

Written Statement for the Congressional Executive Commission Hearing on Working  
Conditions and Worker Rights in China: Recent Developments

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Mary E. Gallagher  
Associate Professor, Department of Political Science  
Director, Center for Chinese Studies  
University of Michigan

Chairman Smith, Chairman Brown, and Members of the Commission.

Thank you for for convening this hearing on this important topic.

In the early summer of 2010, more than a dozen workers at Foxconn, a Taiwanese-owned electronics conglomerate and major supplier to brands such as Apple, committed suicide by jumping off the roofs of their factory dormitories. In the same few months, workers at a Honda automotive parts factory went on strike for higher wages and better working conditions. This strike spread to other Honda factories in the region and eventually led to the shutdown of Honda's assembly plants in China. These two incidents are related, but different. One, the Foxconn suicides, depicts the isolation and alienation that young, migrant workers often feel as they leave their hometowns in rural China for industrial or low-level service employment in China's coastal cities. The Honda strikers represent a more optimistic trend - the successful collective mobilization of workers and the emergence of proto-collective bargaining between labor and management that led to significant increases in wages for many Honda workers.

These events are related because they highlight the transformative changes that have occurred in Chinese labor over the past decade, both the negative and the positive trends. They highlight the varied ways in which Chinese workers, especially young migrant workers, are responding to their plight. While some of these changes are the result of economic and demographic shifts in Chinese society, there has also been considerable political and legal changes since the beginning of this century. The Chinese state's motivations for these changes are grounded deeply in its own fear of instability and worker-led political unrest. Therefore, these changes are not all in one direction - toward greater liberalization and rule of law institutionalization. Instead these reforms include both new, progressive legal codes to improve working conditions, the revival and strengthening of socialist institutions that empower the Communist Party-controlled trade union and worker participation in enterprise decision-making, and,

finally, significant new government efforts to channel disputes away from formal legal settlement and toward government-backed mediation.

In this statement, I will first briefly describe the fundamental economic, social, and political changes that have occurred since China entered the World Trade Organization in 2001. Then, I will examine some of the changes in working conditions and dispute activity since the passage of the Labor Contract Law (LCL) in 2007. This is an important new law that significantly expanded legal protections for Chinese workers, at least on paper. I show that since the LCL some improvements have been achieved, but employers have also exploited loopholes and gaps in the law to evade some of the protections. The combination of more protective laws and more empowered workers with employers and local governments still motivated overwhelmingly to boost economic growth has led to very large increases in labor disputes and labor conflict since 2008. In my conclusion, I argue that the level of dispute activity and the government's inability to deal with increased conflict in an efficient and fair way underscores the institutional vacuum that exists in China's industrial relations. China's legal protections for workers have increased, workers' awareness and knowledge about their legal rights have strengthened, and yet there are no collective organizations - at the firm level or above - that are able to facilitate systematic, regular discussion and negotiation between workers and management. As workers' expectations and demands have increased, there has been a continual rise in formal disputes, wildcat strikes, and demonstrations, but there has been very little real progress in institutional reforms that could structure conflicts over rights violations and interest demands effectively. This failure is a political one, related to the government's unwillingness to reform the All-China Federation of Trade Unions and to allow the establishment of independent trade unions. Liberalizing reforms such as these have been rejected. In their place, the government has decided to inject itself more deeply into the dispute resolution process through the promotion of government-run mediation and other measures that maintain, and even strengthen, the role of the government in managing labor relations.

### *Economic and Demographic Changes in China's Labor Markets*

One of the fundamental changes to occur has been the demographic shifts in China's working population. Widely discussed and debated in China, the change from relative labor surplus to labor scarcity (for some sectors and jobs, in particular) came more quickly than expected. In 2003, reports of labor shortages in coastal manufacturing zones were initially thought to be temporary. These shortages increased in severity over the following years and spread to other areas, including rapidly growing inland regions. China's demographic changes are the result of both regular, "normal" development and more specific effects of China's one-child policy put into effect in the

late 1970s. China's strict implementation of the one-child policy since the 1980s has hastened some of the demographic changes that we see today and has made the aging trajectory more serious, with implications for China's labor markets and for longer term development of social welfare.

China's demographic profile at the beginning of the reform era in 1978 was particularly favorable to rapid industrialization. The proportion of the working-age population to the dependent population was high. In addition, a very large pool of rural surplus labor was untapped, as rural-to-urban migration during the Maoist era was almost completely non-existent. When the government gradually relaxed the *hukou* policy, allowing for rural citizens to temporarily move to cities for employment, this labor pool allowed China to begin to follow in the past of other East Asian economies, as it unleashed rural migrants who had low expectations and little connection to the protected socialist state-run industry in China's cities. This was a favorable context for labor-intensive industrialization and it was timed with large wage increases in more developed Asian economies, such as Japan, South Korea, Taiwan, and Hong Kong. China's favorable working-age population ratio continued as the one-child policy put strict limits on family size, reducing the number of dependents before the increased longevity of older citizens had been fully realized.

China's working-age population will peak in 2015 and fall from 973 million people in 2010 to a predicted 870 million people in 2050. China's slowing population growth mirrors many developed and post-socialist countries' trajectories, though China's decline is not nearly as steep as Russia's or Japan's. Other developing economies such as India, Brazil, and Indonesia are expected to have continued growth in their working populations, especially India. This change in China's demographic trajectory has enlarged the political and economic space for Chinese workers. As labor markets tighten, many workers, especially workers with skills and/or education, can vote with their feet. Employers must improve working conditions and compensation to retain the best workers. But this trajectory has also enlarged the political space for Chinese workers as the diminishing returns to labor-intensive industrialization increase political support for changes to China's economic growth model. The new foundations of growth are increased domestic demand and improvements to productivity and innovation rather than reliance on cheap labor and low-tech, often polluting, industrial sectors.

### *Social Change*

The demographic changes that are remaking Chinese labor markets are also reflected in the differences between younger migrant workers and earlier generations of rural migrants. Young migrant workers are now better educated, come from smaller families,

and desire to become permanent urban citizens. This “new generation of migrant workers” are no longer satisfied with low-level jobs that can earn them savings for a few years before they return to the countryside to agriculture or petty entrepreneurship.

Given this generation’s higher levels of education, better access to technology, and increased integration into urban culture, there seems to be greater potential for this generation to articulate collective interests and to act collectively to press for their interests and rights, vis-à-vis employers and the government alike. Chinese urban workers have acted collectively in the past, often organized by work unit, to protest state-owned enterprise restructuring. Rural migrants have also used native-place affiliations and familial bonds to organize, but these modes of organization have not served them well at their urban workplaces where divisions between workers of different origins, dialects, and local cultures can be used by employers to fragment workers’ collective identity. In the strikes of 2010, observers pointed to workers’ new ability to organize within single workplaces and to design institutions to allow for leadership selection and representation. This was apparent in the 2010 Honda strikes.

### *Political Change*

In this context of shifting demographics, the rising expectations of young migrant workers, and increased disputes and strikes, the Chinese state has moved since 2003 to pass labor laws and regulations that strengthen workers rights, enhance employment security, and widen access to social insurance, such as pensions, medical insurance, and occupational injury insurance. Central government initiatives have been the most important, but many local governments have followed suit with supplementary local laws and guidelines as well. As discussed below, however, local governments have also attempted to pass local regulations that thwart some protective impulses from the central government in order to boost the local economy and its competitiveness vis-a-vis other Chinese localities.

The 2008 Labor Contract Law was the most important piece of legislation in a long list of new laws and regulations that have enhanced legal protections for Chinese workers. Other important laws include the Social Insurance Law (2011), the Labor Dispute Mediation and Arbitration Law (2008), and the Employment Promotion Law (2008). The Labor Contract Law’s implementation period coincided with the onset of the Global Financial Crisis, a steep decline in export orders, and protracted slowdowns in China’s major trading partners in Europe and North America. Although there were calls for the law to be rescinded or its implementation delayed, the National People’s Congress continued to push for implementation and did not consider revision of the law until 2012. The proposed revisions are discussed below.

## *Post-Labor Contract Law Working Conditions in China and Dispute Activity*

The Standing Committee of the National People's Congress passed the Labor Contract Law in 2007 after several years of vigorous debate and discussion. In 2006, the draft law was released for a thirty day period of public comment. It attracted over 190,000 comments from workers, employers, business associations, and lower-level unions affiliated with the ACFTU. Many business associations and employers opposed the law's more protective impulses, which included new restrictions on short-term contracts, enhanced severance compensation, and tougher penalties for failure to sign written contracts with employees. However, there was much popular support for the law as rampant exploitation of workers in labor intensive industries was widely publicized in the Chinese media. Many supporters of the law hoped that it would reverse the trend of declining employment security since reform of the state and collective sectors reached an apex of 30 million layoffs in the late 1990s.

In this section, I argue that the law has improved some aspects of employment relations in China. This does not mean that widespread violations do not continue to occur. They do, as other panelists at this hearing will attest. But there have also been some significant shifts in the right direction. Second, I show that employers have attempted to evade this law mainly through the use of labor subcontracting and the indirect employment of employees via third party employment agencies. Finally, I document how this new, more protective law coupled with increased awareness and education on the part of workers has contributed to a massive increase in labor disputes and labor conflict since 2008.

Since 2008, there has been a marked improvement in the level of formal employment, that is, workers with a written labor contract. In the 2005 mini-census, nearly 70% of all rural migrant workers worked informally, that is, without a written labor contract and, usually, without any access to pension insurance, medical insurance, or occupational injury insurance. Over half of local workers also worked without a formal contract. The China Urban Labor Survey, done in 2001, 2005, and 2010, found that only 12% of migrant workers had contracts in 2005 with 65% of local workers employed with contracts. In 2010, two years after the passage of the LCL, the trend of increasing informality had been reversed, with 71% of local workers employed with written contracts and 34% of migrant workers.

Increased formality in employment has also improved access to social insurance. Chinese law requires that employers contribute about 30% of wages (with individual workers contributing about 10%) for social insurance programs, including pension,

medical, unemployment, maternity, and occupational injury. In 2010, local worker's coverage in pension insurance had increased to 88.5%, up from 77.5% in 2005. The trend was similar for medical insurance. Migrant workers also saw an increase in social insurance coverage, but it was much more modest. Pension insurance coverage increased from 20.4% in 2005 to 22.2% in 2010. Medical insurance coverage increased to 23.8% from 21.8% during the same time period. This lower coverage rate among migrants is related to the unreformed aspects of China's "hukou policy," which discriminates against rural migrants and makes their transition to permanent urban residency difficult. For this reason, many rural migrant workers themselves are loathe to participate in social insurance schemes from which they themselves may not benefit, given their high mobility and uncertain legal status.

A final improvement is in the increased awareness among Chinese workers of their legal rights. This is not necessarily a direct effect of the law itself, but is more likely related to the heightened public and media attention the law's drafting sparked since 2006 when the period of public comment occurred. Labor NGOs and activists have also run programs and projects to increase legal knowledge and awareness among rural migrants, in particular. The China Urban Labor Survey found that most workers were aware of many of the basic stipulations in the law, for example, that a written labor contract is required, that failure to sign a written labor contract within the specified time period entitles the worker to double pay, and that open-ended contracts are also required in some circumstances. In 2010, rural migrants and local workers had similar levels of awareness, which points to the increased education and awareness of young migrant workers.

Despite these positive changes, one glaring trend is the marked increase in labor subcontracting through middlemen employment agencies that then serve as the formal employer<sup>6</sup>. While subcontracting and use of employment agencies are common in market economies, regulation of these agencies in China has been lax. After the LCL went into effect in 2008, many companies looked to labor subcontracting as a way to reduce formal workers with written labor contracts. This cuts labor costs because subcontracted workers are often paid less and receive lower or no social insurance, but it also significantly reduces the employment security of the worker who can be let go summarily and does not have any written labor contract with his actual employer. For the employer, this reduces the risk of committing to longer-term labor contracts and open-ended contracts for workers with ten years of tenure, as the LCL stipulates.

The National People's Congress announced in June 2012 that the Labor Contract Law would be revised this year and that the focus of the revisions would be on the clauses related to labor subcontracting. The NPC cited overuse and "abuse" of labor

subcontracting as a critical issue leading to the need for revision. The actual number of subcontracted workers is difficult to determine as agencies do not report numbers regularly and the industry is loosely regulated. The Ministry of Human Resources and Social Security estimates that between 10 million and 28 million workers are subcontracted. An ACFTU report stated that the number is closer to 37 million. Labor subcontracting is not restricted to the foreign or private sectors, nor is it only found in labor-intensive industry. State-owned enterprises, government organizations, universities and hospitals also employ subcontracted labor on a widespread basis. Draft revisions to the LCL have been released and are focused on better definition of the types of work that can be subcontracted and better regulation of the sector itself. Given that many state-run firms and units use subcontracted labor to reduce costs and increase labor flexibility, successful revision of the LCL will not be enough to curtail abuse of labor subcontracting. Improved implementation and enforcement of the changes are also required.

Labor disputes in China are settled through a three-step process of mediation, arbitration, and litigation. Mediation is voluntary, while arbitration is compulsory for most disputes. Litigation normally occurs when either side appeals the arbitral decision, though some disputes can progress directly to court for adjudication. Voluntary mediation has always been the state's preferred method of resolution because it saves time and may preserve some degree of harmony between the two parties. However, after the passage of the first labor law in 1995, mediation rates fell precipitously as workers had more confidence in dispute processes that relied on formal law and institutions outside the enterprise. Most labor disputes are individual disputes, though collective disputes can occur. Disputes most commonly involve wage and compensation issues. I discuss trends in mediation and collective disputes below.

Labor disputes from 1995 to 2007 rose on average by about 25% annually. This regular increase in disputes was simultaneous with China's reforms in labor markets and the state enterprise sector. It also coincided with a massive influx of foreign direct investment and labor-intensive industry. In 2008, the implementation of the LCL coincided with the global financial crisis, leading to an explosion in disputes. Labor disputes increased by nearly 100% nation-wide, with some localities reporting increases of 300%. Seven provinces reported increases over 100%. In Guangdong Province disputes increased by 170%, in Yunnan Province, by 188%. Disputes taxed the capability of local arbitration committees and civil courts to settle disputes fairly and quickly. The rate of increase in arbitrated disputes since 2008 has slowed and even went down slightly from 2009 to 2010. However, the total number of disputes has not decreased, but continues to rise. In 2010 there were nearly 1.3 million labor disputes. 70% of these disputes were mediated, which shows the success that the government

has had in pushing disputes out of the courts and into government-sanctioned mediation.

While mediation has always been a preferred form of dispute resolution in the PRC, since 2008 the government has attempted to reinvigorate mediation for labor disputes, particularly when disputes are large collective disputes, involve rural migrants, and involve extralegal activity such as strikes and demonstrations. Mediation is encouraged at every step of the resolution process, including arbitration and litigation. Judges and arbitrators are rewarded professionally for high mediation rates, often resulting in “forced” mediations.

Greater reliance on mediation and informal settlement is especially pronounced when labor conflict threatens local social or political stability. These negotiated settlements rely on intergovernmental and CCP unit cooperation as “stability preservation committees” go directly to the site of the conflict to encourage both sides to compromise. Researchers have also noted that while individual leaders and activists may be dealt with harshly, striking workers may receive some significant compensation in exchange for ending the strike and returning to work. This return to mediation and turn away from the rule of law has been roundly criticized by legal scholars, most recently by Carl Minzner of Fordham Law School. It underscores the Communist Party’s ambivalence toward its recent legal reforms that opened up channels for formal, legal resolution of private disputes. The government is worried that these reforms have led to too many disputes, too much adversarial litigation. These trends are not in accordance with the state’s promotion of “harmonious society.” Many recent regulations, circulars, and official statements have instead revived mediation practices that appear to be more conciliatory, but often rely on very active government intervention into disputes, use threats of violence or actual violence to force negotiated settlements, and violate the spirit and letter of China’s own procedural codes.

#### *Conclusion: China’s Institutional Vacuum*

The Chinese state’s laser focus on “social stability” is always to maintain the political status quo, which allows the Chinese economy to continue to grow and the Chinese state to grow wealthier and more powerful. It builds up extremely important domestic and international legitimacy. But the Chinese state is nothing if not extremely ambitious. China’s leaders realize that maintaining the status quo is not enough; stability is the prerequisite for other plans.

In this context of needing to maintain economic growth, but also to fix long-term problems, such as rising inequality and economic imbalances, the Chinese state



envisioning a gradual process of industrial transformation from labor-intensive manufacturing to high-tech, capital-intensive manufacturing and research and development. China's role as the workshop of the world is a stepping-stone to something more valuable—as the laboratory of the world, as the R&D center of the world. At the same time, the movement of labor-intensive manufacturing from the coastal development zones of Guangdong and Jiangsu to internal provinces such as Henan, Sichuan, and Jiangxi will begin to alleviate China's dramatic regional inequality. It will also make the urbanization of China's rural workers more tractable. Instead of leaving home to seek out urban areas for employment and opportunity, China's rural citizens will have the jobs come to them. China's new urban citizens will live in newly created cities as farms become suburbs and suburbs become metropolitan centers in their own right. This goal may not be reachable, but this ideal is an important foundation for the state's support of more protective labor laws and rising wages.

One challenge revealed by the post-2008 increase in labor conflict that has not been solved by the heavy-handed push for mediation and the new legal protections is the lack of institutional capacity for labor-capital bargaining around interest conflicts. The vast majority of the nearly 700,000 labor disputes in 2009 were "rights disputes," disputes that involve the alleged violation of China's own laws. However, Chinese workers and employers have many disagreements and conflicts about their interests, such as wage increases, working conditions, quality of the cafeteria food, or the transportation from workplace to home. Many of the striking automotive workers in 2010, for example, were motivated by a desire for wage increases that reduced the wage inequality between Japanese and Chinese workers employed by the same company and between Chinese workers in different plants owned by the same company. Because in most cases their wages already exceeded the minimum wage standards for their locality, they had wage demands that could not be settled through the current process of labor dispute resolution, which can only handle disputes over rights. Interest disputes simmering over a long period of time are likely to continue to erupt in wildcat strikes and demonstrations. There are no other mechanisms currently in place to handle them preemptively, especially as the government has shown little change in its opposition to freedom of association.

Since the 2010 strikes, the government has revived the idea that China needs a system of collective bargaining and negotiation that would allow for regular and systematic discussion about wages between the government, employers, and workers. Such a system, it is believed, would not only reduce the likelihood of spontaneous workplace actions, but would also contribute to China's desire for industrial transformation as

Unfortunately, China's institutional landscape does not contain actors, on either side of the labor-capital divide, who are capable of effective representation and bargaining. Reforms to the ACFTU, the only state-sanctioned trade union, have been ineffectual. The trade union remains severely constrained by its dual role as representative of labor and the conduit between the Communist Party and workers. Politically, the trade union is embedded in the local Party-State structure, focused on economic growth, social stability, and continued one-party rule. Business associations are weak and fragmented. Labor NGOs and other civil society actors operate in a precarious position and are subject to constant surveillance and occasional crackdowns. While some large state-owned enterprises and multinational corporations may have the capacity to undertake collective negotiations and contracts with their employees, there has yet to be a breakthrough in this regard.

China's development trajectory is an important backdrop to this discussion of Chinese working conditions. As noted in the three areas discussed above—demographic, social and political—recent trends of increased labor activism cannot be explained by any one dimension, but rather by the confluence of factors that are currently in alignment. This alignment has widened the political space available to workers in pushing for new demands. Tighter labor markets have focused the minds of employers who had grown used to low expectations and an endless labor surplus. Political leaders at the top have realized that in order to rectify the dramatic growth in inequality since the 1980s, China's coastal provinces must yield investment to cheaper places inland. China's political system, however, has not changed, and there are few signs of any opening for freedom of association, independent unions, or a truly worker-led labor movement. Without institutional reforms, high levels of labor conflict is likely to continue, if not worsen. The state's reluctance to shift its stance requires that it then strengthen its own role in promoting mediation, maintaining stability and putting down large scale-incidents. As with other aspects of China's political economy since 2008, this greater reliance on the state and the empowerment of state actors at the expense of civil society and the market are additional signs of China's retrenchment and retreat from reform.