



## Should China create a law on strike?

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Even though strikes frequently occur across China, the country actually has no law regulating labor strikes. There is no law *permitting* strikes, but at the same time there is no law *banning* them. After the high-profile strike wave in the automotive sector last year, a small number of public comments were published in China, online and in the print media, discussing the question of whether or not there should be legislation about workers' right to strike. In this issue of CLNT we provide translations of two articles which argue in favour of introducing a law on strike in China, but we will argue that legislating on strike at this juncture in Chinese labour history will actually disadvantage Chinese workers. We are aware this goes against the tide of calling on China to pass the sacrosanct law on strike, but our assessment of the situation is that this demand should be left to the Chinese workers themselves.

### The legality of strike in China

Chinese workers used to have a legal right to strike, contained in the Chinese Constitution, but this clause was removed in 1982. Since then, strikes have occurred in a legal gap. Strikes have been often repressed violently by employers and the state, but this is not because of any legal prohibition on industrial action.

The extremely high incidence of strike in China – and workers' success in using strike to improve working conditions – have prompted both government authorities and employers to acknowledge that the orderly resolution of strikes is important for social stability and for production. Having said that, there is still little public discussion in China about whether strikes should be regulated by law.

In this edition of CLNT, we provide two translations, both of which argue in favour of introducing laws to regulate strikes. The question of right to strike is crucially important for workers in any country, and so we will analyse the two articles in some detail.

### Zeng Qinghong

Zeng Qinghong (曾庆洪) is the general manager of the Guangzhou Automobile Group, the President of the Guangdong Provincial Automobile Industrial Association and a member of the Chinese National People's Congress (not to be confused with another Zeng Qinghong (曾庆红), who was Vice-President of China from 2003 to 2008). In as much as the Guangzhou Automobile Group is a state corporation, Zeng himself, is an influential state official, who wears multiple hats simultaneously. Zeng was involved in mediating a resolution to the strike in the high-profile Nanhai Honda plant in 2010. But since the Guangzhou Automobile group is a shareholder of the Guangzhou Honda Company, Zeng is also a manager of Guangzhou Honda, and has an interest in trying to

end the strike of a Honda supplier plant as quickly as possible. It was, however, in the capacity as the Guangdong Automobile Association President that he went to mediate the strike.

In March this year, as a member of the National People's Congress, he put forth a proposal to that strikes be recognised in China as a normal feature of a market economy, and that they be regulated by law. Importantly, Zeng affirms the legitimacy of strike as a bargaining tool for workers. He argues that the government should not automatically force workers back to work, without considering their economic demands.

The core of Zeng's proposal is that strikes about workers' "economic" interests should be legalised (within strict boundaries), but strikes that "disrupt social order" should be deemed illegal. Zeng also suggests that strikes should be banned for key public sector workers.

Zeng places the trade union at the centre of his proposal, recommending that any strike must go through the official union organisation. Zeng recognises that the trade union must be reformed before it can function as a genuine workers' representative, including democratic election of union leaders and financial independence from company management.

Zeng's article is very long, and if readers do not have time to read the whole thing we suggest you go straight to Section 4 on "Concrete suggestions".

This section proposes many restrictions on strike action that readers might recognise from their own countries, including:

- the need for workers to give employers' advance notice of strike action
- the authorities' right to order a return to work for a "cooling off period"
- the need for the majority of union members to vote for strike action before it can legally take place, and;
- an employers' right to recruit replacement labour (or scabs).

**Click below to read Zeng Qinghong's proposal:**

**Zeng Qinghong: regulate the right to economic strike so as to create harmonious labor relations**

[http://www.clntranslations.org/file\\_download/136](http://www.clntranslations.org/file_download/136)

**曾庆洪：规范经济罢工权 构建和谐劳动关系**

<http://www.jtpt.cn/a/report/opinion/2011/0307/942.html#>

## **Chang Kai**

Chang Kai is chair of the Labor Relations department at Renmin University in Beijing, a well-known labor legal scholar in China and the advisor of many labor law drafting committees. He is well connected with labor NGOs in China, Hong Kong and abroad. After the Nanhai Honda strike broke out in May 2010, he acted as a legal advisor for the strikers.

His message in this article is that the government should not over-react to strikes, but handle them "rationally". He argues that by cracking down on strikes, the government

unnecessarily turns workers' anger at their employer onto the state. Instead of repressing strikers, he advocates that the government should use the law to regulate industrial action, and position itself as a neutral mediator between labor and capital. However, he does not provide any specifics on what should be included in this law.

**Click below to read Chang Kai's article:**

**Chang Kai: how the government deals with strikes**

[http://www.clntranslations.org/file\\_download/137](http://www.clntranslations.org/file_download/137)

**常凯：政府如何处理工人罢工**

<http://www.caijing.com.cn/2010-08-05/110492061.html>

### **Strike laws would not serve workers' interests**

In relation to these two articles, and the question of strike laws in general, CLNT argues that implementing a law on strike in China at this juncture in China's labor history would only restrict workers' ability to use industrial action to improve their working conditions. On this point, we differ from some other commentators, such as China Labour Bulletin, which was more positive about Zeng Qinghong's proposal to legislate on strikes, calling it an effort to "*protect* the right of Chinese workers to go on strike".<sup>1</sup> We see it, rather, as an effort to restrict workers ability to go on strike. Workers have greater bargaining power in the absence of a law on strike.

Any law that defines a strike as legal only if it is approved and led by the official trade union would be tantamount to a ban on strikes in China. To suggest that strikes should have to be co-ordinated by the All-China Federation of Trade Unions (ACFTU) at any level is unrealistic and violates international principles of freedom of association. The ACFTU leadership are not elected by workers and are therefore not their representatives. Furthermore, the ACFTU has never organised a strike in the history of the People's Republic of China. That is why workers have been sidelining the ACFTU when going on strikes. Zeng Qinghong's proposal is an attempt to strengthen and re-embed the ACFTU in Chinese industrial relations, and use it to pacify workers.

The reality is that most Chinese workers are not organised (at least not formally), especially migrant workers in the private sector. They do not have easy access to information about industrial relations laws and procedures, and their ability to bargain for better working conditions will be severely restricted if they are required to jump through bureaucratic procedural hurdles before they can strike legally.

Furthermore, the distinction between "economic" strikes and those that "disrupt social order," (ie. strikes that are "political" in nature), is highly problematic. "Disrupting social order" is a term applied very loosely to social movements in China, and it is a term that could easily be used to crack down on strike action.

In countries with a mature industrial relations system the laws regulating strikes were results of long periods of workers' struggles until finally capital and state agreed to recognize labor as an official partner in legislative negotiation. Even then, the laws

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<sup>1</sup> China Labour Bulletin, "Chinese legislator calls for restoration of the right to strike", 11 March 2011. Available at: <http://www.clb.org.hk/en/node/101005>

restrict strike actions. In China, since the ACFTU is only an arm of the state, genuine “tripartite” negotiation does not exist, and a law on strike will necessarily be disadvantageous to workers. If such a law were passed in China, the institutional support would not be there to help workers negotiate through the complicated procedures necessary to stage a “legal” strike. Even if a law on strike may raise workers' awareness that to strike is legal, political circumstances will make sure it is not attainable.

A good example is Vietnam. A very detailed Article on strike procedure has been in the Vietnamese Labor Code for more than a decade. In 2004 the Code was revised to illegalize any strikes not led by the trade union. Since then, out of several thousand strikes that have taken place, not even one can be called legal. Fortunately the Vietnamese government has not been enforcing its own laws to charge workers for taking part in illegal strikes. In fact, the Vietnamese press and government have avoided characterizing those strikes as “illegal”. But as the number of strikes continues to rise, it is foreign capital, particularly the Taiwanese, who persist in pointing out those strikes as “illegal” putting a lot of pressure on the Vietnamese government to “seriously handle” the strikes, meaning they should use the law as a tool to suppress strikes.

It is notable that Chang Kai, who claims to be a labor advocate, does not mention anything about the steps needed to institute genuine workers' representation by holding democratic elections of workplace trade unions. The resistance workers face when trying to recall yellow unions and elect their own representatives was clearly demonstrated at the Nanhai Honda plant, where workers went on strike in May 2010 and demanded a democratic union election. Researchers studying the factory report that, following the strike, the Guangdong Provincial Trade Union maintained strong, top-down control over collective bargaining and union elections. Some rank-and-file workers were able to win union committee positions, but senior positions remain dominated by managers, and the position of union chairman was exempted from re-election. The appointed union chairman from before the strike is still in place. From this case we can see, top-down trade union intervention in strike sites is approved, but trade unions elected by workers themselves are still tightly controlled. Chang Kai was closely involved in bargaining at the Nanhai Honda site, and must be aware of this.

For the time-being, discussion over the right to strike is not a legislative priority in China, but these two articles, for instance, reflect that influential advocates are laying the foundations to argue for enacting a law on strike. Without any channel to air their grievances and to seek justice, workers are bound to use strikes in increasing numbers over the coming years, and attempts to restrict the right to strike in law cannot be far away.