

# CHINA'S DEVELOPING LABOR LAW

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On July 8, 1979 the People's Republic of China promulgated its first law on joint ventures<sup>1</sup> in an effort to promote internal construction, import modern technology and equipment, and improve economic management.<sup>2</sup> The Law on Joint Ventures followed by one day the signing of a trade agreement between the United States and China that gives China "most-favored nation" tariff status.<sup>3</sup>

These two events mark an important change in economic relations between the United States and China. As a result of its humiliation by foreign powers in the century before 1949, China has, until recently, followed a policy of "self-reliance" that minimized foreign trade, incurred no foreign debt, and allowed no foreign investment in the country.<sup>4</sup> The Law on Joint Ventures and the trade agreement, however,

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1. Unofficial translations of *The Law of the People's Republic of China on Joint Ventures Using Chinese and Foreign Investment* (Law on Joint Ventures) can be found in BEIJING REV., July 20, 1979, at 50; BUS. AMERICA, Aug. 27, 1979, at 20; and EAST ASIAN EXECUTIVE REP., Sept. 1979, at 20. For commentaries on the Law on Joint Ventures, see Cohen, Huang & Nee, *China's New Joint Venture Law*, in A NEW LOOK AT LEGAL ASPECTS OF DOING BUSINESS WITH CHINA (H. Holtzmann & W. Surrey eds. 1979); Hsia & Hahn, *China's Joint Venture Law: Part I*, 1 CHINA L. REP. 5 (1980); Reynolds, *Joint Ventures Law of the People's Republic of China: Preliminary Observations*, 14 INT'L LAW. 31 (1980); Torbert, *China's Joint Venture Law: A Preliminary Analysis*, 12 VAND. J. TRANSNAT'L L. 819 (1979).

2. *PRC to Begin Joint Ventures Using Foreign Capital*, Beijing Xinhua, June 29, 1979, reprinted in FBIS-CHI-79-128, July 2, 1979, at L35.

3. A resolution approving the United States-China trade agreement granting most-favored-nation trade status to the People's Republic of China was approved by Congress on January 24, 1980. The text of the trade agreement is printed in 18 INT'L LEGAL MATERIALS 1041 (1979). For a discussion of the implications of the trade agreement, see Ho, *The China Trade, Recent Developments and Future Prospects*, 53 PAC. AFF. 269 (1980); Jenkins, *Implications of Recent Agreements of United States-China Trade*, 14 INT'L LAW. 5 (1980); Surrey, *Trade and Economic Relations with the People's Republic of China: Recent Developments*, 14 INT'L LAW. 15 (1980).

4. China's policy against foreign investment was, in part, the result of a series of unsuccessful "joint-stock" companies with the Soviet Union during the early 1950s. These joint operations were important to the Chinese economy in five areas: railways, shipbuilding, civil aviation, petrochemicals, and mineral exploration. The Soviet Union contributed plants and equipment for these projects while the Chinese contributed labor and raw materials. Because of Chinese unhappy

not only create an opportunity for increased trade but allow American businesses to enter into joint ventures in China for the first time since 1949.

In order to implement their program of modernization, the Chinese have begun to enact a formal legal system.<sup>5</sup> One area of Chinese law that will be of particular importance to American business is labor law. Firms contemplating a joint venture in China will consider trade union relations, worker incentives, labor discipline, the potential for strikes, and the cost of worker welfare programs crucial factors in their decision. In addition, the Law on Joint Ventures and trade agreement create the potential for heightened competition for American-made products. This competition will come not only from Chinese manufactured goods<sup>6</sup> but also from products manufactured by American-Chinese joint ventures.

Chinese labor policies will have a significant impact on the price of both types of these products in the American market. Thus, this Article

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piness over the conditions of the joint ventures, they were dissolved in 1955. For a discussion of these Sino-Soviet joint ventures, see BUSINESS INTERNATIONAL, BUSINESS STRATEGIES FOR THE PEOPLE'S REPUBLIC OF CHINA 226-28 (1980) [hereinafter cited as BUSINESS STRATEGIES FOR THE PRC]. For a discussion of the Chinese policy of self-reliance, see Prybyla, *Changes in the Chinese Economy: An Interpretation*, 19 ASIAN SURVEY 409, 413 (1979).

5. Since July 1979 the Chinese have begun to move from a reliance on informal means of social control (based upon the neighborhood and workplace) to the adoption of formal laws. In July 1979 the National People's Congress adopted seven basic laws: the "Organic Law of the People's Courts"; the "Organic Law of the People's Procuratorates"; the "Criminal Law"; the "Law of Criminal Procedure"; the "Law on Joint Ventures"; the "Organic Law of the Local People's Congresses and the Local People's Governments"; and the "Electoral Law for the National People's Congress and the Local People's Congresses." In September 1979 the National People's Congress enacted a "Law on Environmental Protection." In August 1980, the National People's Congress passed six additional new laws: the "Income Tax Law Concerning Joint Ventures with Chinese and Foreign Investment"; the "Individual Income Tax Law of the People's Republic of China"; the "Regulations on the Registration of Joint Ventures Using Chinese and Foreign Investment"; the "Regulations on Labour Management in Joint Ventures Using Chinese and Foreign Investment"; the "Regulations on Special Economic Zones in Guandong Province"; and the "Provisional Regulations on Lawyers." For commentaries on China's efforts to establish a new legal system, see A NEW LOOK AT LEGAL ASPECTS OF DOING BUSINESS WITH CHINA (H. Holtzmann & W. Surrey eds. 1979); T. HSIA & K. HAUN, PEKING'S MINISTER OF PUBLIC SECURITY ON STRENGTHENING THE LEGAL SYSTEM (1979); *China's Socialist Legal System*, BEIJING REV., Jan. 12, 1979, at 25; Hsia, *Legal Developments in the PRC Since the Purge of the Gang of Four*, 5 REV. SOCIALIST L. 109 (1979).

6. For two examples of the impact of Chinese imports on American industry see *Clothespins: China, Trade and a Factory in Maine*, N. Y. Times, Oct. 14, 1979, at F3, col. 1; *U.S. Clothing Makers Criticize China Pact*, N. Y. Times, Sept. 19, 1980, at 24, col. 1.

will examine China's labor laws and policies generally as well as those specifically applicable to joint ventures.

### I. THE CONCEPT OF LABOR LAW IN THE PEOPLE'S REPUBLIC OF CHINA

The Chinese concept of labor law, like Chinese law generally, differs fundamentally from that in the United States.<sup>7</sup> The primary reason for this difference lies in the nature of the Chinese economy, in which all significant enterprises are owned either by collectives or the state.<sup>8</sup> Although Chinese trade unions are concerned with wage standards, labor protection, and the material well-being of their members, as are unions in the United States, their overriding task involves educating and organizing workers and staff members "to adopt a new attitude toward labour, to observe labour discipline, to organize labour emulation campaigns and other production movements in order to ensure the fulfillment of the production plans."<sup>9</sup>

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7. For an introduction to the Chinese concept of law, see D. BODDE & C. MORRIS, *LAW IN IMPERIAL CHINA* (1967); T. CH'U, *LAW AND SOCIETY IN TRADITIONAL CHINA* (1961); S. LENG, *JUSTICE IN COMMUNIST CHINA* (1967); V. LI, *LAW WITHOUT LAWYERS* (1978); Jones, *An Approach to Chinese Law*, 4 REV. SOCIALIST L. 3 (1978); Leng, *The Role of Law in the People's Republic of China as Reflecting Mao Tse-tung's Influence*, 68 J. CRIM. L. & C. 356 (1977).

8. Article 5 of the 1978 Chinese Constitution provides in part: "There are mainly two kinds of ownership of the means of production in the People's Republic of China at the present stage: socialist ownership by the whole people and socialist collective ownership by the working people." China's largest and most important industries are owned by the "whole people," that is, state owned. These enterprises receive the largest state grants, have greater access to raw materials, are guaranteed markets for their products, and receive preferential assignments of college graduates. The second principal form of ownership is by the "working people," that is, collectives. These enterprises were severely criticized during the Cultural Revolution but have recently taken a greater role in the Chinese economy. In addition to these two forms of ownership, five other forms of ownership have come into existence recently: joint ventures between the state and collectives, joint ventures between the state and individuals, joint ventures owned by collectives and individuals, joint ventures owned by the Chinese government and foreign investors, enterprises run by "overseas" Chinese, 100% foreign-owned enterprises, and individual proprietorships. For a description of state-owned and collective enterprises and the new forms of ownership, see Pyle, *Reforming Chinese Management*, CHINA BUS. REV., May-June 1981, at 7-8. For examples of the recent emergence of private enterprise in China, see *China gingerly Gives Private Business a Try*, N. Y. Times, Mar. 8, 1981, at E3, col. 4; *Flower Stall, Closed in '66 Is Reopened*, N. Y. Times, Aug. 2, 1981, at 8, col. 1; *Sales Pitch Heard Again in Shanghai*, N. Y. Times, Aug. 2, 1981, at 8, col. 4.

9. The Trade Union Law of the People's Republic of China, art. 9(b), reprinted in *IMPORTANT LABOUR LAWS AND REGULATIONS OF THE PEOPLE'S REPUBLIC OF CHINA* I (enl. ed. 1961) [hereinafter cited as *IMPORTANT LABOUR LAWS*]. See also *SELECTED LEGAL DOCUMENTS OF THE PEOPLE'S REPUBLIC OF CHINA* 301 (C. Wang ed. 1976) [hereinafter cited as *SELECTED LEGAL DOCUMENTS*].

Because wages and other working conditions are largely determined by the state, there is no place in the Chinese system for the free collective bargaining between labor and management that is the cornerstone of American labor law.<sup>10</sup> This means that China, unlike the United States, has no need for a framework of statutes and administrative decisions dealing with representation elections, the use of economic weapons by labor and management, or the enforcement of collective bargaining agreements.

Recent developments in China's system of economic management, however, may require changes in the basic structure of Chinese labor policy. The Third Plenary Session of the Eleventh Central Committee of the Chinese Communist Party, held in December 1978, found that many problems in economic management in China were due to the overconcentration of decision making authority.<sup>11</sup> In response to arguments that individual factories should have greater independence and control over their own management, the State Council adopted regulations in July 1979 allowing experiments with self-management in a number of factories.<sup>12</sup> Under the experimental regulations, certain factories were given more power to draw up their own production plans, sell some of their products on the domestic and foreign markets, and fix the prices of some of their products according to market prices.<sup>13</sup> Instead of handing over all of their profits to the state, as was previously done, the factories paid an income tax, a business tax, and a fixed assets tax to the state. Any profit above these taxes could be retained by the factory for expanding production, improving worker welfare, and paying higher wages and bonuses. In addition, some factories were given the authority to recruit and promote their own workers according to

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10. For a detailed analysis of labor law in the United States, see R. GORMAN, *BASIC TEXT ON LABOR LAW: UNIONIZATION AND COLLECTIVE BARGAINING* (1976); C. MORRIS, *THE DEVELOPING LABOR LAW* (1973). Professor Bok contrasts the unique elements of American labor law with those in Western Europe. Bok, *Reflections on the Distinctive Character of American Labor Law*, 84 HARV. L. REV. 1394 (1971).

11. *More Enterprises With Greater Power of Self-Management*, BEIJING REV., Aug. 18, 1980, at 3.

12. For examples and discussions of the effects of increased self management on China's economy, see *In China, New Incentives Ignite Economic Growth*, N. Y. Times, Apr. 14, 1981, at 4, col. 1; *In Economy, Learn from Sichuan*, FAR E. ECON. REV., Nov. 21, 1980, at 30; *More Authority for Enterprises Revives the Economy*, BEIJING REV., Apr. 14, 1981, at 21; *While Warning That Change Has Limits, China Keeps Moving to a Freer Economy*, Wall St. J., Jan. 9, 1981, at 30, col. 1.

13. *State Council Approves Enterprise Self-Management Plan*, Beijing Xinhua, Sept. 6, 1980, reprinted in FBIS-CHI-80-176, Sept. 9, 1980, at L27.

ability and to dismiss unsatisfactory workers.<sup>14</sup>

Although less than twenty percent of the state-owned enterprises were involved in these experiments,<sup>15</sup> their success in raising production and profits<sup>16</sup> led the State Council in September 1980 to approve the gradual expansion of self-management to all state-owned industrial enterprises beginning in January 1981.<sup>17</sup> This will result in many functions that were once handled by the state being turned over to individual factories.

Thus, an examination of labor law in China must look not only at legislation, some of which dates back to the early 1950s, and the policies toward trade unions, incentives, discipline, and welfare programs that have been developed since the death of Mao Zedong, but also at the experimental policies of the government that, if adopted nationwide, will create the most significant change in labor relations since 1949.

The most authoritative overview of current Chinese policy on labor issues is found in the 1978 Chinese Constitution.<sup>18</sup> That constitution, like its two predecessors,<sup>19</sup> is not a constitution in the American sense of the term. China's courts lack the authority to invalidate legislation or official actions on constitutional grounds. Frequently Chinese officials have simply ignored provisions of the previous constitutions.<sup>20</sup> This does not mean, however, that the new constitution can be dis-

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14. *Id.* at L29.

15. *Enterprises Experiment With Expanded Authority*, Beijing Xinhua, July 21, 1980, reprinted in FBIS-CHI-80-142, July 22, 1980, at L9.

16. *Renmin Ribao Views Example of New Self-Management Plan*, Beijing Xinhua, Sept. 7, 1980, reprinted in FBIS-CHI-80-178, Sept. 11, 1980, at L34.

17. *Gongren Ribao Editorial*, Beijing Xinhua, Sept. 5, 1980, reprinted in FBIS-CHI-80-176, Sept. 9, 1980, at L29.

18. For a translation of the 1978 Chinese Constitution see Hsia & Haun, *People's Republic of China*, in III CONSTITUTIONS OF THE COUNTRIES OF THE WORLD (1978); PEKING REV., Mar. 17, 1978, at 5-14. For commentaries on the 1978 Constitution see Cohen, *China's Changing Constitution*, 76 CHINA Q. 794 (1978); de Heer, *The 1978 Constitution of the People's Republic of China*, 4 REV. SOCIALIST L. 309 (1978); Kearley & Kim, *The 1978 Constitution of the People's Republic of China*, 2 HASTINGS INT'L & COMP. L. REV. 251 (1978).

19. For a translation and discussion of the 1975 Chinese Constitution see Kim, *The 1975 Constitution of the People's Republic of China*, 1 HASTINGS INT'L & COMP. L. REV. 1 (1977). A translation of the 1954 Constitution is contained in SELECTED LEGAL DOCUMENTS, *supra* note 9, at 1.

20. Article 90 of the 1954 Chinese Constitution gave citizens "the freedom of residence and freedom to change their residence." CONSTITUTION OF THE PEOPLE'S REPUBLIC OF CHINA ch. 3, Art. 90 (1954), reprinted in SELECTED LEGAL DOCUMENTS, *supra* note 9, at 52. In fact, the government placed specific restrictions on movement. Peasants who wished to move to cities were dis-

missed as mere propaganda. Instead, it serves the important function of announcing overall policy guidelines. The importance of the constitution to labor law is that it sets out the government's general policy on the right to work, labor incentives, labor discipline, and labor insurance. Although each of the constitutional provisions dealing with these subjects was derived from the 1975 Constitution, the 1978 Constitution expands them to indicate a greater emphasis. Before examining those policies in detail, it is useful to summarize the relevant constitutional provisions.

*Right to Work.* Article 10 of the 1978 Constitution states that "[w]ork is an honourable duty for every citizen able to work." In keeping with that duty, Article 48 guarantees citizens the "right to work." While the constitution does not specify how this right will be implemented, it does commit the government to provide "employment in accordance with the principle of overall consideration."

Corresponding to the right to work, Article 49 gives "working people" the "right to rest." In order to guarantee this right, the Article provides that "the state prescribes working hours and systems of vacations and gradually expands material facilities for the working people to rest and recuperate."

*Labor Incentives.* Article 10 of the 1978 Constitution reflects the often conflicting Chinese attitudes toward labor incentives. It states that the government "applies the policy of combining moral encouragement with material reward, with the stress on the former, in order to heighten the citizens' socialist enthusiasm and creativeness in work" while simultaneously declaring that "he who does not work, neither shall he eat" and "from each according to his ability, to each according to his work." Although this latter provision was also contained in the 1975 Constitution, Article 48 of the new constitution further emphasizes the policy by stating that "on the basis of increased production, the state gradually increases payment for labour, improves working conditions, strengthens labour protection, and expands collective welfare."

*Labor Discipline.* Article 45 of the 1978 Constitution includes the "freedom of strike" as one of the fundamental rights of citizens. This right is balanced, however, by Article 8, which forbids "any person

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couraged and thousands of high school graduates were forced to leave the cities during the cultural revolution to live and work in rural areas.

from using any means whatsoever to disrupt the economic order of society," and by Article 57, which imposes a duty on citizens to "take care of and protect public property, observe labour discipline, observe public order, respect social ethics and safeguard state secrets."

*Labor Insurance.* Article 50 of the 1978 Constitution states that "working people" have the right to "material assistance in old age and in case of illness or disability." In order to implement this right, the constitution commits the state to "gradually expand social insurance, social assistance, public health services, co-operative medical service, and other services."

The 1978 Constitution reflects the Chinese concern for economic development. While it has not completely abandoned the rhetoric of "Mao Zedong Thought," it has reinterpreted that thought in such a way as to emphasize work, material incentives, and labor discipline. This is consistent with the government's goal of implementing the "four modernizations" and attracting foreign investment. The difficult task for the Chinese will be to translate these goals into reality.

## II. THE FUNCTION OF TRADE UNIONS

At the Ninth National Trade Union Congress, held in October 1978, Chinese trade unions were hailed as "a pillar of the PRC regime."<sup>21</sup> Such a statement from a country whose constitution proclaims it a "socialist state of the dictatorship of the proletariat led by the working class"<sup>22</sup> is not surprising. What is unusual about the statement, however, is that it was made at the first trade union congress held in China in twenty years, a congress that marked the formal re-emergence of the trade union movement that had been abolished in 1966.

With China's emphasis now on the "four modernizations," trade unions have been assigned a central role in increasing production.<sup>23</sup> Despite the current stress on the trade unions, however, it is important to

21. *Revised Constitution Adopted*, Peking NCNA Domestic Serv., Oct. 21, 1978, reprinted in FBIS-CHI-78-164, Oct. 23, 1978, at E7.

22. THE CONSTITUTION OF THE PEOPLE'S REPUBLIC OF CHINA ch. 1, art. 1 (1978), reprinted in 22 PEKING REV., Mar. 17, 1978, at 6. See also Hsia & Haun, *supra* note 18.

23. *Central Task of the Trade Union*, BEIJING REV., Mar. 16, 1979, at 4; *Tasks of Trade Unions*, BEIJING REV., Nov. 23, 1979, at 4. When one of the authors questioned a manager of the Hangzhou Silk Printing and Dying Complex in Hangzhou in November 1980 concerning the status of the Trade Union Law, he was told that the law was still in effect except for some modifications brought about by the Trade Union Constitution adopted by the Ninth National Trade Union Congress.

remember that unions have had a turbulent history since the founding of the People's Republic of China. It is the purpose of this section to examine the diverse sources that have contributed to the development of the current policies relating to trade unions.

#### A. *The Trade Union Law*

Shortly after the founding of the People's Republic of China, the government adopted the Trade Union Law to define "in explicit terms the legal status, functions, and duties of trade union organizations in the new democratic state . . ."<sup>24</sup> Although some of the provisions of this law are now obsolete<sup>25</sup> and drafts of a new law are being prepared,<sup>26</sup> the Trade Union Law remains the basic source of legislation concerning the organization, rights and duties of trade unions.

##### 1. *The Duties of Trade Unions*

Article 1 of the Trade Union Law states that "[t]rade unions are mass organizations of the working class formed on a voluntary basis. All wage workers, including manual and brain workers . . . whose wages constitute their sole or main means of livelihood . . . have the right to organize trade unions."<sup>27</sup> Under the law, all unions must be organized in conformity with the constitution of the All China Federation of Trade Unions (ACFTU) and resolutions of the trade union congresses.<sup>28</sup>

The Trade Union Law declares in Article 7 that the "duty of trade unions" is

to protect the interests of workers and staff members, exercise supervision to ensure that the managements . . . conscientiously carry out labour protection, labour insurance, wage standards, factory sanitation, and safety measures as stipulated in the laws and decrees of the government . . . and to take measures for improving the material and cultural life of the work-

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24. The Trade Union Law of the People's Republic of China [hereinafter cited as Trade Union Law], Preamble, reprinted in SELECTED LEGAL DOCUMENTS, *supra* note 9, at 301.

25. Because private ownership of the means of production no longer exists in China, all Trade Union Law provisions referring to private ownership are obsolete as are those sections of articles that refer to "owners" of enterprises.

26. *Central Organizations Preparing Drafts of New Laws, Regulations*, Beijing NCNA English Serv., Feb. 7, 1979, reprinted in FBIS-CHI-79-027, Feb. 7, 1979, at E3.

27. Trade Union Law, *supra* note 24, art. 1.

28. *Id.* art. 3.

ers and staff members.<sup>29</sup>

In order to carry out this duty, the law assigns a number of tasks to the trade unions. First, unions must "educate and organize workers . . . to uphold the laws and decrees" and "carryout the policies" of the government "in order to consolidate the people's state power led by the working class."<sup>30</sup> Second, unions must instruct workers to "adopt a new attitude" regarding labor, to follow labor discipline, and organize and participate in labor emulation campaigns in order to fulfill production plans.<sup>31</sup> Finally, unions must "protect public property, oppose corruption, waste and bureaucracy, and fight against saboteurs in enterprises . . ."<sup>32</sup>

## 2. Primary Trade Union Organization

The basic unit of union organization in China is the primary trade union committee. The law provides that a number of the members of the primary trade union committee in each enterprise may be full-time union officials.<sup>33</sup> The exact number is based upon the number of workers and staff in the enterprise.<sup>34</sup> Management must release full-time union officials from other work.<sup>35</sup> Although these officials are paid by the trade unions, they continue to receive labor insurance protection and are permitted to use the welfare facilities funded by management.<sup>36</sup> When a full-time union official's term of office expires, management must return him to his original position or to a position with identical pay.<sup>37</sup>

## 3. The Rights of Trade Unions and Their Members

The Trade Union Law establishes basic rights for trade unions and their members and staff.

Article 2 of the law specifies two rights of trade union members in relation to their unions. First, members may dismiss and replace at any time any primary trade union committee member they have elected.

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29. *Id.* art. 7.

30. *Id.* art. 9(a).

31. *Id.* art. 9(b).

32. *Id.* art. 9(c).

33. *Id.* art. 15.

34. *Id.*

35. *Id.* art. 16.

36. *Id.* art. 17.

37. *Id.*

The Article, however, does not specify any grounds for dismissal or any procedure to accomplish it. Second, the Article requires the trade union committee to submit work reports to the union membership.

In addition to granting specific rights to trade union members, the law also details the rights of the trade unions as organizations. These rights can be divided into three categories.

First, unions have the authority to supervise management. Article 8 gives unions the right to request that management supply work reports to general membership meetings or representative conferences. The Article also authorizes unions to participate in administrative committees on behalf of the workers. Article 12 allows trade union committee members to inspect work places and hostels when authorized by the union. Management cannot refuse to permit such inspections "except in certain specifically stipulated cases."<sup>38</sup>

Moreover, unions are guaranteed protection from management interference. Article 18 prohibits management from preventing or obstructing the functioning of the primary trade union committee or meetings or conferences convened by it. The Article requires, however, that trade union meetings be held outside working hours except in cases of "special circumstances." In such cases, the consent of management is required.

Finally, trade unions must be consulted concerning changes in a member's employment status. If management wishes to discharge or transfer a trade union committee member, it must, in turn, seek the approval of the higher trade union committee.<sup>39</sup> In the case of ordinary workers and staff, management must notify the primary trade union committee ten days before termination.<sup>40</sup> This notification must include the name of the individual involved and the cause for the termination. The committee then has seven days in which to object to the termination on the ground that it violates government laws or decrees.<sup>41</sup> The primary trade union committee must also be notified by management before workers are hired. The committee has three days to object if the engagement violates government laws or decrees.<sup>42</sup>

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38. *Id.* art. 12.

39. *Id.* art. 11.

40. *Id.* art. 22.

41. *Id.*

42. *Id.* art. 21.

### B. *The Communist Party and the Trade Unions*

In its application, the Trade Union Law has been more significant for the principles it has established than for its effectiveness as a law guiding labor and management on a daily basis. In large part this has been the result of the subordination of trade unions to the dictates of the Communist Party.

In the years immediately following the adoption of the Trade Union Law, trade unions were allowed considerable independence of operation subject only to the overall policy of the Party.<sup>43</sup> This independence eventually resulted in a series of conflicts over the form and amount of Party control.<sup>44</sup> According to Leninist doctrine, unions were to act as a "transmission belt," that is, a means of transmitting policy "from the Party down to the masses" and feedback "upwards from the masses."<sup>45</sup> However, the Party soon decided that unions should only be a vehicle to transmit Party policy downward and sought to limit the unions' power by transferring control over basic union organizations to local Party committees, thus reducing the authority of the ACFTU.

The Eighth Trade Union Congress, held in December 1957, established Party control over the unions and marked the beginning of the decline of the national trade union structure.<sup>46</sup> During the "Great Leap Forward" (1958-1960), many of the administrative functions previously performed by the unions were transferred to the Party. Although the unions resumed some of their earlier functions in the early 1960s,<sup>47</sup> the economic problems of that period limited the unions' ability to assert their independence.

Chinese policy toward labor unions took a radical turn during the "Cultural Revolution" and its aftermath. During this period, labor policy, like law, was determined according to the "thoughts of Mao Zedong" and best illustrated by Mao's "Constitution of the Anshan Iron and Steel Company,"<sup>48</sup> which stressed "politics in command" and

43. For a discussion of party-trade union relations immediately following 1949 see M. FLETCHER, *WORKERS AND COMMISSARS* (1974); Edles, *Mobilization of the Masses: A Survey of Communist Chinese Labor Law*, 1969 WASH. U.L.Q. 395.

44. The two principal conflicts between the party and the unions are discussed in Harper, *The Party and the Unions in Communist China*, 37 CHINA Q. 84 (1969).

45. *Id.* at 85-89.

46. *Id.* at 99-114.

47. See M. FLETCHER, *supra* note 43, at 63-68.

48. Mao, *Note on Charter of the Anshan Iron and Steel Works*, reprinted in 13 CHINESE L. & Gov't 69 (1980).

Party leadership.

Although criticism of the trade unions during the Cultural Revolution was based upon their alleged opposition to Mao's policies,<sup>49</sup> many of the actual conflicts between Red Guard organizations, composed of groups ineligible for union membership, and veteran workers had more to do with economic self-interest than Party leadership. Despite the ability of some local unions to continue functioning in areas in which Party leadership was conservative, the national union system, including the ACFTU, was abolished in 1966 as reactionary.<sup>50</sup>

### C. *The Ninth National Trade Union Congress and the Revised Trade Union Constitution*

The formal re-emergence of the trade union movement did not begin until 1973. Although planning reportedly began in 1975 for the Ninth National Trade Union Congress,<sup>51</sup> it was not until 1978 that the ACFTU, along with other mass organizations, was formally reactivated.<sup>52</sup> Finally, on October 11, 1978, the Ninth National Trade Union Congress was opened with 2000 delegates, the largest such congress in Chinese labor history.<sup>53</sup>

Vice-Premier Deng Xiaoping addressed the Congress on behalf of the Party Central Committee and the State Council.<sup>54</sup> He stressed the need for trade union members to play an active role in the management of enterprises. The Vice-Premier explained:

Workshop directors, section chiefs and group heads in every enterprise must in the future be elected by the workers in the unit. Major issues in an enterprise should be discussed by workers' congresses or general membership meetings, at which leading cadres of the enterprise must listen to the workers' views and accept their criticism and supervision.<sup>55</sup>

Deng also stressed that "trade unions must work hard to protect the

49. See M. FLETCHER, *supra* note 43, at 63-68.

50. *Id.*

51. *Trade Union Federation Attacks Gang Theory on Unions*, Peking People's Daily, Dec. 29, 1977, reprinted in FBIS-CHI-78-006, Jan. 10, 1978, at E11.

52. *Mass Organizations Reactivated*, PEKING REV., May 19, 1978, at 10.

53. *Congress Opens 11 October*, Peking NCNA English, Oct. 11, 1978, reprinted in FBIS-CHI-78-197, Oct. 11, 1978, at E3.

54. *Teng Hsiao-Ping Addresses Trade Union Congress Opening*, Peking NCNA English, Oct. 11, 1978, reprinted in FBIS-CHI-78-197, Oct. 11, 1978, at E24.

55. *Text of Teng's Speech*, Peking NCNA English, Oct. 11, 1978, reprinted in FBIS-CHI-78-198, Oct. 12, 1978, at E6.

welfare of workers.”<sup>56</sup> He added, however, that welfare could not be rapidly expanded because of China’s underdeveloped economy. Only a slow improvement could occur as a function of greater productivity.<sup>57</sup>

On October 12, 1978, Ni Zhifu, a Political Bureau member and trade union leader, presented a work report to the Congress.<sup>58</sup> The report, which echoed many of the concerns of Deng, stressed the importance of drawing “workers into managerial work [to] protect their democratic rights to be their own masters.”<sup>59</sup>

On October 21, 1978, the Congress adopted its revised constitution, which embodied many of the points Deng had emphasized.<sup>60</sup> The constitution underscored the need to strive for the “four modernizations” as the general task. It set out the “fundamental principles” for labor unions in the new period as:

Follow the line of the 11th National Party Congress . . . unite, educate and lead the broad masses of workers in constantly raising their political awareness, mastering modern science and technology, positively taking part in enterprise management, extensively launching socialist labour emulation campaigns, making great efforts to raise labour productivity, improving . . . the workers’ cultural and material lives and striving to fulfill the general task of the new period.<sup>61</sup>

In addition to setting out tasks for the trade unions and their members, the new constitution also detailed the trade union structure.

Trade unions in China are organized both on a vertical and horizontal plane. The basic unions are formed according to industry and on a local or regional level. Industrial unions are arranged in a national vertical structure while the local or regional units are organized horizontally to represent the different unions existing in a geographic area. This horizontal organization is continued at each level of the political hierarchy, from the local unit upward, coinciding with party and state structure. The national industrial unions are directed by national congresses similar in form to the National Congress of Trade Unions. The ACFTU and the National Trade Union Congress sit at the top of this

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56. *Id.*

57. *Id.*

58. *Further Reportage on Ninth National Trade Union Congress: Ni Chih-fu's Work Report*, Peking NCNA English, Oct. 12, 1978, reprinted in FBIS-CHI-78-199, Oct. 13, 1978, at E2.

59. *Id.*

60. See *Revised Constitution Adopted*, *supra* note 21.

61. *Id.*

dual organization.<sup>62</sup>

Article 10 of the new trade union constitution makes union congresses or general membership meetings at each level the "supreme organs" of trade unions at that level.<sup>63</sup> The National Congress of Trade Unions is the highest such body. The National Congress is to be called every five years by the Executive Committee of the ACFTU, which is elected by the National Congress. When the Congress is not in session, the Executive Committee carries out its directives.<sup>64</sup>

The Executive Committee elects its chairman, vice-chairman, and Standing Committee.<sup>65</sup> The Standing Committee convenes the plenums of the Executive Committee and performs its duties when it is not in session.<sup>66</sup> Secretaries and alternate secretaries are appointed by the Standing Committee to form a secretariat that handles the routine chores of the Standing Committee under its direction.<sup>67</sup>

The local and grassroots trade union organizations are structured in a similar fashion. A grassroots union committee may be organized in an enterprise with more than twenty-five trade union members. An enterprise having less than twenty-five trade union members may either associate with a grassroots association of a similar union nearby or establish a joint organization.<sup>68</sup>

The grassroots organization is required to hold one general membership meeting or congress each year. This meeting or congress is to examine and approve the work and financial reports of the grassroots committee, outline the objectives and goals for union work in the unit, and elect the grassroots committee.<sup>69</sup>

The grassroots committee elects its chairman and vice-chairman and, if required, may elect a Standing Committee.<sup>70</sup> The committee is assigned detailed tasks by the trade union constitution, including leading workers to participate in enterprise management, launching socialist emulation campaigns, improving wage rates and labor protection work,

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62. CONSTITUTION OF THE ALL CHINA FEDERATION OF TRADE UNIONS, *supra* note 21, arts. 9 & 12 (1978).

63. *Id.* art. 10.

64. *Id.* art. 12.

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.* art. 15.

69. *Id.* art. 16.

70. *Id.*

performing labor insurance assignments, and recruiting new union members.<sup>71</sup>

The local trade union council committee is the basic operating body of the horizontal union structure. The trade union council committee elects a chairman and vice-chairman as well as its Standing Committee. The local council committee meets at least twice annually as called by the Standing Committee. During periods when the local trade union congress is not in session, the local committee implements the directives of the congress and leads the union organization pursuant to the instructions and decisions of the appropriate higher body.<sup>72</sup>

Trade unions derive their funds from four sources.<sup>73</sup> First, monthly union membership dues, which are set at .5% of the workers' wages, are collected from each member. Second, each enterprise contributes a sum equal to two percent of the total wages paid its workers and staff. Third, all income from sports and cultural activities conducted by the unions is added to this amount. Finally, subsidies from the government or enterprise may also supplement this fund. It is reported that primary level unions keep sixty percent of the sum the enterprises pay them, five percent goes to the ACFTU, and the remaining thirty-five percent is allotted to maintain the provincial or autonomous region, municipal, and county union organizations. The primary level unions spend approximately 35% to 37.5% of funds received from enterprises for educational purposes, including special instruction, reading material, and spare time schools. Additional union funds are spent for sports and cultural activities, assisting members with financial problems and operating expenses.<sup>74</sup>

#### D. Worker Participation in Management

Vice-Premier Deng Xiaoping and union officials who spoke at the Ninth National Trade Union Congress stressed the need for greater participation by workers in management.<sup>75</sup> This was reflected in the new trade union constitution, which lists worker participation in management as part of its "fundamental principles" and as a specific task

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71. *Id.* art. 17.

72. *Id.* art. 13.

73. *Id.* art. 19.

74. *China's Trade Unions, CHINA RECONSTRUCTS*, May 1979, at 9, 12.

75. See Teng Hsiao-Ping Addresses Trade Union Congress, *supra* note 54.

for the trade union grassroots committee.<sup>76</sup>

Encouragement of workers to take part in management is not a recent development in Chinese labor history.<sup>77</sup> This concept originated with the Leninist idea that trade unions should be schools of enterprise management, producing qualified personnel for the time when workers would take over the management of industry. In China, however, the promotion of workers to management positions has been more common than direct participation by workers as a group in management.<sup>78</sup> In order to predict the success of current efforts at worker participation in management, it is necessary first to look briefly at past practices.

Immediately after 1949, management of state-owned enterprises was placed in an administrative committee and a conference of workers and staff members. The administrative committee was composed of the enterprise directors, the chief engineer, the chairman of the trade union, and representatives of workers and staff. Members of the conference of workers and staff were elected by the workers themselves.<sup>79</sup> The conference, however, lacked any decision making power and was limited to discussing reports submitted by the administrative committee.

In 1953 China adopted its first Five Year Plan. This plan was based upon the Soviet system of "one-man leadership" in which an enterprise director exercised the managerial function.<sup>80</sup> As a result, the administrative committee and the conference of workers and staff members were abolished in many enterprises.

The system of "one-man leadership" was reversed by the Eighth Party Congress in 1956. At that time, a decision was made to introduce a system in which management responsibility was divided between the enterprise directors and the enterprise party committee. In addition, a congress of workers and staff members was established and given the power to examine and discuss production plans, finances, and wages

76. See *Revised Constitution Adopted*, *supra* note 21.

77. For examples of the various forms that worker participation in management has taken see Goldwasser, Dowty & Russell, *What About Workers in China?*, FAR E. REP. Jan. 1976; Hoffman, *Worker Participation in Chinese Factories*, 3 MODERN CHINA 291 (1977); *Who Controls Leadership of the Enterprises?*, PEKING REV., Apr. 23, 1976, at 18; *Worker-Advisors Aid Plant Management*, CHINA RECONSTRUCTS, May 1975, at 40; *Workers Participate in Management*, PEKING REV., Apr. 30, 1976, at 13.

78. See M. FLETCHER, *supra* note 43, at 84-86.

79. *Democracy in Factories*, BEIJING REV., Sept. 1, 1980, at 19.

80. Li, *Strengthen the Party's Leadership Over Enterprises and Implement the Mass Line*, reprinted in 13 CHINESE L. & GOV'T 25 (1980).

and to make decisions on the use of enterprise funds for bonuses and welfare projects. The congress also had the power to propose, but not implement, the removal of certain directors.<sup>81</sup>

During the Cultural Revolution, the congresses of workers and staff, along with the trade unions, were abolished and replaced by revolutionary committees that had the responsibility for making and executing policy.<sup>82</sup> Although this action has now been criticized by the Chinese, a review of the practices since 1949 indicates that, despite the congresses of workers and staff, there have been "no sustained efforts . . . to institutionalize direct worker participation in management."<sup>83</sup> The congresses were ineffective at giving workers a role in enterprise management because they had no control over the major issues of the enterprise nor could they appoint, replace, reward, or punish the enterprise directors. They had only the right to raise criticisms and make suggestions.

Developments since the Ninth National Trade Union Congress raise questions concerning how much actual control over the management of enterprises the government is now willing to give workers. Although numerous articles have stressed "the right of workers and staff to run their enterprises in the capacity of masters,"<sup>84</sup> the Chinese have also stated that economic modernization requires "unified and centralized leadership of production and management."<sup>85</sup> Thus, one of the biggest problems facing the Chinese is how to develop a system that will permit greater worker participation compatible with centralized administrative leadership.

With the end of the Cultural Revolution, the revolutionary committees in factories were abolished.<sup>86</sup> Factories have returned to the system of organization established during the late 1950s, in which policy decisions are made by the enterprise party committee.<sup>87</sup> It is then the administrative responsibility of the enterprise directors to organize the workers to carry out those decisions. In the past two years, however,

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81. Lee, *China's Managerial Modernization: Three Basic Models, 1956-1978*, 13 CHINESE L. & GOV'T 3, 6-7 (1980).

82. *Id.* at 15.

83. See M. FLETCHER, *supra* note 43, at 85.

84. *Workers and Staff Must Have the Right to Manage Enterprises*, BEIJING REV., Oct. 20, 1980, at 14.

85. *Id.*

86. See Lee, *supra* note 81, at 15.

87. *New Chain of Command in Factories*, BEIJING REV., Nov. 17, 1980, at 3.

the establishment of a system of congresses of workers and staff members has begun to make changes that could significantly alter this system of enterprise organization.

Since the Ninth National Trade Union Congress, congresses of workers and staff have been established in over eighty percent of the factories in Shanghai, Beijing and Tianjin.<sup>88</sup> This system, however, is still in the developmental stage and has not yet become the "organ of power for the masses of staff and workers to manage their enterprises as masters."<sup>89</sup> Although the operation of the congresses has been uneven and experiments are still being conducted in their method of operation, it is possible to make some general statements about them.

The Chinese have emphasized that representatives to the congresses must be elected by the workers and staff and not appointed by the factory directors.<sup>90</sup> In some enterprises, the congresses include not only "workers" but all wage earners, including members of the party committee, the factory directors, engineers, and technicians. These factories, however, require that a majority of the delegates be workers.<sup>91</sup> Direct elections to the congresses are held annually while most congresses meet twice a year. When the congresses are not in session, the factory trade union handles the daily work, including the implementation of the congresses' resolutions and the disposition of workers' grievances, recommendations, and proposals. In addition, some congresses have established permanent "democratic management committees" to exercise the power of the congress when it is not in session.<sup>92</sup>

The goal of the new system of congresses is to go beyond the limited supervisory powers of the past and change the system of factory organization.<sup>93</sup> If fully implemented, the new system would give the decision making power over enterprise policy to the congresses instead of the party committee. Factory directors would retain administrative re-

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88. *Gongren Ribao Reports on Congresses of Staff, Workers*, Beijing Xinhua, Oct. 6, 1980, reprinted in FBIS-CHI-80-196, Oct. 7, 1980, at L1, L2.

89. *Id.*

90. *The Congress of Workers and Staff Is the Organ of Power for the Workers and Staff in Carrying Out Enterprise Management*, Beijing Renmin Ribao, Nov. 7, 1980, reprinted in FBIS-CHI-80-224, Nov. 18, 1980, at L16, L17.

91. *Congress of Workers and Staff*, BEIJING REV., Sept. 1, 1980, at 22.

92. *Chengdu: Enterprises Experiment With Democratic Management*, Beijing Xinhua, Oct. 4, 1980, reprinted in FBIS-CHI-80-197, Oct. 8, 1980, at Q1.

93. *An Inquiry Into Reform of the Leadership System in Industrial Enterprises*, Beijing Renmin Ribao, Nov. 20, 1980, reprinted in FBIS-CHI-80-239, Dec. 10, 1980, at L22, L25-L27.

sponsibility for production and management of the enterprise but would be under the direction of the congress. Finally, the party committee would be responsible for education and supervision in a way similar to the current party committees of governmental departments. Even under this system, however, there would be limitations on the power of the congresses. The Chinese have made it clear that the congresses must follow the policies, laws, and regulations of the party and state.<sup>94</sup>

Although the system of congresses has not yet met the above goal, the more successful congresses have begun to exercise a number of powers. First, a few congresses have begun to exercise decision making authority over enterprise policy. In those factories, proposals concerning management policy, production plans, budgets, accounting of revenue and expenditures, distribution of funds, education for workers and staff, labor safety devices, formulation and revision of important rules and regulations, and the wages and welfare for workers and staff must be discussed and decided by the congresses.<sup>95</sup>

Second, in many enterprises, factory directors are required to submit work reports to the congresses at regular intervals.<sup>96</sup> In this way, the congresses have the power to inspect and supervise factory administrative work and departmental functions.

Finally, many congresses have the power to elect workshop directors, section chiefs, and other grassroots leaders.<sup>97</sup> In a few factories, the congresses have also been given the power to elect the directors, although the choice must still be approved by the government.<sup>98</sup> In addition, most congresses have the right to make recommendations for the promotion, sanction, and even dismissal of administrative personnel. The congresses, however, cannot take the action themselves but must refer the matter to the government.<sup>99</sup>

Despite success in a few factories, the record of the congresses falls short of the goals envisioned by their supporters. In some enterprises,

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94. *An Important Measure for Developing Socialist Democracy—on the Question of Implementing the System of Workers' Congresses*, Beijing Gongren Ribao, Oct. 21, 1980, reprinted in FBIS-CHI-80-220, Nov. 12, 1980, at L14, L17.

95. See *Congress of Workers*, *supra* note 90.

96. See *State Council Approves Enterprise Self-Management Plan*, *supra* note 13, at L29.

97. For a detailed example of one election of workshop leaders see *The Election of Shop Heads*, CHINA RECONSTRUCTS, May 1979, at 6.

98. *Democratic Factory Management Helps*, BEIJING REV., Aug. 18, 1980, at 27.

99. See *State Council Approves Enterprise Self-Management Plan*, *supra* note 13.

the congresses have encountered opposition from directors and administrators who fear that the congresses will weaken their power.<sup>100</sup> More importantly, however, the congresses suffer from the fact that the scope of their functions and powers is still limited and varies from one factory to another. For example, in the majority of enterprises, the congresses are permitted only to discuss the important issues concerning the enterprise instead of having the power to make decisions. They are permitted to elect workshop leaders and section chiefs but are not authorized to elect the factory directors.

It is still too early to predict whether the revival of the worker congresses represents a real desire by the Chinese government to institutionalize direct worker participation in enterprise management. Since the Ninth National Trade Union Congress there has been a continuing emphasis on the need for workers to play an active role in management. However, Deng Xiaoping and others have spoken only of the need of management to "listen to workers' views" and "accept their criticism and supervision." Such statements, coupled with the limited powers given to the congresses that have been established, indicate that the government is not yet willing or able to give workers a concrete role in actual enterprise management. One analyst has suggested that the reason for this is that "[t]he present emphasis on managerial and technical responsibility precludes collective decision-making involving the workers and limits the effectiveness of consultation at the enterprise level [as opposed to the workshop level]."<sup>101</sup>

### III. LABOR INCENTIVES

Unlike the practice in the United States, where worker incentives are part of the collective bargaining process between unions and management, labor unions in China do not play a significant role in wage de-

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100. *The Enterprises Expanded Self-Management Right Must Be Turned Over to Staff and Workers*, Beijing Xinhua, Oct. 6, 1980, reprinted in FBIS-CHI-80-196, Oct. 7, 1980, at L3, L4. See also *An Important Measure for Developing Socialist Democracy*, *supra* note 94, at L18.

101. Fletcher, *Industrial Relations in China: The New Line*, 52 PAC. AFF. 78, 91 (1979). In September 1981 Provisional Regulations Concerning Congresses of Workers and Staff Members in State-Owned Industrial Enterprises were published by the Chinese. These regulations, adopted on June 15, 1981, detail the function and powers as well as the organizational system for workers' congresses in certain state enterprises. It is interesting to note that in Article 7 of the regulations the "higher organ of the enterprise" is empowered to enforce its decisions or directives even when the Congress differs with them. For a translation of these regulations, see *An Important Step Towards Democratic Management*, BEIJING REV., Sept. 7, 1981, at 16-19. For commentary on the regulations, see *id.* at 14.

termination. Until recently, wages and incentives were determined by the national government as a matter of national policy.<sup>102</sup> Like other aspects of China's labor policies, however, those on wages and incentives have been undergoing extensive reconsideration and careful alteration.

Incentive policy has been the subject of a continuing debate over the past thirty years between those who want to rely on "material rewards" and those who stress the necessity of "moral encouragement" to "heighten the citizens' socialist enthusiasm and creativeness for work."<sup>103</sup> Although the current emphasis is on material rewards, this represents a significant policy shift from the past decade. Before examining the current practice in detail, it is necessary to look briefly at these competing incentive policies.

#### A. *Labor Incentive Policy: 1949-1976*

##### 1. *1949-1958*

The period from 1949 to 1958 was one of economic reconstruction in China, during which the government followed the Soviet pattern of labor policies, including the use of material incentives.<sup>104</sup> The principles established during those early years have served as the focal point of controversy ever since.

In 1956 the Chinese developed an eight-grade wage scale that was to serve not only as an incentive to production, because increases in wages were based upon job performance, but also as a means of directing workers into certain industries.<sup>105</sup> In those enterprises and geographic locations that the government especially wanted to develop, the variation between the top and bottom of the wage scale was approximately

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102. Despite Article 7 of the Trade Union Law and Article 17 of the revised Constitution of the All China Federation of Trade Unions, unions in China have had little impact on wage rates. Recently, however, as part of the experiments in enterprise self-management, some factories have been given the right to fix wage levels and award bonuses. Whether this will lead to greater participation by the trade unions in deciding wages and bonuses is uncertain. It is very unlikely, however, that this will lead to the type of bargaining between the unions and management known in the West.

103. THE CONSTITUTION OF THE PEOPLE'S REPUBLIC OF CHINA, *supra* note 22, art. 10.

104. For a discussion of Chinese economic policy from 1949 to 1958 see J. CHESNEAUX, CHINA: THE PEOPLE'S REPUBLIC, 1949-1976, at 31-82 (1979); Hoffman, *Worker Incentive Policy in Communist China*, 17 CHINA Q. 92, 92-100 (1964).

105. See Hoffman, *supra* note 104, at 95.

3:1. However, in other areas with less priority, the differential was held to less than 3:1.

At the same time that the Chinese developed an eight-grade wage scale, they also pursued a low wage policy designed to curb consumption in favor of construction and to promote Mao Zedong's deliberate policy of asceticism and equality.<sup>106</sup> It is here that the seeds of the later conflict over wage policy were sown. In the early years the government was required to put aside theories of how the "new socialist man" would act in favor of the practical necessity of reviving production. Although wages were deliberately kept low, the government rewarded production that exceeded the established quotas for a wage scale with cash bonuses.<sup>107</sup> This was a direct incentive to workers and units and allowed an immediate personal benefit from increased production.

In addition to outright cash bonuses, production that exceeded quotas was also compensated by piece-rate pay. This system of incentives was originally hailed as "the system that will most easily realize the socialistic principle of payment according to work."<sup>108</sup> At its zenith in 1957, almost forty-two percent of all workers in state-owned factories and mines were covered by the piece-rate system.<sup>109</sup>

Finally, the Chinese government also used a series of campaigns to encourage competition between workers and factories. Workers and units that increased output above the established quotas were rewarded with cash payments.<sup>110</sup>

## 2. 1958-1960

By 1958 the Chinese economy had improved sufficiently so that Mao Zedong was able to shift the emphasis away from material incentives. During the "Great Leap Forward," China radically altered its policy on labor incentives. While material incentives were not totally abandoned, the emphasis was shifted to "moral rewards," and wages lost their importance as incentives. Bonuses and piece-rate pay were abolished on the ground that they fostered competition between workers and did not lead to the collective spirit that should prevail in a socialist system. Instead, psychological rewards such as public honors, banners,

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106. See Prybyla, *supra* note 4, at 412.

107. C. HOFFMAN, THE CHINESE WORKER 107 (1974).

108. Hoffman, *supra* note 104, at 95.

109. *Id.* at 96.

110. See C. HOFFMAN, *supra* note 107, at 110-22.

and certificates were given to workers and groups who won labor emulation campaigns conducted among workers in the same industry or in different industries.<sup>111</sup>

### 3. 1960-1966

The policies of non-material incentives followed during the Great Leap Forward had a negative effect on the Chinese economy.<sup>112</sup> In response, during the early 1960s the government returned to wage increases, bonuses for the overfulfillment of quotas, piece-rate pay, and monetary rewards in labor emulation campaigns. These incentives enabled the economy to recover from the natural and political disasters of the Great Leap Forward.

### 4. 1966-1976

During the decade of the Cultural Revolution, Mao Zedong reasserted his policy of non-material incentives. He stressed political education as the means of producing a "new socialist man" who would work selflessly for the collective good and would not require material incentives. Thus bonuses and piece-rate pay were again abolished, and the labor emulation campaigns appealed to the workers' political consciousness.<sup>113</sup>

## B. Labor Incentive Policy Since 1976

The most important change that has occurred in Chinese labor policy since the death of Mao Zedong has been the return to material rewards based upon the quality and quantity of work. Article 10 of the 1978 Chinese Constitution sets out the government's policy on labor incentives:

The state applies the socialist principles: "He who does not work, neither shall he eat" and "from each according to his ability, to each according to his work."

Work is an honourable duty for every citizen able to work. The state promotes socialist labour emulation, and putting proletarian politics in

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111. For a discussion of the wage system and labor incentives during the Great Leap Forward, see Y. WU, THE ECONOMY OF COMMUNIST CHINA 81-84 (1965).

112. For a discussion of the Chinese economy from 1960 to 1966, see J. CHESNEAUX, *supra* note 104, at 113-37.

113. See C. BETTELHEIM, CULTURAL REVOLUTION AND INDUSTRIAL ORGANIZATION IN CHINA (1974); J. CHESNEAUX, *supra* note 104, at 138-200.

command, it applies the policy of combining moral encouragement with material reward, with the stress on the former, in order to heighten the citizens' socialist enthusiasm and creativeness in work.<sup>114</sup>

This Article of the constitution is a compromise between the conflicting views on incentive policy. The first paragraph represents the views of those who favor material rewards based upon work while the second paragraph retains the Maoist policy of emphasizing "moral encouragement" over "material rewards."

Despite the formal retention of the policy advocating "moral encouragement" in the constitution, the new Chinese leadership has left no doubt as to the most important policy in practice. In his "Report on the Work of the Government" delivered to the Second Session of the Fifth National People's Congress in June 1979, Hua Guofeng denounced "egalitarian" tendencies and placed the emphasis on material rewards.

The principle "from each according to his ability, to each according to his work, must be implemented." The earnings of an enterprise and the income of its workers and staff must be commensurate with their contribution to the state. The egalitarian tendency in which no distinction is made between those who do a good job or a poor one and between those who do more work or less must be resolutely checked.<sup>115</sup>

In implementing this policy, the Chinese are relying upon the four incentives that have been the subject of debate in the past: basic wages, bonuses, piece work pay, and labor emulation campaigns.

### 1. *Wage Policy*

In spite of the emphasis during the Cultural Revolution on moral encouragement to raise production, many of China's current economic problems are the result of the loss of worker morale due to insufficient recognition of above average work. China is now attempting to raise worker morale and, with it, productivity by using its wage policy to stimulate greater output.

Although the Chinese have retained the eight-grade wage system that was developed in the 1950s and kept the wage differential at about 3:1, they have begun to raise wages within each grade.<sup>116</sup> Between Oc-

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114. THE CONSTITUTION OF THE PEOPLE'S REPUBLIC OF CHINA, *supra* note 22, art. 10.

115. *Report on the Work of the Government*, BEIJING REV., July 6, 1979, at 5, 12.

116. *A Glimpse of Factory Life*, BEIJING REV., Mar. 17, 1980, at 17. For discussions of possible changes in the present wage system, see e.g., *Shanghai Enterprises Restructure Existing Wage Systems*, Beijing Xinhua, Nov. 19, 1980, reprinted in FBIS-CHI-80-226, Nov. 20, 1980, at O2; *Tenta-*

tobr 1977 and January 1978, sixty percent of Chinese workers and staff received pay increases averaging seven percent.<sup>117</sup> According to the Chinese, production in state-owned enterprises rose twelve percent during the same period.<sup>118</sup> Further wage increases of 9.5% in 1978 brought the average basic wage of urban workers in state-owned enterprises to 705 yuan per year.<sup>119</sup>

Recent experiments in enterprise management are also an attempt to raise production by increasing wages. As part of the greater control given individual enterprises, workers will have a motive to increase profits, because part of those profits may be retained by the factory and used to pay higher wages.

In addition to paying higher wages as a stimulus to greater production, the Chinese have also been forced to pay higher wages to compensate for inflation. Although China's official rate of inflation was only 5.8% for 1979,<sup>120</sup> it comes after twenty-five years of price stability and thus is a new phenomenon to most workers. As a result, the government announced in November 1979 that forty percent of all urban workers would receive wage increases to help compensate for a thirty-three percent increase in food prices brought about by an increase in the subsidies paid agricultural communes.<sup>121</sup> To help consumers, the government also decided that all workers in state-owned enterprises would receive an extra allowance of five yuan per month to compensate

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*tive Discourse on the Principle of All-Round Material Benefits*, Beijing Renmin Ribao, July 14, 1980, reprinted in FBIS-CHI-80-142, July 22, 1980, at L10.

117. *NCNA Reports Wage Increases for 6 Out of 10 Workers*, Peking NCNA Domestic Serv., Jan. 1, 1978, reprinted in FBIS-CHI-78-001, Jan. 3, 1978, at E16. See also *Rise in Worker, Peasant Incomes*, Beijing Xinhua, June 22, 1979, reprinted in FBIS-CHI-79-123, June 25, 1979, at L8.

118. *Communiqué on Fulfillment of China's 1978 National Economic Plan*, BEIJING REV., July 6, 1979, at 37, 40.

119. *Text of Communiqué on Fulfillment of 1979 Economic Plan*, Beijing Xinhua, Apr. 30, 1980, reprinted in FBIS-CHI-80-085, Apr. 30, 1980, at L1, L9. Recent reports indicate that the average pay for Chinese workers in state-owned enterprises rose by another 9% in 1979 and 14% in 1980. See *BUSINESS STRATEGIES FOR THE PRC*, *supra* note 4, at 102; *Average Wages for Chinese Workers Rose An Inflation-Adjusted 6.1% During 1980*, Wall St. J., Apr. 29, 1981, at 26, col. 1. For a discussion of China's attempts to raise per capita income for workers, see *How Should We Understand the Concept of an Average of \$1000 Per Capita by the End of the Century*, Beijing Ribao, Oct. 27, 1980, reprinted in FBIS-CHI-80-223, Nov. 17, 1980, at L24.

120. *Chinese Argue Heatedly Over Who Will Get Raises*, N.Y. Times, May 14, 1980, at A3, col. 1. On the problems of China's inflation, see Liang, *Inflation in a Socialist Planned Economy*, MONSOON, Nov. 1980, at 11; *The New Threat to China's Economy: Inflation*, BUS. WEEK, Jan. 19, 1981 at 38.

121. *Increasing Wages*, BEIJING REV., Nov. 9, 1979, at 4.

for inflation.<sup>122</sup> While the government had deliberately kept food prices low for urban workers in the past by absorbing such price increases, urban workers are now being asked to bear part of the cost of raising agricultural output.

The wage increase of November 1979 is significant not only because it was a response to inflation, but also because of the way in which the increases were awarded. Unlike previous wage increases that were awarded by the government and based upon seniority, the November 1979 increases were decided upon by the workers themselves based upon skill and hard work.<sup>123</sup> Throughout China, meetings were held in factories in order for workers to review and criticize their own work records and those of their fellow employees. Many Chinese have criticized this method as time consuming and inconclusive, because most workers are reluctant to criticize each other. The result was heated arguments and a fear by the workers of a loss of prestige if they were told that their work was not up to standard.

The attempts at wage reform have not gone without criticism. In December 1978 posters were put up in Beijing criticizing the widening gap in wages as violating the spirit of Communism. The posters argued that the wage reform benefited only highly skilled workers and thus created a "basis for instability in the society."<sup>124</sup> Others have criticized the wage reforms for not going far enough to keep up with inflation.<sup>125</sup> Such criticism indicates the dangers facing the Chinese government in the new wage policies. Although the government wants to reward skilled workers, feeling that this will be an incentive to modernization, an acceptance of wage inequality means that some Chinese workers will fall behind, thus creating a corresponding threat to stability in society.

## 2. Bonuses

In 1978 a number of factories in China resumed awarding bonuses to workers and groups achieving outstanding results. The resumption of the bonus system, after its suspension and criticism during the Cultural Revolution, has been justified as necessary for economic

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122. *Inflation*, CHINA NEWS ANALYSIS, Apr. 11, 1980, at 3.

123. See *Chinese Argue Heatedly Over Who Will Get Raises*, *supra* note 120.

124. *Peking Wallposter Criticizes Wages System*, Tokyo Kyodo, Dec. 21, 1978, reprinted in FBIS-CHI-78-246, Dec. 21, 1978, at E12.

125. Kraar, *China: Trying the Market Way*, FORTUNE, Dec. 31, 1979, at 51, 53.

development.<sup>126</sup>

Although the Chinese have not yet formulated a firm policy on awarding bonuses, the experience of a number of enterprises is indicative of the direction this new policy is taking.

There are two sources of funds from which factories are permitted to award bonuses.<sup>127</sup> First, a "basic bonus" of up to 8.5 yuan per month per worker is taken from funds allocated by the state for the factory's production costs. Second, a "profit related" bonus may be awarded based upon the profits of a factory. A number of criteria are being developed to determine the method of payment and the amount of bonuses. First, many factories award bonuses based upon the quality and quantity of work, lack of waste, and regular attendance.<sup>128</sup> In other enterprises, bonuses are based upon working conditions (*i.e.*, underground mines or severe climactic conditions).<sup>129</sup> Second, bonuses may take the form of cash rewards and material goods such as blankets, tea sets, or cosmetics.<sup>130</sup> Third, bonuses are awarded to individual workers or, if that is not possible, to an entire group. Finally, in some factories the workers themselves decide upon the criteria for awarding bonuses, the amount to be awarded, and the recipients.<sup>131</sup>

The resumption of the bonus system has met with criticism and problems. In March 1979 *Beijing Ribao* carried an editorial criticizing the overemphasis on either spiritual encouragement or material incentives.<sup>132</sup> It declared:

It is absolutely necessary for us to pay attention to the material interests of the masses and practice the system of material rewards in order to bring into play their enthusiasm for socialism, but in doing so we cannot advocate the omnipotence of bonuses to the neglect of the role of political awareness.

In April 1979 the Chinese press began to criticize the "misuse" of bonus funds. Editorials stated that in some cases the money used for

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126. *Implement the Principle of 'to Each According to His Work' and Practice the Bonus System*, Sinkiang Regional Serv., Nov. 8, 1978, reprinted in FBIS-CHI-78-221, Nov. 15, 1978, at M1.

127. *Work Pays*, THE ECONOMIST, Dec. 29, 1979, at 28.

128. Gittings, *Wages and Management in China*, 9 J. CONTEMP. ASIA 53, 54 (1979).

129. See Kaplan, *Bonuses, Red Banners and Politics in Command*, NEW CHINA, Spring 1979, at 22, 23.

130. *Id. See also Managing in China*, Wall St. J., June 18, 1979, at 18, col. 3.

131. *Basic Industry Raises Basic Questions of Politics, Too*, N.Y. Times, Feb. 24, 1980, at 4E, col. 3.

132. *Beijing Ribao Criticizes Too Much Reliance on Material Incentives*, Beijing Xinhua, Mar. 14, 1979, reprinted in FBIS-CHI-79-055, Mar. 20, 1979, at L4, L5.

the payment of bonuses was improperly raised and mistakenly distributed evenly among the workers. It was argued that this "represents the other extreme of egalitarianism and also violates the principle of more pay for more work."<sup>133</sup>

In May 1980 *Renmin Ribao* published a lengthy article entitled "Correctly Implement the Bonus System in Line with the Principle 'to Each According to His Work.'"<sup>134</sup> The article stated that although bonuses awarded in 1978 "helped to mobilize the workers' socialist enthusiasm and to fulfill or overfulfill the annual state plan and various economic and technical targets," problems arose at the end of the year when "lavish cash prizes and materials were given away by some localities." Thus, "[t]he result was that although the state spent a tremendous sum of money, the expenditures did not help in rewarding the advanced, pushing the backward forward or stimulating production."<sup>135</sup>

In order to correct these deficiencies, an article in *Beijing Review* suggested that:

Bonus[es] must be linked with the results of production and based on the contributions made by the workers and staff, and commendation must go hand in hand with disciplinary measures. With regard to mistakes committed during work, the leadership should put the emphasis on conducting education among the workers concerned, supplementing it with necessary punishment, including economic measures. Only thus can those neglecting their duties be urged to mend their ways.<sup>136</sup>

Recent articles in the Chinese press indicate that the problems associated with bonuses still have not been resolved. An editorial in *Nanfang Ribao* in May 1980 cited a number of continuing problems.<sup>137</sup> The editorial stated that some enterprises make indiscriminate payment of bonuses "by the method of egalitarianism," devise schemes to arbitrarily enlarge bonuses, and divert funds from production costs to increase bonuses.<sup>138</sup> It concluded that the result of such practices "is bound to cause conflicts between enterprises, dampen the enthusiasm

133. *Guangming Ribao Says No to Bonus System*, Beijing Xinhua, Apr. 8, 1979, reprinted in FBIS-CHI-79-080, Apr. 24, 1979, at L3.

134. *Correctly Implement the Bonus System in Line With the Principle of 'to Each According to His Work'*, Beijing Xinhua, May 18, 1979, reprinted in FBIS-CHI-79-099, May 21, 1979, at L7.

135. *Id.*

136. *Discussions on Bonuses*, BEIJING REV., Apr. 20, 1979, at 5, 6.

137. *Correctly Handle the Bonus Issue*, Nanfang Ribao, May 19, 1980, reprinted in FBIS-CHI-80-107, May 27, 1980, at P1.

138. *Id.*

of the masses, and reduce the financial revenues of the state."<sup>139</sup>

The same editorial argued that there are only two "proper" criteria for awarding bonuses. First, bonuses should be rewards for production, namely, overfulfilling production targets and improving quality, quantity, and safety. The funds for these bonuses come from the profits of the enterprise. Second, bonuses may also be awarded for conserving raw materials and fuels. The funds for these bonuses are set by the state and paid as a production cost.

Although problems still exist in the development of the bonus system, there is no indication that the Chinese will discontinue the practice in the foreseeable future. In fact, with the appointment of Zhao Ziyang as premier, the bonus system has acquired a strong supporter. As the party leader in Sichuan Province, Zhao instituted broad economic reforms including the reintroduction of the bonus system.<sup>140</sup> Thus, the bonus system is again an integral part of China's incentives to workers.

### 3. *Piece Work Pay*

In addition to reinstituting the bonus system, the Chinese leadership has stated that "[p]iece work wages must not be restricted any more. Trades and professions which can pay piece work wages should do so."<sup>141</sup> Piece work pay has now been revived for handicraft workers and for those engaged in heavy industry.<sup>142</sup>

### 4. *Labor Emulation Campaigns*

The official policy in China is still to combine "material reward and moral encouragement, with the emphasis on the latter."<sup>143</sup> However, the principle of "to each according to his work" now means that out-

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139. *Id.*

140. *Zhao Ziyang on Economic Reforms*, BEIJING REV., May 5, 1980, at 5.

141. *Anhui Federation of Trade Unions Holds Forum on Progressives*, Hefei Anhui Prov. Serv., Feb. 19, 1979, reprinted in FBIS-CHI-79-042, Mar. 1979, at G1, G2.

142. Gittings, *supra* note 128, at 55.

143. Although material bonuses are now the most important form of worker incentives, non-material incentives are still used. These nonmaterial incentives take two principal forms. First, "model worker" awards are given to the top five percent of the work force. These awards are given by management based upon an evaluation of the workers' attitude, quota completion, cooperation, floor leadership, and colleagues' opinion. In addition, labor emulation campaigns are still used among workers both within and between factories. See *Pace-Setters in the Modernization March*, BEIJING REV., Jan. 7, 1980, at 8; Pyle, *supra* note 8, at 17-18.

standing workers and groups receive material rewards in addition to social recognition, oral commendations, citations, and honorary titles for winning labor emulation campaigns.

The history of worker incentives in China has been one of sharp swings between "material rewards" and "moral encouragement." Although material rewards are now an important means of achieving increased production and improved quality, there are still questions as to the best method of implementing this policy.<sup>144</sup>

The Chinese recognize these problems and have begun to discuss openly the question "what is to be relied upon in arousing workers' enthusiasm?"<sup>145</sup> Between December 1979 and May 1980 the newspaper *Gongren Ribao* received over 2700 letters on this question and printed 108 of them.<sup>146</sup> While the Chinese leadership may have a policy of combining material reward and moral encouragement, the letters to the newspaper indicate that Chinese workers are divided on the question. The letters ranged from those that argued that "only money can bring the workers' enthusiasm into play" to those that wrote that "unless ideological education is provided, workers' enthusiasm will not last long."

Chinese history since 1966, however, indicates that more than material rewards will be required to insure the success of the "four modernizations." It will also be necessary to change the attitude of Chinese workers in order to rebuild a disciplined work force. The next section will examine attempts to reconcile such discipline with the "right to strike."

#### IV. LABOR DISCIPLINE

The drive for modernization and increased production has not only moved Chinese policy toward a system of material incentives, but has also brought renewed emphasis on rules, regulations, and enterprise discipline in the 1978 Constitution. In order to understand the effect of these provisions, it is necessary to examine them separately.

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144. See, e.g., *What Brings Out Worker Initiative?*, BEIJING REV., May 12, 1980, at 19.

145. *Id.*

146. For an analysis of the workers' responses, see *Certain Questions on Arousing Workers' Enthusiasm*, *Gongren Ribao*, May 22, 1980, reprinted in FBIS-CHI-80-124, June 25, 1980, at L4.

### A. *The Right to Strike*

Although strikes were an important part of the Communist Party's labor policy prior to 1949, the People's Republic of China initially attempted to abolish them in the interest of increased production. This policy was reflected in the 1954 Constitution, which contained no provision for the right to strike but instead placed a duty upon citizens to uphold labor discipline and keep public order.<sup>147</sup>

A number of labor disturbances occurred in the 1950s despite this constitutional provision. In his book *The Chinese Worker*, Charles Hoffman lists fifteen major labor disturbances in the single year mid-1956 to mid-1957.<sup>148</sup> The causes of these disputes were wages, work assignments, poor welfare benefits, and harsh work rules.

Strikes received the philosophical support of Mao Zedong in 1957 when he said that "strikes and boycotts" were "a means of struggle against the bureaucracy."<sup>149</sup> The basis of Mao's support for strikes is found in his 1957 speech "On the Correct Handling of Contradictions Among the People."<sup>150</sup> Unlike Lenin, who argued that after the revolution there would be no conflict between labor and management because the working class would be in control,<sup>151</sup> Mao argued that contradictions would continue even in a postrevolutionary society.<sup>152</sup> Since Mao considered such contradictions as "contradiction among the people," however, the resolution had to be by "the democratic method" of discussion, criticism, persuasion, and education.<sup>153</sup>

Mao did not support a general rule to strike. Instead, he considered the problem of the bureaucracy to be a major obstacle to the kind of society he wanted to build. When this bureaucracy was encountered in the workplace, Mao felt that workers had a duty to use "criticism," including strikes or boycotts if necessary, to resolve the problem.

In 1971 Premier Zhou Enlai lent his support to the right to strike as a

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147. Article 100 of the 1954 Chinese Constitution provided:

Citizens of the People's Republic of China must abide by the Constitution and the law, uphold Discipline at work, keep public order and respect social ethics.

148. See C. HOFFMAN, *supra* note 107, at 146-47.

149. Cohen, *supra* note 18, at 832.

150. Speech by Mao Zedong, "On the Correct Handling of Contradictions Among the People," in Beijing at the eleventh session of the Supreme State Conference (Feb. 27, 1957), reprinted in MAO, ON THE CORRECT HANDLING OF CONTRADICTIONS AMONG THE PEOPLE (1966).

151. THE SOVIET STATE AND LAW 188-265 (V. Chkhikvadze ed. 1969).

152. See MAO, *supra* note 150, at 1.

153. *Id.* at 8.

part of the struggle against the bureaucracy when he said: "We allow that workers go on strike if the factories are not well managed; we accept the strike as a sign of protest."<sup>154</sup> The right to strike finally received official recognition when it was included in the 1975 Constitution,<sup>155</sup> which also deleted the duty under the 1954 Constitution to uphold labor discipline and keep public order.

The labor unrest of the Cultural Revolution culminated in a wave of large scale strike and work stoppages from 1973 through 1977.<sup>156</sup> The death of Mao Zedong and the arrest of the "Gang of Four" signaled a sharp debate over the future of the right to strike. Hua Guofeng and Deng Xiaoping were committed to modernization and rapid economic growth, a policy at odds with continued labor unrest. Hua, however, was unable simply to abolish the right to strike, because the provision had allegedly been inserted in the 1975 Constitution at Mao's request.<sup>157</sup> The result was a compromise in the 1978 Constitution that preserves in Article 45 the provision for "the freedom to strike" while inserting a provision in Article 8 forbidding "any person from using any means whatsoever to disrupt the economic order of society" and in Article 57 imposing a duty on citizens to "take care of and protect public property, observe labour discipline, observe public order, respect social ethics and safeguard state secrets."

While the 1978 Constitution retains the right to strike, it does not specify the situations under which the right may be exercised. An examination of recent Chinese sources, however, indicates official support for strikes to protect "workers' democratic rights" and for the protection of workers' health and safety.

### *1. Protection of "workers' democratic rights"*

In May and June 1979 Chen Yu and Kang Yonghe, both Vice-Chairmen of the ACFTU, gave extensive interviews on "China's Trade

154. Interview with Zhou Enlai, *reprinted in MILTON, MILTON & SCHURMANN, PEOPLE'S CHINA* 487-88 (1974).

155. Article 28 of the 1975 Chinese Constitution provided in part:

Citizens enjoy freedom of speech, correspondence, the press, assembly, association, procession, demonstration, and the freedom to strike, and enjoy freedom to believe in religion and freedom not to believe in religion and to propagate atheism.

156. For accounts of the labor unrest in China in 1976 and 1977, see Domes, *China in 1977: Reversal of Verdicts*, 18 ASIAN SURVEY 1 (1978); Domes, *China in 1976: Tremors or Transition*, 17 ASIAN SURVEY 1 (1977); McDougall, *The Chinese Economy in 1977*, 70 CHINA Q. 72 (1977).

157. See Hsia & Haun, *supra* note 18, at 32.

Unions.”<sup>158</sup> Among the topics discussed were “workers’ democratic rights” and the right to strike to guarantee them. The following is a composite summary of their views.

Although China is now a socialist state in which workers and enterprise leaders are equal, some enterprise leaders still have “feudal patriarchal attitudes, are bureaucratic and order people around. Some even act against national policies or break the law.”<sup>159</sup> In order to protect workers against such enterprise leaders, “the trade unions must fight for the democratic rights of the workers and oppose all forms of bureaucracy.”<sup>160</sup>

Kang stated that in the event of a strike (presumably a spontaneous action by the workers themselves), the union would have three options:

(1) If the workers put forward reasonable demands which can and should be settled, the trade unions would resolutely support them and fight against bureaucratism. The trade unions would bring them to the attention of the Party Committees and the management so that the demands could be met as soon as possible.

(2) If reasonable demands cannot be met for the time being due to the lack of certain conditions, the trade unions would give an explanation and educate the workers while passing the demands on to the Party committees and the departments concerned so that the problem could be settled step by step.

(3) If a few bad elements incite the masses to wilfully make trouble, the trade unions would explain to the hoodwinked masses that they are wrong, expose the bad elements and help the management and judicial departments take disciplinary and legal measures against these elements so as to protect the interests of the factory and all the workers.<sup>161</sup>

The criteria for judging whether workers’ demands are reasonable was discussed in *Beijing Review* in May 1980.<sup>162</sup> The article played down the need for strikes to resolve workers’ problems, saying that there are other channels available for them to express their views. “[T]hey may make their demands known to the departments concerned through the trade unions, talk with the factory directors or leading members of the departments concerned or write letters to departments

158. Chen, *China's Trade Unions*, CHINA RECONSTRUCTS, May 1979, at 9; Kang, *China's Trade Unions*, BEIJING REV., June 8, 1979, at 9.

159. See Chen, *supra* note 158, at 11.

160. *Id.*

161. See Kang, *supra* note 158, at 13.

162. *Some Questions on China's Trade Unions*, BEIJING REV., May 5, 1980, at 25-26.

at higher levels.”<sup>163</sup>

If a strike does occur, however, the demands of the workers will be judged according to the Constitution, law, principles, policies and related regulations of the country. If the strike is mainly against the bureaucracy of the leadership in the enterprise, the trade unions should stand firmly on the side of the workers and ask the departments concerned to settle the problem as soon as possible. If some of the workers’ reasonable demands cannot be met immediately owing to a lack of financial and material resources, the trade unions should explain this to the workers so that they might have a better understanding of the situation. Normally, strikes can be solved in this way. After so much work, it is not difficult to see whether there are bad elements inciting the people to make trouble.<sup>164</sup>

These views are a continuation of Mao Zedong’s and Zhou Enlai’s position that unions must struggle against the bureaucracy. It is important to note, however, that Kang and Chen did not include the right to strike for higher pay. One reaction of the Chinese authorities to a strike protesting wages is illustrated by a December 1978 incident in which a woman was shot by Chinese police who fired on a group of workers protesting low wages at a Shanghai silk factory.<sup>165</sup>

## *2. Protection of workers’ health and safety*

The second area in which the Chinese recognize a right to strike is in situations that threaten the health or safety of workers. In February 1979 the ACFTU issued a circular on labor protection stating that “trade unions have the right to refuse signing on workers and forbid the operation of any newly built or expanded factory and mining operation which does not have the necessary labour protection facilities.”<sup>166</sup>

163. *Id.*

164. *Id.*

165. See *AFP Reports Shanghai Police Disperse Workers’ Demonstration*, Paris AFP, Dec. 31, 1978, reprinted in FBIS-CHI-79-001, Jan. 2, 1979, at G5. In April, 1981 *Beijing Review* reported that there had been “some cases of disturbance by workers and students” in recent weeks. *On the Question of Disturbances Created by Small Numbers of People*, BEIJING REV., Apr. 13, 1981, at 3. Although the article stated that the incidents had been infrequent and had involved only a small number of people, it did admit that the causes of workers’ dissatisfaction were wages, bonuses, and housing. The article was critical of the foreign news media, which the Chinese said “often exaggerate when they report these disturbances.” The article said that some of the disturbances were justified and that reasonable demands would be met if possible. In the case of illegal disturbances, the article reported that the “antisocial elements” would be “punished according to the law.” *Id.*

166. *Trade Union Circular Urges Better Labor Protection*, Beijing Xinhua, Feb. 26, 1979, reprinted in FBIS-CHI-79-041, Feb. 28, 1979, at E25.

In addition, the circular gives a worker the right to "refuse to perform his duties" when working conditions threaten his life or health.

In light of local conditions, trade unions at all levels should help departments concerned investigate enterprises where there are frequent accidents and thick dust which exceeds the state's standard. They should urge and help the administrative units of these enterprises to seriously solve the problems. They should make proposals in improving conditions where a worker's life is in danger and his health is impaired, and set a time limit for making the improvements. If the improvements are feasible but have not been made in accordance with such proposals, a worker may refuse to perform his duties and the trade union should support him.<sup>167</sup>

#### B. *Labor Discipline*

In addition to the conflict over the right to strike, Chinese policy toward labor discipline has also been the subject of sharp debate. Although the 1954 Constitution placed a duty on citizens to "uphold labour discipline," Mao Zedong was an advocate of reforming "irrational rules and regulations."<sup>168</sup> The Chinese now admit that Mao's policy was carried to extreme during the Cultural Revolution. One source has commented:

[I]n the course of abolishing irrational rules and regulations, the slogan "Smash all rules and regulations" popped up, accompanied by the fallacy that "rules and regulations are all rubbish". . . . Chaos resulted in many factories where rules and regulations were ignored or there were no rules and regulations to follow at all, discipline became lax and production fell.<sup>169</sup>

One Western economist has written of the breakdown of rules and regulations during the Cultural Revolution:

Many rules and regulations essential to the orderly conduct of business affairs were thrown out on the contention that they were elitist. As a result labor discipline became unglued: absenteeism was reportedly rampant, on-the-job performance became something less than exemplary, attention to the quantity and quality of output was minimal, industrial safety was neglected, and so forth. Thomas Robinson, who visited one particular factory before the gang's fall, was told proudly "in the old

167. *Trade Union Federation Issues Circular on Labor Protection*, Beijing Gongren Ribao, Feb. 21, 1979, reprinted in FBIS-CHI-79-044, Mar. 5, 1979, at E15, E17.

168. *The Gang of Four Pushed Anarchism*, PEKING REV., Apr. 1, 1977, at 23, 26.

169. *Id.* at 23.

Liuist" days we the workers had to punch in and punch out. All that is now done away with. The punch clock, it is now said, was apparently replaced with a visitor's book.<sup>170</sup>

While the 1978 Constitution retains the right to strike, the current emphasis is on Article 57, which imposes a duty upon workers to observe labor discipline. At the Ninth National Trade Union Congress, Vice-Premier Yu Chiu-li stated that "[t]he trade unions should educate workers to abide by state laws and the rules and regulations of the enterprise and to struggle against anarchism."<sup>171</sup> This view was repeated by the communique issued at the conclusion of the third session of the Eleventh Central Committee of the Chinese Communist Party in December 1978. "[S]ocialist modernization requires centralized leadership and strict implementation of various rules and regulations and observances of labor discipline. Bourgeois factionalism and anarchism must be firmly opposed."<sup>172</sup> The most serious problems in achieving this labor discipline no longer come from strikes but from the system of job security, known as the "iron rice bowl."

By the mid-1950s all urban workers in China were employed either by state-owned or collective enterprises. Under the system of allocating work in those enterprises, the state had the power to assign workers to various jobs. Since such assignments were both arbitrary and permanent, the system came to be known as the "iron rice bowl." This was a guarantee that once a worker was hired he could never be fired and could only be promoted, not demoted.<sup>173</sup>

Recently, however, this system has come under criticism by the Chinese. In an article in *Beijing Ribao* in July 1979, Xue Muqiao, an economist and advisor to the State Planning Commission, attacked the "iron rice bowl" system on the grounds that it was not conducive to raising labor productivity and the "four modernizations" of giving every worker job security and a guaranteed income.<sup>174</sup> In particular, the Chinese are concerned that the "iron rice bowl" system results in

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170. See Prybyla, *supra* note 4, at 414.

171. *Yu Chiu-li, Fang I Reports*, Peking NCNA Domestic Serv., Oct. 14, 1978, in FBIS-CHI-78-200, Oct. 16, 1978, at E9.

172. *Communiqué of the Third Plenary Session of the 11th Central Committee of the Communist Party of China*, Peking NCNA, Dec. 23, 1978, reprinted in FBIS-CHI-78-253, Dec. 26, 1978, at E4, E10.

173. *Should the 'Iron Rice Bowl' Be Smashed?*, BEIJING REV., Nov. 30, 1979, at 4.

174. *Several Problems of Labour and Employment in Our Country*, Beijing Renmin Ribao, Aug. 19, 1980, reprinted in FBIS-CHI-80-173, Sept. 4, 1980, at L24.

worker apathy and aggravates the already serious problem of unemployment.

While the surplus of workers has forced the Chinese to provide employment for more workers than is necessary, worker apathy has become an unwanted by-product of the job security these workers receive. The results of the apathy are seen in high absenteeism, low quality of production, and a reluctance of workers to take jobs in enterprises that may require additional work for the same pay.<sup>175</sup> Although the Chinese have publicized the selective use of fines against workers who "won't do a decent day's work,"<sup>176</sup> the principal means of combating this problem has been criticism and education.

In an attempt to lessen worker apathy, the system of job security is now undergoing change. While no firm policy has yet emerged, a number of suggestions and experiments have been made. First, some have argued that the introduction of an employment examination system would raise labor efficiency. Those employed through such a system would also be required to take an annual test to determine whether they deserve promotion and wage increases.<sup>177</sup> In 1979 a number of cities throughout China adopted such a practice on an experimental basis.<sup>178</sup> Some prospective workers were required to sit for examinations in language, mathematics, and other subjects. Those who passed with high grades were given jobs in industry, transportation, construction, and trade. Other workers took examinations for skilled labor positions such as drivers, electricians, and carpenters. In addition, some factories operating under the experimental regulations concerning self-management have been given the authority to give examinations to select and promote their workers.<sup>179</sup> This allows the factory to by-pass the Department of Manpower, which previously had the sole authority to assign workers.

Second, under the "iron rice bowl" system, it is almost impossible for a worker to switch to another job, no matter what the reason. Recently, however, in an attempt to create efficiency by relating jobs to workers' interest, the Chinese government has begun to allow workers to change

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175. *How a Chinese Factory Leads a Leap Forward Into Capitalist Ways*, Wall St. J., July 5, 1979, at 1, col. 1.

176. *Loafer's Wages Docked*, BEIJING REV., Jan. 12, 1979, at 39.

177. See *Should the 'Iron Rice Bowl' Be Smashed?*, *supra* note 173, at 5.

178. Yau, *More Freedom of Employment*, MONSOON, Aug. 1980, at 9.

179. *Id.*

jobs. In July 1980 the *Renmin Ribao* newspaper advertised for editors and reporters to work on its forthcoming English language edition.<sup>180</sup> The paper stated that anyone already employed in another enterprise could apply for one of the positions provided he received the permission of his present employer. In addition, *Renmin Ribao* has suggested that the "help wanted" advertisements in newspapers be expanded from those who are unemployed to those who are already employed but want to change jobs.<sup>181</sup>

The second attack upon the "iron rice bowl" system is the result of widespread unemployment in China, particularly among high school graduates, ex-servicemen, and the "educated youths" who were sent to the countryside to work during the Cultural Revolution and who now want to return to live and work in the cities.<sup>182</sup> Although almost twenty million of these persons have been provided with jobs since 1977,<sup>183</sup> an estimated twenty million more people, or twenty percent of the urban work force, remain unemployed.<sup>184</sup> Lacking a chance for real employment, some of these youths have turned to disruptive tactics such as blocking traffic and stopping trains.<sup>185</sup> Such actions have been condemned by the trade unions and older workers who see these youths as potential competitors and disruptors of production and stability.<sup>186</sup>

In their attempts to solve the problems of unemployment within a system that gives permanent employment to those with jobs, the Chinese have been forced to introduce a new employment policy and to encourage individuals to work for themselves. Thus, about half of the newly employed persons are now employed in collective enterprises instead of state-owned industries.<sup>187</sup> As long as there is no "exploitation" and the ownership of the means of production remains in control of the collective, the Chinese are encouraging such small scale service enterprises. In addition, the government has established employment agencies and technical training programs for unemployed workers. All of

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180. *Id.*

181. *Id.*

182. *Interview with Director of State Bureau of Labour*, BEIJING REV., Feb. 11, 1980, at 13.

183. *20 Million More People Employed*, BEIJING REV., July 21, 1980, at 5.

184. *China Plans More Help for Self-Employed*, Japan Times, Aug. 14, 1980, at 11, col. 2.

185. *Shanghai CYL Discusses Troublemaking Youth*, Shanghai City Serv., Feb. 8, 1979, reprinted in FBIS-CHI-79-028, Feb. 8, 1979, at G2.

186. *Workers Meeting Scores Shanghai Public Disturbances*, Shanghai City Serv., Feb. 7, 1979, reprinted in FBIS-CHI-79-028, Feb. 8, 1979, at G2.

187. See *Discussions About Individual Economy*, BEIJING REV., Nov. 20, 1980, at 20; *20 Million More People Employed*, *supra* note 183.

this represents a major shift from the employment policies of the Cultural Revolution and is designed to take the unemployed off the streets and the pressure off the government.

With these changes in the "iron rice bowl" system have come a new problem, the fear of competition.<sup>188</sup> Although many workers have criticized the "iron rice bowl" system, most workers feel comfortable with the security it provides them. Many have expressed concern at the stress and competition that may result if the system is changed.<sup>189</sup> In Beijing this concern recently resulted in violence when the employees of a state-owned store wrecked a collective store next door because it was doing more business.<sup>190</sup> Thus, the important question for the Chinese is whether the insecurity associated with competition is preferable to the problems associated with the "iron rice bowl" system.

The emphasis in China is now clearly on labor discipline. The trade unions have lessened the threat of organized strikes and now see their task as rebuilding a disciplined work force after so many years of anarchy. This may be possible with older workers who remember conditions before 1949 and the improvements of the 1950s. However, a large portion of the Chinese work force consists of youths who came of age during the years of the Cultural Revolution and who have never known labor discipline. Whether this group will now accept the rules and regulations is one of the biggest uncertainties in China's labor picture.

## V. LABOR PROTECTION

### A. *Health and Safety*

The health and safety of workers has been a concern of the People's Republic of China since its inception. This concern has been reflected in the Trade Union Law, the trade union constitutions, and in scores of regulations and State Council decisions. However, this attention to worker protection has frequently conflicted with state mandated production plans. When this has occurred, the health and safety of workers sometimes has suffered.

Article 7 of the Trade Union Law declares it the duty of trade unions to "exercise supervision to ensure managements conscientiously carry out labor protection . . . [and] factory sanitation and safety measures."

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188. See *China Plans More Help for Self-Employed*, *supra* note 184.

189. *China in Transition*, MONSOON, Oct., 1980, at 5, 7.

190. *Id.*

The Trade Union Law also empowers trade union committees, when properly authorized by their unions, to inspect work areas and hospitals.<sup>191</sup> In 1956 a series of State Council regulations and decisions were issued pertaining to worker health and safety.<sup>192</sup> The most comprehensive of the published regulations deals with factory safety and sanitation.<sup>193</sup> Its provisions cover the proper maintenance of factory premises; the operation of mechanical and electrical equipment, boilers, and gas cylinders; techniques for safely dealing with gas, dust, and dangerous materials; guidelines for property water supply; and protective clothing and materials for workers.<sup>194</sup> Additional regulations concerning safety in building construction have been adopted together with a State Council decision pertaining to the proper handling of silica dust in factories and mining operations.<sup>195</sup>

The primary level trade union is charged with the duty to inspect work places to determine whether health and safety regulations are being followed.<sup>196</sup> Enterprise administrators must maintain the health and safety standards imposed by the regulations, but they may draft more detailed separate regulations adapted to the unique problems of their particular industry.<sup>197</sup> Frequently, worker protection departments have been created in larger enterprises while trained health and safety personnel, chosen from among the workers, are employed in smaller firms. Periodically, safety training programs for workers have been available and conferences on labor protection at various levels have been used to underscore worker health and safety concerns.<sup>198</sup>

Labor health research institutes have been established in various governmental subdivisions to "safeguard worker health, improve working conditions and protect the environment."<sup>199</sup> Many of these institutes function as research facilities, as agencies for the detection, treatment, and prevention of occupational diseases, and as training

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191. Trade Union Law, *supra* note 24, art. 12.

192. These regulations and one State Council decision are published in **SELECTED LEGAL DOCUMENTS**, *supra* note 9, at 332-73, and in **IMPORTANT LABOUR LAWS**, *supra* note 9, at 32-80.

193. See **SELECTED LEGAL DOCUMENTS**, *supra* note 9, at 334-46.

194. *Id.*

195. *Id.* at 347-71.

196. Trade Union Law, *supra* note 24, arts. 7 & 12.

197. Regulations on Factory Safety and Sanitation art. 88, reprinted in **SELECTED LEGAL DOCUMENTS**, *supra* note 9, at 346.

198. See C. HOFFMAN, *supra* note 107, at 140-42.

199. See *How a Labour Health Research Institute Works*, CHINA RECONSTRUCTS, June, 1977, at 29.

schools for labor protection workers. Teams from the institutes are sent into factories and mines to examine workers laboring in environments containing deleterious substances. If cases of occupationally related silicosis or poisoning are detected, the workers can be treated in the institutes' hospitals.<sup>200</sup>

A principal function of the institutes is performing basic research in the toxicology, immunology, and the pathology of occupational diseases. New drugs for the treatment of silicosis and patients suffering from industrial poisoning are studied and tested. Finally, the institutes train primary health workers in the techniques of labor protection. Both year long and short term courses are given regarding the protection of workers and the detection and treatment of diseases affecting them.<sup>201</sup>

Since 1977 the Chinese leadership has exhibited a heightened interest in labor protection. Article 48 of the 1978 Chinese Constitution emphasizes that "on the basis of increased production the state gradually . . . improves working conditions, strengthens labor protection and expands collective welfare." This represents an expansion of the language found in the 1975 Constitution.<sup>202</sup> Furthermore, the revised Trade Union Constitution specifies the improvement of labor protection work as a task for the trade union grassroots committee.<sup>203</sup>

In February 1979 the ACFTU, in response to a Central Committee directive, issued a circular on labor protection directed to the trade union councils of all provinces, municipalities, and autonomous regions and the railway trade union council.<sup>204</sup> The circular calls upon trade unions to "urge the administrative units of various enterprises to realistically carry out the state's laws and decrees governing labor protection, and at the same time, teach the workers and staff to . . . seriously carry out various regulations and rules and actively do a good job of labor protection."<sup>205</sup>

Trade unions are admonished to organize and better their labor protection institutions and to assign full time cadre members to them.

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200. *Id.*

201. *Id.*

202. No such language was contained in the 1975 Chinese Constitution.

203. CONSTITUTION OF THE ALL CHINA FEDERATION OF TRADE UNIONS, *supra* note 21, art. 17 (1978).

204. See *Trade Union Circular Urges Better Labor Protection*, *supra* note 166 at E25; *Trade Unions Federation Issues Circular on Labor Protection*, *supra* note 167, at E15-E17.

205. See *Trade Unions Federation Issues Circular on Labor Protection*, *supra* note 167, at E16.

Moreover, the unions are to urge enterprise administrators to provide safety measures and to support administrators in encouraging workers to improve the safety of their work areas and to deal with pollution of their environment.<sup>206</sup>

The circular, more importantly, outlines mechanisms by which unions can secure safe and healthy conditions for workers. First, in the construction or expansion of factories and in mines, provisions for labor protection must be adopted. If such measures are not instituted, the union is authorized to "refuse to sign and seal the necessary documents" and to "forbid . . . [the] work to proceed."<sup>207</sup> Second, unions are encouraged to make recommendations for rectifying conditions endangering workers' lives or health. Time limits are to be imposed for the necessary improvements. If the recommended improvements are workable but have not been implemented within the time provided, "a worker may refuse to perform his duties and the trade union should support him."<sup>208</sup> Thus, unions and workers now have a means by which they can enforce labor protection measures, if they use it. As an additional safeguard, situations involving a serious accident or wholesale poisoning must be investigated by the union and reported to a higher level union and the ACFTU.

In August 1979 *Beijing Review* announced that an "economic division" had been established in the intermediate people's court in the city of Chongqing in Sichuan Province and that other intermediate courts were following suit.<sup>209</sup> This new court is authorized to impose economic sanctions on enterprises that violate state economic rules and regulations. Included in such violations are "[c]ases of . . . neglect of operational safety, which seriously impair the health of workers . . . and are harmful to public interest."<sup>210</sup>

Moreover, on September 13, 1979, the eleventh session of the Standing Committee of the Fifth National People's Congress adopted the Law on Environmental Protection.<sup>211</sup> Article 23 of this law provides:

Airtight production equipment and methods of processing should be actively adopted at all units that cause harmful gas and dust to spread, and

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206. *Id.*

207. *Id.*

208. *Id.* at E17.

209. *Economic Division Set Up in Court*, BEIJING REV., Aug. 10, 1979, at 5.

210. *Id.* at 6.

211. *Text of Law on Environmental Protection*, Beijing Xinhua, Sept. 16, 1979, reprinted in FBIS-CHI-79-182, Sept. 18, 1979, at L1.

devices for ventilation, dust collection, air purification and reclamation should also be installed. The amount of harmful gas and dust in working areas should meet standards fixed by state regulations concerning industrial sanitation.<sup>212</sup>

The Chinese leadership's greater awareness of the need for worker safety is due in part to a series of industrial accidents that have occurred in recent years.

The Chinese press has published detailed accounts of coal mine accidents<sup>213</sup> and of the capsizing of a mobile off-shore oil rig.<sup>214</sup> In November 1979 the Bohai No. 2 oil drilling rig overturned while being towed to a new location, killing seventy-two workers. The accident reportedly was caused by the failure of responsible officials to follow safety precautions in ordering the movement of the rig during severe wind conditions.<sup>215</sup> A subsequent inquiry disclosed that the agency in charge of the rig had not translated the necessary instructions for operation of the Japanese made rig prior to the accident. The Chinese News Agency called the capsizing "the largest such accident ever to occur in China" and disclosed that the Oceanic Petroleum Exploration Bureau's "incomplete statistics" revealed a total of 1,043 accidents, including more than 30 major ones, from 1975 to 1979. These accidents caused the death of 105 persons and serious injury to 114 others.<sup>216</sup>

In September 1980 the four officials directly responsible for the Bohai No. 2 oil rig sinking were brought to public trial in Tianjin. Ma Jixiang, director of the Oceanic Petroleum Exploration Bureau, was sentenced to four years imprisonment; Zhang Dejing, deputy general dispatcher of the Bureau, was sentenced to two years imprisonment with two years probation; Wang Zhaozhu, deputy director of the Bureau, received two years imprisonment; and Lin Yongzhi, captain of

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212. *Id.*

213. Breeze, *Safety First in Industry*, FAR E. ECON. REV., Oct. 10, 1980, at 61.

214. For accounts of the Bohai oil rig accident, see *Accusations Against Bureau Leaders*, Beijing Xinhua, July 26, 1980, in FBIS-CHI-80-147, July 29, 1980, at L13; *Gongren Ribao* on "Exposing" *Background of Drilling Rig Disaster*, Beijing Xinhua, July 23, 1980, reprinted in FBIS-CHI-80-143, July 23, 1980, at L2; *Guangming Ribao* Commentary, Beijing Xinhua, July 29, 1980, reprinted in FBIS-CHI-80-147, July 29, 1980, at L14; *Tianjin Trade Union Official*, Beijing Xinhua, July 28, 1980, reprinted in FBIS-CHI-80-147, July 29, 1980, at L14. See also *Bohai No. 2 Oil Rig Disaster*, CHINA PICTORIAL, Nov. 1980, at 6.

215. *Further Reportage on Bohai No. 2 Accident*, Beijing Xinhua, Aug. 29, 1980, reprinted in FBIS-CHI-80-173, Sept. 1980, at L19; *State Investigates 1979 Bohai Bay Oil Rig Disaster*, Beijing Xinhua, July 21, 1980, in FBIS-CHI-80-142, July 22, 1980, at L1.

216. *Id.*

the towing vessel, was sentenced to one year imprisonment with one year probation.<sup>217</sup> The accused may appeal if they do not accept the verdict.

Accounts of numerous mine disasters have also been published, including a gas explosion that ripped through the No. 2 plant at the Songshun coal mine in Jilin Province, killing fifty-two persons. Two officials were later prosecuted because they ignored warnings of concentrations of gas and improper ventilation in a new mining location. Instead of ceasing operations, the two officials convinced the miners to continue working with promises of increased bonuses.<sup>218</sup>

In the face of such a distressing safety record, the new Premier, Zhao Ziyang, has launched an industrial safety campaign. This campaign is intended not only to improve the workers' lot and build enthusiasm for the difficult tasks of modernization, but also to cast aspersions on the unsafe working conditions that resulted from the Maoist drive to transcend the normal limitations on production.<sup>219</sup>

### B. Labor Insurance

In 1951 the People's Republic of China promulgated Labor Insurance Regulations that were amended in 1953 to extend their application and afford greater benefits.<sup>220</sup> These regulations provide coverage for injury, sickness, disability, death, maternity, and associated problems in factories, mines, and other enterprises with more than 100 workers and staff.<sup>221</sup> Enterprises not covered by the regulations are free to develop their own insurance plans.<sup>222</sup>

All workers in participating enterprises, except those deprived of political rights, are eligible for benefits regardless of whether the injury,

217. *Bohai Trial Announced*, Beijing Xinhua, Aug. 30, 1980, in FBIS-CHI-80-173, Sept. 4, 1980, at L21; *NPC Deputies Approve Verdicts*, Beijing Xinhua, Sept. 3, 1980, reprinted in FBIS-CHI-80-173, Sept. 4, 1980, at L22; *Officials Sentenced*, Beijing Xinhua, Sept. 2, 1980, reprinted in FBIS-CHI-80-173, Sept. 4, 1980, at L21.

218. See *Safety First in Industry*, *supra* note 213.

219. *Guangming Ribao Analyzes "Fear Neither Hardship Nor Death"*, Beijing Guangming Ribao, Aug. 26, 1980, reprinted in FBIS-CHI-80-180, Sept. 15, 1980, at L42; *Respect Science and the Masses and Ensure Safety in Production*, Beijing Renmin Ribao, Sept. 19, 1980, reprinted in FBIS-CHI-80-187, Sept. 24, 1980, at L18.

220. *IMPORTANT LABOUR LAWS*, *supra* note 9, at 11; *Labor Insurance Regulations of the People's Republic of China* [hereinafter cited as *Labor Insurance Regulations*], reprinted in *SELECTED LEGAL DOCUMENTS*, *supra* note 9, at 311-31.

221. *Labor Insurance Regulations*, *supra* note 220, art. 2.

222. *Id.* art. 3.

sickness, or disability occurred on the job.<sup>223</sup> The amount and scope of benefits, however, depend upon the connection with employment.<sup>224</sup>

Management is responsible for the entire cost of labor insurance benefits.<sup>225</sup> Certain of the expenses are paid directly by management while the remainder are paid from a labor insurance fund supported by management and supervised by the trade unions. Enterprises are required to make a monthly payment to the labor insurance fund in an amount equal to three percent of their total payroll.<sup>226</sup> Thirty percent of this sum is paid to the ACFTU as a general insurance fund to be used to operate collective labor insurance undertakings such as sanatoria, rest homes, homes for the aged, orphanages, and homes for the disabled.<sup>227</sup> The remaining seventy percent is paid to the primary trade union committees of the enterprise involved as a labor insurance fund to be employed to pay pensions, allowances, and relief benefits as prescribed by the regulations.<sup>228</sup>

The regulations distinguish between injuries and sickness occurring on the job and elsewhere. Workers injured while at work are entitled to have their enterprise management bear the entire cost of treatment, medicine, hospitalization, meals while hospitalized, and travel expenses.<sup>229</sup> The worker's normal wages are paid during hospitalization. Workers suffering disability as a consequence of injuries sustained on the job are paid monthly invalid pensions from the insurance fund based upon the nature of their disability.<sup>230</sup> A totally disabled worker requiring assistance in living receives a pension for life equal to seventy-five percent of his wages, and a worker in similar condition who does not require care from others receives a pension equal to sixty percent of his wages until his recovery or death.<sup>231</sup> A partially disabled worker, capable of working, is assigned "suitable work" by management and is eligible for an invalid allowance ranging from ten to thirty percent of his usual wages, based upon the extent of his disability. This

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223. *Id.* arts. 4, 12 & 13.

224. *Id.* arts. 12 & 13.

225. *Id.* art. 7. Recent accounts suggest that the total cost of labor insurance is 10% or 11% of the enterprises' total wages. See Vermeer, *Social Welfare Provisions in China*, 19 ASIAN SURVEY 856, 869 (1979).

226. Labor Insurance Regulations, *supra* note 220, art. 8.

227. *Id.* art. 9.

228. *Id.* arts. 9 & 17.

229. *Id.* art. 12.

230. *Id.*

231. *Id.*

allowance plus the worker's wages cannot exceed his income before the disability.<sup>232</sup>

Workers sustaining off the job sickness, injury, or disability are covered by a separate schedule of benefits.<sup>233</sup> In such cases the enterprise is responsible for treatment, operations, hospitalization, and ordinary medicine. The patient must bear the cost of expensive medicine, meals while hospitalized, and travel.<sup>234</sup> Workers financially unable to pay these expenses may receive an allowance from the insurance fund.<sup>235</sup>

Wages for sick or injury leave are paid by management to a worker absent for medical treatment based upon the length of his employment in the enterprise.<sup>236</sup> These benefits range between 60% and 100% of his usual wages and are paid for a maximum of six consecutive months. When the duration of the absence exceeds six consecutive months the worker receives benefits from the labor insurance fund equaling forty to sixty percent of his wages until he returns to work, is declared disabled, or dies. If a worker retires from his position due to total disability, payments of sick leave or injury wages cease and he is then paid relief benefits from the insurance fund. The benefits paid are dependent upon whether the disabled worker needs assistance from others in living.<sup>237</sup> Workers suffering sickness, injury, or disability away from work are entitled to a suitable position upon recovery and certification of fitness by the responsible medical institution.<sup>238</sup>

The families of workers may receive free medical treatment for illness. Only fifty percent of operation fees and the cost of ordinary medicines are paid by management, however. All other expenses must be paid by the dependent.<sup>239</sup>

The regulations provide death benefits for workers and their lineal dependents based upon whether the injury or sickness resulting in death was connected with work.<sup>240</sup> For example, funeral payments range from the equivalent of three months of the average worker's wages for a death occurring at work to two months of the average

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232. *Id.*

233. *Id.* art. 13.

234. *Id.* art. 13(a).

235. *Id.*

236. *Id.* art. 13(b).

237. *Id.* art. 13(c).

238. *Id.* art. 13(d).

239. *Id.* art. 13(e).

240. *Id.* art. 14.

worker's wage for a death from sickness or injury not connected with work.<sup>241</sup>

A male worker is eligible for retirement at the age of sixty if he has worked for twenty-five years with at least five years of service in the subject enterprise.<sup>242</sup> The worker's monthly pension, based upon the number of years of his employment in the enterprise, equals between fifty and eighty-five percent of his wages.<sup>243</sup> In situations in which the need of the enterprise dictates, a worker may be kept on the job after he is entitled to retire. The worker then receives his usual wages together with a monthly old age pension determined as outlined above but equal only to ten to twenty percent of his wages.<sup>244</sup> A female worker becomes eligible for retirement at the age of fifty if she has worked for twenty years with at least five years of service in the concerned enterprise. The amount of a female's pension is determined in the same way as the male's.<sup>245</sup> The regulations prescribe earlier retirement ages for laborers in adverse environments.<sup>246</sup>

Maternity benefits for female workers include fifty-six days pregnancy leave during which time normal wages are paid.<sup>247</sup> Fourteen additional days leave, with pay, are provided in cases of complicated delivery or the birth of twins.<sup>248</sup> A maximum of thirty days paid leave may be granted if ordered by the physician in cases of miscarriage in the first seven months of pregnancy.<sup>249</sup>

The expenses of prenatal care and child delivery for pregnant workers are assumed by management. Other costs are covered under the provisions pertaining to sickness, injury, or disability not occurring at work.<sup>250</sup>

The regulations give preference to union members by reducing cer-

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241. *Id.* arts. 14(a), (b).

242. *Id.* art. 15. One recent commentator indicates that men are eligible for retirement at the age of 60 after 20 years of employment. See Vermeer, *supra* note 225, at 866.

243. Labor Insurance Regulations, *supra* note 220, art. 15(a).

244. *Id.*

245. *Id.* art. 15(b). One commentator indicates that women are eligible for retirement at age 55 after 15 years of employment. See Vermeer, *supra* note 225, at 866. *But see* Chicago Tribune, Dec. 23, 1979, § 5, at 6, col. 1, which states that women retire at age 50. These variations probably result from differences among enterprises.

246. Labor Insurance Regulations, *supra* note 220, arts. 15(c), (d).

247. *Id.* art. 16(a).

248. *Id.* art. 16(b).

249. *Id.*

250. *Id.* art. 16(d).

tain benefits for non-members.<sup>251</sup> For instance, non-union members are entitled to only fifty percent of the amount of wage and relief benefits provided during medical treatment for sickness or injury not occurring on the job.<sup>252</sup> In addition, model workers, model staff members, and army "combat heroes" are entitled to certain preferential benefits when properly recommended and approved by the trade union organizations.<sup>253</sup> These preferential benefits include payment by management of the cost of expensive medicines, travel expenses, and meals during hospitalization for sickness or injury not connected with work.<sup>254</sup> Wages during sickness or injury, relief benefits, invalid pensions, allowances for disability, and old age pensions are extended in duration and enlarged.<sup>255</sup> Last, the preferred categories of workers have priority in the use of the collective labor insurance facilities.<sup>256</sup>

The administration of labor insurance funds and benefits has been entrusted to the unions.<sup>257</sup> In practice there appears to be wide variation in the functioning of the system.<sup>258</sup> The regulations make the primary trade union committees the "basic units in the administration of labor insurance."<sup>259</sup> Their duties comprise the supervision of payments from the labor insurance fund, oversight of expenses paid by management from the fund, the preparation of reports on labor insurance funds, and the encouragement of enterprises to upgrade management of public health services and collective labor insurance facilities.<sup>260</sup>

The ACFTU is denominated as the "highest leading organ" for management of labor insurance matters in the PRC.<sup>261</sup> Its responsibilities are the direction and oversight of insurance work performed by local unions and industrial union organizations, the auditing of labor insurance funds, and the preparation of annual budgets and work reports for the Ministries of Labor and Finance.<sup>262</sup> Since the activities of the

251. *Id.* art. 18.

252. *Id.*

253. *Id.* art. 19.

254. *Id.* art. 19(a).

255. *Id.* art. 19(b).

256. *Id.* art. 19(c).

257. *Id.* arts. 25-27.

258. See Kallgren, *Social Welfare and China's Industrial Workers*, in CHINESE COMMUNIST POLITICS IN ACTION (D. Barnett ed. 1969).

259. Labor Insurance Regulations, *supra* note 220, art. 25.

260. *Id.* art. 29.

261. *Id.*

262. *Id.*

ACFTU and many unions were suspended during the Cultural Revolution, their functions, including the administration of labor insurance, had to be assumed by the enterprise, the party, or other available organizations. The Ministry of Labor is the ultimate authority in labor insurance, handling enforcement of the Labor Insurance Regulations and the general supervision of insurance work.<sup>263</sup>

Since 1953 there have been no publicly announced changes in the regulations, although some have reportedly occurred.<sup>264</sup> Likewise, little has been published concerning the administration of labor insurance regulations. The available information reveals that there is much diversity in the administration and the interpretation of the regulations. This diversity results, in part, from ambiguity in the language used in the regulations and from the fact that the enterprise union has much independence in insurance matters. The need of a particular worker is often interjected, contrary to the language of the regulations, in order to allocate the limited monetary resources of the insurance fund. This is especially true in situations in which an employee is entitled to retirement or a pension. A lack of uniformity is one by-product because there are no formal standards established to determine the requisite need even in those situations in which it is a permissible consideration under the regulations.

The insurance system also lacks uniform criteria to determine the existence of a work related disability. Finally, the use of an individual's political activity as a criterion for the award of benefits increases the unpredictability of the system.

The goals of the present leadership necessitate renewed emphasis on labor insurance matters and the expansion of coverage. Article 50 of the 1978 Chinese Constitution reflects this viewpoint when it declares: "Working people have the right to material assistance in old age, and in case of illness or disability. To ensure that working people enjoy this right, the state gradually expands social insurance, social assistance, public health services, co-operative medical services, and other services."<sup>265</sup>

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263. *Id.* art. 31.

264. For a discussion of recent developments in social insurance, see Vermeer, *supra* note 225, at 866-68.

265. THE CONSTITUTION OF THE PEOPLE'S REPUBLIC OF CHINA, *supra* note 22, art. 50.

## VI. THE REGULATION OF LABOR RELATIONS IN JOINT VENTURES

The Law on Joint Ventures gives little guidance concerning how much freedom China will allow joint ventures with foreign firms in dealing with labor matters. Although Article 2 of the law declares that “[a]ll activities of a joint venture shall be governed by the laws, decrees and pertinent rules and regulations of the People's Republic of China,” Article 6 provides that “[p]rocedures covering the employment and discharge of workers and staff members of a joint venture shall be stipulated according to the law in the agreement or contract concluded between the parties to the venture.”

Because of the ambiguity in the law, clarification must be sought in the specific provisions of joint venture agreements, the rules for the special economic zones, and the “Regulations on Labour Management in Joint Ventures Using Chinese and Foreign Investment.”

In March 1980 the first details of a joint venture agreement were made public. The contract, creating the China Schindler Elevator Co., Ltd., contains a number of important provisions concerning labor relations.<sup>266</sup> It establishes an average wage of Rmb 2,042 per worker per year with a sixty percent increase to Rmb 3,264 over a five year period. These wages are to be paid to a governmental agency rather than directly to the workers. The wages actually paid to the workers will be left to the discretion of the agency involved but are expected to be approximately twice the wage paid for similar jobs in domestic enterprises. Finally, the agreement gives the board of directors of the joint venture the power to dismiss unsatisfactory workers.

In January 1980 rules for joint ventures in Shekou Industrial Zone in southern Guangdong Province were announced by the Chinese owned China Merchants Steam Navigation Co. (“CMSN”).<sup>267</sup> CMSN, which reports to the Ministry of Communications, was given control over Shekou as part of China’s early attempts to attract foreign investment. The Shekou rules allow a joint venture to “scrutinize” workers before

266. For details of the China Schindler Elevator Co. Ltd. joint venture, see *China Approves a Joint Venture with Swiss Firm*, Wall St. J., July 11, 1980, at 16, col. 1; *Chinese Joint Venture Provides Guidelines for Future Equity Deals*, Bus. ASIA, Mar. 28, 1980, at 98. For a summary of other early joint ventures, see *China Approves Joint Ventures with Outsiders*, Wall St. J., Apr. 23, 1980, at 16, col. 1.

267. *Shekou’s Investment Rules*, Bus. ASIA, Jan. 18, 1980, at 22. A summary of these rules is printed in Ernst & Whinney, People’s Republic of China, at 7 (Int’l Series August 1980). For a discussion of recent developments in the Shekou Industrial Site, see *China Prepares to Lure Foreign Investors to Build Plants at Shekou Industrial Site*, Wall St. J., Aug. 5, 1981, at 25, col. 5.

hiring them and to dismiss workers who violate the joint venture's rules and regulations. The rules also provide that workers are to be paid in Hong Kong dollars, which must be converted into renminbi. Although the rules do not provide for a specific wage, the average compensation for ordinary workers will be higher than for comparable workers in China but lower than those paid similar workers in Hong Kong.

At the Fifteenth Session of the Standing Committee of the National People's Congress, held in August 1980, "Regulations on Special Economic Zones in Guangdong Province" were adopted.<sup>268</sup> The regulations have specific provisions concerning labor management relations in joint ventures. Article 19 states that labor service companies are to be established in each of the special zones in Guangdong Province. These labor service companies are to recommend Chinese workers and staff members for employment by the joint venture. The joint venture may also recruit its own workers and staff members with the consent of the Guangdong Provincial Administration of Special Economic Zones. These joint ventures are empowered to test workers before employing them and to enter into labor contracts with them.

Article 20 provides that employees of joint venture in the special economic zones are to be utilized by the joint venture according to the provisions of the labor contract. Joint venture employees are also free to submit their resignations as provided in their labor contract.

Wages, award methods, labor insurance, and various state subsidies for Chinese workers and staff are to be included in the contracts signed between the joint venture and employees pursuant to the requirements of the Guangdong Provincial Administration of Special Economic Zones.<sup>269</sup>

Finally, Article 22 covers labor protection, declaring that the joint venture must take adequate measures to ensure that their employees work in safe and hygienic conditions.

The Guangdong Special Zone regulations leave many unanswered questions and create uncertainty about the continuing validity of the earlier rules of the Shekou Industrial Zone, which is technically cov-

268. For a translation of the regulations, see *Regulations on Special Economic Zones in Guangdong Province*, MONSOON, Oct. 1980, at 11. For a discussion of these regulations, see *China Seeks to Improve Labor Rules Affecting Trade Zones*, Wall St. J., June 5, 1981, at 25, col. 5; *Two Important Regulations*, BEIJING REV., Oct. 6, 1980, at 20.

269. *Regulations on Special Economic Zones in Guangdong Province* art. 21, reprinted in MONSON, Oct. 1980.

ered by the Guangdong Special Zone regulations.<sup>270</sup> Apparently the Chinese have not yet determined where Shekou fits within the special zones or how special it should be.

New industrial zones are also being established in Fujian Province. The first such zone, Huli, is located on the northwest part of Xiamen Island in the city of Xiamen (Amoy).<sup>271</sup> While only limited information is available about this zone, an official did confirm that foreign investors in the zone will be able to test workers prior to their employment. Workers can also be dismissed if they do not perform at the level stipulated in their employment contracts.

In addition to the regulations covering special zones, the Chinese also adopted "Regulations on Labour Management in Joint Ventures Using Chinese and Foreign Investment" in September 1980.<sup>272</sup> It is uncertain at the present how these regulations will affect the special zone regulations. However, it is clear that the sixteen articles of the regulations are much more detailed than the rules relating to special zones.

The regulations require that matters relating to the terms and conditions of employment, including wages, discipline, labor insurance, and labor protection, must be stipulated in contracts. These contracts are to be signed by a joint venture and the trade union established in the joint venture. Small joint ventures, however, may sign individual contracts with their workers and staff members. An executed labor contract must be submitted to the labor management department of the appropriate governmental subdivision for approval.<sup>273</sup>

In an attempt to provide labor efficiency, the regulations give joint ventures limited control over selecting and discharging their employees. Article 3 provides that "[t]he workers and staff members of a joint venture . . . should all be selected by a joint venture through examination for their qualification."<sup>274</sup> Article 4 gives a joint venture the power to discharge "surplus" workers resulting from changes in methods of production when such workers remain unqualified after training and

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270. *China Confuses Zone Rules*, BUS. ASIA, Oct. 3, 1980, at 318.

271. *Industrial Zones in Fujian Province: An Investment Opportunity*, BUS. ASIA, Nov. 14, 1980, at 363.

272. For a translation of the regulations, see BUSINESS STRATEGIES FOR THE PRC, *supra* note 4, at Appendices H & I.

273. Regulations on Labour Management in Joint Ventures Using Chinese and Foreign Investment art. 2, reprinted in BUSINESS STRATEGIES FOR THE PRC, *supra* note 4.

274. *Id.* art. 3.

are unsuitable for other positions available. If a worker is discharged, however, he must be paid an unspecified amount of compensation and given another job either by the joint venture or the labor management department. In addition, "punishment by discharge" is permitted for violations of rules and regulations of a joint venture that result in "bad consequences."<sup>275</sup> Such a discharge must be reported to the authorities responsible for the joint venture and the labor management department of the appropriate governmental subdivision for approval.

The joint venture trade union has the right to object to disciplinary action or to the discharge of workers and staff members when it considers the action taken unreasonable. The union is authorized under the regulations to send representatives to attempt to resolve such matters through consultation.<sup>276</sup> If consultation fails to solve the problem, however, the procedures in Article 14 of the regulations may be invoked.

Article 14 states that labor disputes in a joint venture should be resolved by consultation between the parties. If that fails, either or both parties may request arbitration by the labor management department of the provincial government, autonomous region, or municipality where the joint venture is located. If either party disagrees with the arbitration result, it may file suit in the people's court.<sup>277</sup>

The wages of workers and staff members in a joint venture are set by the regulations at 120% to 150% of the wages of workers and staff members of state-owned enterprises in the same trade in the area.<sup>278</sup> Wage standards, the form of wages, bonuses, and subsidy systems, are to be determined by the board of directors of the joint venture.<sup>279</sup>

The regulations require that bonuses and welfare funds taken from a joint venture's profits must be used for these purposes and must not be misappropriated.<sup>280</sup> The joint venture must pay for workers' labor insurance, medical expenses, and government subsidies in accordance with the standards existing in state-owned enterprises.<sup>281</sup>

Article 13 of the regulations governs labor protection. It requires

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275. *Id.* art. 5.

276. *Id.* art. 6.

277. *Id.* art. 14.

278. *Id.* art. 8.

279. *Id.* art. 9.

280. *Id.* art. 10.

281. *Id.* art. 11.

that joint ventures must comply with the relevant rules and regulations of the Chinese government on labor protection and worker safety. The labor management department of the Chinese government is authorized to monitor compliance with these standards.

Finally, Article 15 of the regulations gives the State Bureau of Labor the right to interpret the regulations.

Despite the specific provisions of the joint venture agreements and the rules and regulations enacted by the Chinese, a number of serious problems remain in labor-management relations in joint ventures. Many of the joint ventures established in 1979 and 1980 have been frustrated by labor related problems.<sup>282</sup> Even after training programs, the quality and quantity of production in some factories have been hurt by the payment of inadequate wages and the lack of an experienced, disciplined, skilled, and educated work force. Joint ventures that sought to dismiss unsatisfactory workers initially met resistance from the Chinese authorities. Only after the suspension of operations in some joint ventures did the Chinese agree to fire nonproductive workers and increase incentives for others. Although joint ventures are continuing, the experiences of the past year indicate that it will take more than contracts, rules, and regulations to make labor-management relations a success in joint ventures.

## VII. CONCLUSION

Chinese labor law has been characterized by dramatic swings in policy orientation since 1949. Policy changes have been most evident in relation to the role of trade unions, the use of material as opposed to moral and ideological incentives for workers, and in the proper emphasis on labor discipline.

After the final communist victory, trade unions were allowed considerable latitude of operation and nearly fulfilled their assigned "transmission belt" role. However, the pendulum of official policy swung back, and by 1957 the Party had established total dominance over the trade union organization. The year 1966 marked the farthest point of the pendulum's leftward movement with the abolition of the ACFTU. Unions reemerged in 1973 and now have a revitalized role in modernizing China, albeit under Party control.

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282. For a discussion of some of these problems, see *Problems Hobble China Joint Venture*, Wall St. J., Dec. 11, 1980, at 27, col. 1.

Chinese incentive policy has followed a similar but more vacillating course. From 1949 through 1958, China followed the Soviet example and employed material incentives for its workers. In 1958 a new policy began to emerge with emphasis being given to "moral rewards." Bonuses and piece rate pay were ultimately abolished, and labor emulation campaigns abandoned monetary rewards.

Following the dismal experience of the Great Leap Forward, the government returned to wage increases, bonuses for overfulfillment of quotas, and monetary rewards in labor emulation campaigns. But during the Cultural Revolution Mao once again proclaimed the supremacy of nonmaterial incentives. Political education replaced material rewards as a catalyst for stimulating production. Bonuses and piece rate pay were discontinued, and labor emulation campaigns appealed to political consciousness rather than to the pocketbook.

With the passing of Mao Zedong, material rewards were reestablished for Chinese workers, although the 1978 Constitution lists both material rewards and moral encouragement as sanctioned incentives. Presently, experiments with enterprise autonomy in management create the opportunity for a greater use of bonuses to spur productivity.

Official Chinese oscillation toward labor discipline has also been evident. Once in control, the Party attempted to abolish strikes in order to increase production. Indeed, the 1954 Constitution called for labor discipline while establishing no right to strike. In 1957, however, Mao gave limited endorsement to certain strikes in reaction to low wages, work assignments, poor welfare benefits, and harsh work rules as tools in the struggle against bureaucracy. This endorsement culminated in the excision of the 1954 duty to uphold labor discipline from the 1978 Constitution and the guaranty of the right to strike.

The present Chinese Constitution is the result of a compromise regarding labor discipline. Article 45 retains "the freedom to strike" while Article 57 provides that citizens must "observe labour discipline, observe public order, respect social ethics." The trend toward greater labor discipline is evident in the recently promulgated "Regulations on Labour Management in Joint Ventures Using Chinese and Foreign Investment," which allow "punishment by discharges" but require approval from the joint venture authorities and the labor management department of the appropriate governmental subdivision.

If any lesson can be learned from the sometimes lucid, sometimes enigmatic course of Chinese labor law, it is that change is the norm.

Today emphasis is on unions, labor discipline, material incentives, worker protection, and modernization. Tomorrow may bring retrenchment.