A peaceful and compliant urban labour force is integral to the success of China's reform program; but even as workers’ real wages rise and the Chinese economy starts to become less dependent on labour-intensive manufacturing, worker unrest remains a problem, and one that factory managers and owners as well as local officials often seem unable to cope with. The Third Plenum was a good opportunity for the central authorities to put in place new solutions. But Professor Anita Chan argues here that the Plenum’s policy proposals in this field turned out to be inadequate.

The Chinese Trade Union Federation at the Crossroads – Relaxing Control over Labour or Risking Labour Instability

Anita Chan

As the number of mass incidents (群众事件) has continued to rise in the past decade, the paramount concern of the Chinese Communist Party (CCP) has become one of maintaining social stability. One of the major types of ‘mass incident’ has been labour protests. For some years the CCP has delegated to the All-China Federation of Trade Unions (ACFTU) a responsibility to contain labour unrest before it explodes into bigger and more organised and violent disturbances. How the ACFTU handles this mission impossible is the subject of this presentation. The ACFTU needs to devise a balancing act between relaxing pressures and not letting things get out of hand. Does the CCP’s Third Plenum Decision of November 2013 have anything to contribute to helping with this balancing act?

I will first identify some fundamental issues faced by the ACFTU. Then I will discuss whether the several labour-related Articles in the Third Plenum’s Decision are likely to have any impacts on the union federation and labour.

China’s neglect of core labour rights
As labour unrest increased in the late 1990s the CCP began pressuring the ACFTU to find solutions. However, being under the constraint of the Chinese Trade Union Constitution, the ACFTU cannot deviate from the ‘guidance of the Party’, meaning that both union and workers have little room to act independently.

In the mid-2000s the ACFTU came up with a new policy that, if successful and rolled out in China, would have changed the industrial relations landscape. It would have let workers elect their own trade union branches at workplaces without the
ACFTU losing control, and then move on to what the Chinese union titles ‘collective consultations’ (集体协商) with management. For the ACFTU, this would have killed two birds with one stone. China would have partially adopted the terms of the two core labour rights Conventions of the ILO (International Labour Organization): Convention no. 87, Freedom of Association and Protection of the Right to Organise, and Convention no. 98, The Right to Collective Bargaining (neither of which it has ratified). From the point of view of ACFTU’s own institutional self-interest, first, it might finally have been welcomed into the fold of international trade unions. This is a status that the ACFTU had aspired to for some years. Second, it would have stabilised industrial relations. Labour history shows internationally that organised labour representation has helped stabilise industrial relations.

Thus in 2006, when the Communist Party renewed its pressure on the ACFTU, the union federation initiated a new thrust by secretly organising employees at eighteen Walmart stores to elect their own workplace union committees without Walmart’s knowledge (as opposed to being appointed by upper level trade union officials together with management). The elections were genuinely democratic. This marked the ACFTU’s first ever attempt to take a small step towards honouring ILO Convention no. 87. Unfortunately, within a matter of weeks the ACFTU reversed this new initiative. It came to an agreement with Walmart that management and trade unions would together decide on who to appoint to be ‘elected’ to trade union branch committees. With this, the democratic elections came to an end. After that the ACFTU launched a nationwide campaign to have so-called ‘direct elections’ (直接选举), which meant pro forma elections directly controlled by local trade unions and/or management. The use of the word ‘direct’ is to avoid using the word ‘democratic’.

One of the paramount functions of any trade union is to carry out collective bargaining with management. Interestingly, China has always recognised what it calls ‘collective consultation’, which approximates ‘collective bargaining’, but with Chinese characteristics. There is a fundamental difference between the two. Collective consultation assumes a non-adversarial relationship between management and labour and assumes the consultative outcome is a win-win situation for both parties, while collective bargaining is premised on an adversarial relationship between the two parties and assumes a zero-sum negotiated outcome. ‘Collective consultation’ is a turn of phrase used to avoid recognising class conflict between capital and labour. Yet gradually ‘collective bargaining’ has been slipping into the official vocabulary, since after all the reality is any labour dispute is born out of an adversarial relationship between management and labour. The ACFTU has been accepting, indeed requesting, collective-bargaining training programs from foreign trade unions, indicating it implicitly recognises the adversarial relationship.

A question is: why is the Chinese government willing to accept collective bargaining but not freedom of association, even though freedom of association whereby workers can have their own elected union representation is normally a pre-
condition for collective bargaining? Without genuine representation it is not possible to have genuine collective bargaining. The Communist Party and the ACFTU have no intention of letting workers have their own representation. They are side-stepping the crux of the matter and are determined to maintain their tight control over labour. At the grassroots level in China, labour advocates, labour scholars, and even trade union officials have been discussing and debating these issues in conferences for some years. The Party and the ACFTU are caught in a contradictory situation, as any liberalisation of grassroots union organisation is a double-edged sword.

The Third Plenum Decision – a document of little significance for labour

The Third Plenum Decision basically reiterates the status quo in the Party’s stance toward labour and the ACFTU. The Decision’s various vague policy statements on labour will not take China’s industrial relations system in a new direction. The Party is caught in a dilemma of how to attain labour harmony, one of the most important priorities of the ruling authorities.

Let us go through the relevant Articles of the Plenum Decision. Article 44 refers to improving the wage collective consultative negotiation system, but only in passing, without specifying any substantive new suggestions. Notably, it still uses the phrase ‘collective consultation’ rather than ‘collective bargaining’. It does not address the fact that even though the phrase ‘collective consultation’ was inserted into the Chinese Labour Law more than twenty years ago and the ACFTU has launched campaign after campaign to set up these consultative meetings, almost nothing has changed.

Another example: Article 29 of the Decision proclaims a desire to improve ‘democratic management’ (民主管理) in enterprise institutions and in public institutions (企业单位, 事业单位), and specifically mentions the ‘staff and workers representative congress’ (职工代表大会) as the basic democratic management system of these institutions. This oft-used Party expression ‘democratic management’ has been on the books for many years. To hail the staff and workers congress as a basic democratic system is not new either. When Deng Xiaoping began launching enterprise reforms in the early 1980s, he re-established the staff and workers representative congresses in state-owned enterprises as a means to offset slightly the increased authority that was being granted to company management. A few years later, in 1987–88, the ACFTU even argued that an article should be inserted into the Labour Law that the congress was to be the highest authoritative institution in an enterprise. Reformists in the ACFTU were then aggressively promoting the staff and workers congress as a potential defender of labour in China’s transition to capitalism. In doing so the ACFTU had to contend with pro-capital and pro-management bureaucratic interests. But in the 1990s, as enterprise reforms steamed ahead, resulting in the lay-off of millions of state enterprise workers, the role of the congress was smothered. Since then in most state enterprises it has become either a defunct or a formalistic institution, only to be dragged out to legitimise management
decisions. In a few rare cases workers have ‘discovered’ the congress’s authoritative power that is written in law and have used it to confront management. But this is so rare that the rhetoric in the Decision about staff and worker congresses reads like platitudes and rings hollow to the ear.

Of note is that the Decision does not touch on the issue of democratic elections of trade union committees. This is indicative of the Party’s reluctance to let the ACFTU renew anything akin to the earlier Walmart union election programme of 2006. In sum, the Decision has not outlined any breakthrough that can move China closer to recognising the two ILO core labour rights conventions that some reformists in the ACFTU would like to see.

However, the Decision does reiterate a number of Party/government efforts to ‘improve’, ‘deepen’ and ‘advance’ existing policies, which if implemented will help workers’ livelihoods. For instance, Articles 43, 44 and 45 of the Decision promise to create higher employment, do away with discrimination in hiring practices, improve the setting of the minimum wage, provide a fairer distribution of income in society and a fairer social security system, narrow the gap between urban and rural disparities, and so forth. These are not new proclamations. Could the Decision have proclaimed otherwise? The minimum wage, for instance, has been increasing at a double-digit rate annually in the past seven years. This has been beneficial to migrant factory workers, whose wage levels tend to hover close to the minimum wage. To workers, the main issues are unpaid or underpaid overtime work, wage cheating and excessive overtime, issues that have remained fairly unchanged in the past two decades. Based on my detailed computation of wage data collected in my research projects, when the monthly wage is converted into an hourly wage, the actual wage level is generally lower than the legal wage by about 30 per cent due to underpayments in the large amount of overtime work. This problem has been near-universal in the foreign-funded industrial sector for many years, though it also exists in the state sector. The root cause is lack of enforcement by local authorities and the ACFTU.

The Decision’s significant impact lies in what it has avoided confronting. It says nothing about labour unrest; it tenaciously sticks to the expression ‘collective consultation’; and it is silent on the emergence of some 60 million dispatch (temp agency) workers in the labour market in both the manufacturing and service industries. Nor is there any reference to workers’ participatory role. All in all, as far as labour is concerned the Decision is just a goodwill gesture, projecting China as a nation of wellbeing and social harmony aspiring to attain Xi Jinping’s ‘China Dream’.

The ACFTU’s reaction to the Third Plenum Decision
How has the ACFTU responded to the Third Plenum Decision? The day after the closing of the Third Plenum, the front-page article in Workers Daily reaffirmed that the ACFTU is a mass organisation under Party leadership, that it would be of service
to the Party and the state, working towards the common good, and that it would raise high the banner of socialism with Chinese characteristics. The language was trite and full of Maoist-era jargon. Two or three weeks later the ACFTU’s official website and Workers Daily issued a spate of documents, speeches and conference reports eulogising the wisdom of the Decision in deepening reforms. The ACFTU declared that it would propagate the Party’s message far and wide to the lower levels of the union, and that union officials would study the Decision with diligence. All this is standard Chinese-style bureaucratic protocol after the announcement of any broad-ranging Party decision.

A fine example of the ACFTU’s trite and empty reaction to the Plenum Decision was a 6th December People’s Daily article penned by Li Jianguo, a Member of the Communist Party Politburo and the ACFTU Chairman. After five lines of praise for the Decision’s new ideas and important theory, Li plunged into recounting two special talks Xi Jinping gave to ACFTU officials earlier, in April and October 2013. In one short article he referred to the ‘China Dream’ eighteen times. Was this just regular bureaucratese, or was Li being especially eager to show off his personal obsequious deference to Xi Jinping? It is difficult to tell, but what comes through very clearly is that the ACFTU would remain subserviently under the Party’s absolute control. Li seemed incapable of extracting from the Plenum Decision anything of substance to highlight. His article openly illustrates the big psychological, social and emotional distance between the top Party leadership and lower level trade union units and workers, a gap that at one time Mao had attempted to bridge.

**Reality on the ground**

The ACFTU is the bureaucracy that has daily interaction with workers. City-level, district-level, and street-level (街道) union officials and staff are at the front line, dealing with labour issues and the increasing incidence of industrial conflicts. They are thrust into a position torn by conflicting demands. By its constitution, the ACFTU’s task is to protect workers’ legal rights, but at the same time it is also to serve as a transmission belt between workers and the state. In practice, the trade union chairperson at each level is appointed by the party-state at the same level, and not by the trade union one level above. He or she is accountable to the local party-state and not to the workers. Therefore it is quite normal that new union appointees have never previously been involved in trade union work, and might even have been state enterprise managers or officials from some other local bureaucracy whose previous responsibilities had sometimes stood in opposition to the well-being of workers. An official previously in charge of attracting corporations to invest within the district being assigned next to work for the trade union is a good example.

Trade unions therefore have difficulty cultivating a corpus of expertise to resolve industrial relations issues or develop a culture of sympathy for workers’ grievances.
Inasmuch as local and regional leaders' promotion criteria are based on success in promoting economic development and social stability, they tend to favour capital and management and the suppression of social unrest. In the rare circumstances where the local party-state is more sympathetic to the plight of workers, the union may have more room to manoeuvre in representing workers' interests. For instance, when Wang Yang was Party Secretary of Guangdong province (2007–13), both the provincial and Guangzhou trade union chairs developed a more sympathetic attitude towards workers. They tried to educate themselves in union matters though engagement with foreign trade unions, invited foreign trade unions and academics to train lower-level union cadres in collective bargaining, and were even openly critical of police suppression of labour protests. But when they retired two years ago, the orientations of these unions changed.

Overall, the ACFTU is saddled with inertia despite years of internal discussion about reforming itself. Nonetheless, the labour sphere in China has undergone rapid change. In the second half of the 1990s, the ACFTU had had the herculean task of placating state enterprise workers who were being laid off and of settling severance packages. As the upheaval in the state sector decreased and more state enterprises began to turn in a profit, labour protests in the state sector subsided. The workers'
conditions and wages in this sector are relatively good compared to the foreign-funded and private sectors, and management is more apt to comply with the labour laws. Workplace-level union branches in the state sector play the role of management's social-service arm.

The ACFTU's main daily challenge lies in the non-state sector, especially the Asian-owned foreign factory sector which has hired a vast number of migrant workers during the past thirty years. In the 1980s and the first half of the 1990s, when China was less developed, migrant factory workers were fewer in number and less aware of their legal rights and labour disturbances were less frequent. The migrant workers were seen as necessary victims of a new stage of capital accumulation. But in the last twenty years, through the efforts of Hong Kong labour NGOs (non-governmental organisations), and later China's home-grown labour NGOs, propagating workers' legal rights among migrant workers has begun to pay off. Resistance has begun to emerge among these millions of migrant workers. Admittedly their demands are still mostly defensive, protesting against legal violations by employers, but the protests are no longer limited to unpaid wages or illegally long work hours. Workers are beginning to demand that employers make legally mandated but long-ignored contributions to workers' social security pension accounts. Since the ACFTU's Walmart organisation campaign legitimising workers' elections of branch union committees, some workers have been making demands to set up and elect their own workplace union branches.

Here is a brief chronology of cases of workers' protests (which in the past decade or so have expanded in range, as have efforts by local governments to suppress them):

2006 – workers at a small Danish company's factory in China successfully went on strike to demand their own union representation. This was the first trade union branch set up by workers after a strike.

2010 – workers at a Honda parts manufacturing plant demanded an unprecedented 30 per cent pay rise, the removal of their appointed union chair and the election of a new trade union committee.

2011 – five Pepsi Cola bottling plants located in five cities coordinated a protest action to protect their rights against Pepsi's amalgamation with a Chinese company. This was the first attempt at a well-coordinated cross-workplace organisation.

2013 – workers at a company named Deweixin protested over their severance package. One worker was jailed for 300 days, the first case of a worker being criminalised for going on strike.

2013 – workers at a factory of the Ohms corporation fought to elect their own trade union chair, and one year later wanted to recall him and elect another one. This was the first time workers held accountable a union chair that they themselves had elected.
April 2014 – twelve private security guards at the Guangzhou University of Chinese Medicine Hospital went on a peaceful strike over pay and conditions and were convicted for disturbing the peace. Nine of them were sentenced to prison for seven to nine months, the first time such a large group of strikers were sentenced for going on strike.

April 2014 – 48,000 workers at a huge Taiwanese-owned shoe factory went on strike to protest at being cheated by underpayments to their social security accounts. This is the largest strike in the foreign-funded sector since economic reforms commenced in the early 1980s.

What do all these labour protests tell us? Workers’ awareness has been rising, progressing from isolated strikes to cross-workplace strikes; from spontaneous incidents to increasingly organised incidents; from small-scale protests to large-scale protests; from protests against illegal violations and non-payments of wages, to demands for material improvements and higher wages and a right to organise (but not yet as an autonomous trade union).

How does the ACFTU handle this escalating labour resistance? Its responses have been fraught with internal contradictions. While continuing to call for a more effective collective consultation process in the hope of pre-empting disputes and settling workers’ grievances peacefully, it has normally continued to side with management and pro-capital local governments. Instead of helping workers organise their own elected trade union branches, local union officials have often tried to thwart democratic elections every step of the way. While proclaiming they are working towards a harmonious society, they and local government officials have invited the use of physical violence by calling in the police while simultaneously criminalising strike actions.

As the older generation of migrant workers mature and gain more experience, the authorities are increasingly confronted by a migrant labour force that is beginning to demand respect, material gains, and labour rights. The ACFTU has been tasked by the party-state to handle labour dissatisfaction, but the union federation normally remains unwilling to side with labour. Nor will the ACFTU let go of its official monopoly on labour representation.

The ACFTU is caught in a bind of multiple contradictions. The Third Plenum Decision is too vague, too unheeding, and too removed from reality to provide the ACFTU with any solutions to its conundrum.
CHINA AT THE CROSSROADS
WHAT THE THIRD PLENUM MEANS FOR CHINA, NEW ZEALAND AND THE WORLD

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