, at 28.

150. FAR E. ECON. REV., Jul. 30, 1987, at 18.

ity Law differs little in substance to martial law. The terms of the National Security Law are only declaratory, however, and cannot be enforced until separate enabling legislation is passed in the near future. It is therefore impossible to determine whether the enforcement of the National Security Law will differ significantly from the enforcement of martial law.¹⁵¹

The DPP failed to maintain its position as the representative of Taiwan's workers. The DPP spokesman on labor affairs shocked DPP labor supporters by telling U.S. officials that Taiwan took good care of its workers.¹⁵² On December 5, 1987, labor activists and intellectuals split with the DPP and formed a Labor Party. The party announced its intention to become the main political vehicle for Taiwan's industrial workforce although it remains to be seen whether it will mobilize wide popular support. Given the hostility of the KMT to leftist organizations, the Labor Party has embraced private ownership of capital and free enterprise as its basic philosophy. The political objectives of the party include free unionism, opposition to discrimination against women and minorities in the workplace, tighter enforcement of industrial health and safety laws and financial and tax supports for small and medium sized enterprises.¹⁵³

In addition to the apparent discontent of the members of officially recognized unions and the formation of an independent labor party, some pressure on the KMT for reform has recently come from the U.S. Congress. When the Trade Act of 1974, which provides the Generalized System of Preferences ("GSP") for selected developing countries was amended in 1984,¹⁵⁴ Congress imposed certain requirements concerning observance of human rights on recipient nations.¹⁵⁵ Developing countries will be denied GSP benefits if it is shown that the country "has not taken or is not taking steps to afford internationally recognized worker rights to workers" in the beneficiary developing country.¹⁵⁶ The Trade Act as amended adopts standards for internationally

151. Asia Resource Center Petition, *supra* note 20 (citing interview with Deputy Secretary General of the KMT). In what apparently was the first case tried under the National Security Law, two dissidents were sentenced to 10 and 11 years in prison for advocating Taiwanese independence. FAR E. ECON. REV., Feb. 4, 1988, at 16.

152. FAR E. ECON. REV., Sept. 24, 1987, at 31.

153. FAR E. ECON. REV., Jan. 21, 1988, at 18.

154. Act of Oct. 17, 1984, Pub. L. No. 98-573, 98 Stat. 3018. Goods exported to the U.S. under the GSP are exempt from tariffs. However, the amount of goods eligible for GSP are subject to quantitative limits by category of import.

155. 19 U.S.C. § 2462 (Supp. IV 1986)

156. 19 U.S.C. § 2462(b)(7) (Supp. IV 1986). The 1984 amendments to the Trade Act of 1974 also deny GSP benefits to members of OPEC, nations which do not

recognized workers' rights as set by the International Labor Organization of Geneva.¹⁵⁷ These include: the right of association, the right to organize and bargain collectively, the prohibition of forced labor, a minimum age for child labor and acceptable conditions of work with respect to wages, hours and occupational health and safety.¹⁵⁸

This provision is significant to the authorities in the ROC because the ROC is and has been for several years, the largest recipient of United States GSP benefits.¹⁵⁹ In 1985, petitions were lodged with the U.S. Trade Representative by several interested parties such as the AFL-CIO, the International Union of Electronic, Electrical, Technical, Salaried and Machine Workers and the Asia Resource Center alleging that the ROC had not granted workers in Taiwan internationally recognized workers' rights.¹⁶⁰ Representatives of the ROC government pointed to the recent promulgation of the LSL as evidence they were taking steps to improve workers' rights in Taiwan.

The ROC's GSP beneficiary status was supported by the U.S. State Department. The State Department's position was based on foreign policy concerns and on the interest of U.S. companies with operations in Taiwan. U.S. companies are among the largest exporters from Taiwan to the U.S. and thus, among the largest beneficiaries of the GSP program.¹⁶¹

Support in the U.S. for improved workers' rights in Taiwan is therefore ambivalent at best. While U.S. labor organizations have been active in calling attention to denial of workers' rights,¹⁶² U.S. compa-

respect intellectual property rights or which fail to allow U.S. exporters reasonable access to its own markets.

157. 19 U.S.C. § 2462 (a)(4) (Supp. IV 1986).

158. *Id.*

159. Telephone interview with Ed Zabrocki, Office of the U.S. Trade Representative (Aug. 1987). In 1986 alone, the ROC exported \$3.5 billion to the U.S. under GSP.

160. *See supra* notes 34, 55.

161. The ROC government is under pressure from the USTR not only for failure to recognize workers' rights but also for maintaining import quotas which deny U.S. firms reasonable access to the domestic Taiwan market. The official U.S. policy is to gradually decrease the GSP benefits the ROC receives by reducing the number of categories and quantity limits within each category applied to the ROC. Telephone interview with Marc J. Cohen, Ph.D, Asia Resource Center (Aug. 1987).

162. On June 24, 1985, Douglas Meyer, Associate Director, Research Department, IUE, testified in USTR General Review of GSP hearings on Taiwan that:

It is [the IUE] position that there is a direct relationship between labor practices in several beneficiary countries and the ability of those countries to export products to the United States at very low prices. Members of our union are not the only workers who are affected adversely by the production of these low-priced imported goods . . . the hidden costs of the export bonanza enjoyed by the leading

nies which have made enormous investments in Taiwan have an interest in the maintenance of the status quo. Given the close relationship which remains between the U.S. and the ROC, in spite of the severance of formal diplomatic relations in 1979, and given recent developments in the ROC such as the repeal of martial law, it seems unlikely that the U.S. Trade Representative will find that the ROC is not "taking steps" toward the recognition of workers' rights. The White House announced on January 29, 1988 that Hong Kong, Singapore, Taiwan, and South Korea would lose GSP status as of January 2, 1989.¹⁶³ That decision apparently was made because the four countries failed to appreciate their currencies or take other measures to correct their chronic trade surplus with the U.S.¹⁶⁴

IV. CONCLUSION

A survey of labor laws and regulations in the ROC indicates that workers are denied by statute, or by the accepted interpretation of statutes, fundamental labor rights. The overwhelming desire of KMT leadership for security, both from internal dissent and from external subversion, has seriously impaired workers' freedom of association and their freedom to form independent labor organizations. The government's rush for economic growth at any cost requires considerable sacrifices from workers in terms of free collective bargaining.

There are signs that the commitment of the leadership of the KMT to maintaining security at all costs is diminishing. The increasing tolerance towards political opposition in Taiwan and the repeal of martial law are encouraging. Increased popular participation in the political process may well herald increased worker participation in the workplace. However, the current situation in Taiwan is made up of too many imponderables to venture an opinion as to whether the current mood of reform will continue long enough to produce lasting results.

While Taiwan's economic miracle has been achieved at the cost of serious environmental and occupational health and safety problems, workers in Taiwan have also enjoyed a steadily improving standard of living for the last thirty years. KMT leadership provided substantial

GSP protected countries lies in the exploitation of local workers—the denial of both their labor rights and basic human rights. Although ostensibly intended to aid in the economic and social development of third world countries, the GSP has had the effect of worsening both the relative and absolute well-being of workers both in the U.S. and in beneficiary countries.

163. Asian Wall St. J. Weekly, Feb. 8, 1988, at 5.

164. *Id.*

economic benefits to the people of Taiwan even in the absence of independent labor organizations or broad political participation. In the early decades, the legitimacy of the KMT regime on Taiwan was buttressed by constant reference to the policy of regaining control of mainland China. As this objective gradually became more implausible, there has been a shift in emphasis in favor of retaining power in Taiwan by delivering economic benefits to the people of Taiwan. Direct controls in the form of free elections and worker control of unions might secure greater benefits but it cannot be denied that, indirectly, the working people of Taiwan have come to exercise some control over their leaders.

Because of the ROC's precarious international position, there are no clear alternatives to KMT rule. Voluntary unification with the PRC would probably lower the standard of living in Taiwan. Conversely, the possibility of an independent Taiwan is blocked by the threat of military intervention by the PRC. Thus, KMT rule, based in theory on a claim to be the sole legitimate government of all of China and in fact on the ability to deliver a rising standard of living to the people of Taiwan, offers at least the possibility of continuing gradual improvements.

