



Chang Kai: how the government deals with strikes

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In terms of how the government treats and handles strikes and other collective labor disputes, I've long advocated for it to use an approach of "rational treatment, rule-of-law resolution." As the legal consultant for the "Nanhai Honda" labor talks, I believe that the local government adopted a proper method for handling the strike that occurred at that company.

Firstly, the local government did not view the strike simply as a "sudden outburst" or "destabilizing" incident in order to impose intervention by the state apparatus, neither did it just declare that the action was "workers violating the law" so as to interfere directly with the workers' action. Instead it viewed it as a labor dispute arising out of problems over wages. The government assumed a neutral position as a third party mediator, urging both sides to sit down and resolve issues through negotiation. Eventually, a collective agreement acceptable to both sides was reached, resulting in a smooth resolution to the collective labor dispute.

For "rational treatment", it is important to make a correct judgement about the nature of workers' strike action. Looking at current strike actions in China, the vast majority are labor disputes of an economic nature, including collective disputes brought on mostly by losses incurred through the restructuring of former state-owned enterprises and damages to workers' interests. Collective disputes with private enterprises are basically due to issues of working conditions, either the standards are too low or the treatment is unfair. It can be said that strikes at restructured enterprises are more complex because they involve political factors related to past government policies. However the nature of strikes at private enterprises is generally simpler, and workers are merely seeking better treatment and improved labor standards.

To determine the nature of strikes, it's necessary to conduct a detailed analysis on why workers choose to strike. For them, launching or participating in a strike is by no means a rash move, but one made only after difficult considerations. Strike action is high-risk

¹ Translated from Chinese. Read the original Chinese 常凯：政府如何处理工人罢工 at: <http://www.caijing.com.cn/2010-08-05/110492061.html>

and costly. At a time when our legal system is not yet well-established, the final outcome of any strike is completely unpredictable. Participants in a strike face multiple risks, including economic risks, when wages may be withheld and contracts rescinded; political risks, since a strike may be seen as a “destabilizing factor” or behavior that “undermines stability”; and criminal risks, as participants may be held criminally responsible for “illegal assembly to disrupt the social order.” Therefore, if workers initiate and participate in a strike, it’s most certainly a final choice and their only alternative. That is, they would have already exhausted all other options for achieving their reasonable demands, and striking would be an unwise move if other ways existed to solve the problems. Moreover, it’s not likely that a few people could “incite” dozens or hundreds or even thousands of people to take such action. Whilst we hope that workers should not try to realize their aspirations by such means, if they’ve chosen this path it shows that they have no other options. We should therefore give them our deepest sympathy, and hope to resolve the dispute as soon as possible within a legal framework.

So, when dealing with such incidents, the government should not force employers to acquiesce to workers' demands, nor should it force labor to return to work unconditionally. Instead, the government should take an impartial and neutral third-party position, and conduct a detailed analysis of the cause of the dispute, mediate between labor and management, promote and facilitate collective bargaining between the two sides in order to resolve disputes.

Relevant laws and regulations should be used for the resolution of strikes under the rule-of-law. Chinese law contains specific provisions on how to deal with strikes. Article 27 of the “Trade Union Law” provides: “In case of work-stoppage or slow-down strike in an enterprise or institution, the trade union shall, on behalf of the workers and staff members, hold consultation with the enterprise or institution or the parties concerned, present the opinions and demands of the workers and staff members, and put forward proposals for solutions. With respect to the reasonable demands made by the workers and staff members, the enterprise or institution shall try to satisfy them. The trade union shall assist the enterprise or institution in properly dealing with the matter so as to help restore the normal order of production and other work as soon as possible.” This law has two clear mandates to restore the order of production where there has been a stoppage or go-slow. One is that the union is “obliged” to represent the employees in consultation with the enterprise, and reflect their views and demands while proposing solutions; second, the enterprise is “obliged” to address the reasonable demands of labor. It is obvious that settling the reasonable demands of striking workers is a prerequisite to resuming the order of production. And the path to resolution is through collective bargaining between management and labor. With the strike at Honda, work was resumed precisely based on the settling of labor’s reasonable demands.

It is necessary for economic disputes not to be politicized if strikes are to be resolved by adhering to the rule of law. Disputes should not be simply seen as “sudden outburst” incidents and problems of social stability that have to be suppressed by force. The use of the police to force labor to return to work should also be avoided. Otherwise it will be seen that force has been used to end strikes, which in fact complicates problems even more. This approach only results in labor relations becoming more tense, making psychological and emotional alienation and confrontations more serious. Moreover, this kind of government action would transform the original conflict between labor and management into a conflict between workers and government. A government attempt to shield the bosses would make workers resent it even more. For the ruling party, this is

very short-sighted behavior that requires great effort but brings little return.

In looking at the historical development of labor policies in other countries, capitalist systems which were in the process of initial accumulation of capital would suppress labor strike harshly, but market economies have long abandoned this practice. China is a socialist country where the constitution clearly states that the proletariat are the leaders. It's an extremely unwise political choice to follow the labor policies of early capitalism to deal with labor conflicts and workers strikes.

Local government dealt with the situation in Nanhai Honda with a "rational treatment, rule-of-law resolution" approach. It assumed an impartial third-party position, it promoted and presided over bilateral negotiations which were undertaken in good-faith. The pro-active way in which the local government handled the Nanhai Honda strike can serve as a reference for handling such situations from now on.

Superficially Honda strike settlement looks quite satisfactory, but there are deeper underlying critical issues. One institutional problem is, in relative terms, there is no systematic process for handling collective labor disputes. The "Labor Dispute Mediation and Arbitration Law," which is intended to provide for mediation and arbitration, is limited to individual labor disputes. In handling collective labor disputes, the laws covers only disputes related to the implementation of collective contracts. Provisions for dealing with disputes in collective bargaining and collective action (strikes) exist only in principle, and concrete implementation of these principles lack institutions and mechanisms. Therefore, many places often have no guidelines to follow in handling and resolving them. Building a complete mechanism for handling collective labor disputes is an urgent issue in the improvement of labor laws at this moment in time.

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