

2015

In the early 2010s, a handful of Chinese labour nongovernmental organisations (NGOs) began to go beyond the narrow legalistic approach that most organisations had taken up to that moment and started teaching workers how to organise themselves to bargain collectively with their employers. As these organisations gained success after success and grew in influence and visibility, the Party-State intervened to rein them in. It all began with a series of arrests at the end of 2015.

Labour NGOs under Assault

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If you talk about the labour movement, the Party, who started to establish itself exactly through the labour movement ... gets alarmed. Why? Because this is the way in which they came to power.

— A labour NGO activist in Shenzhen, September 2015

Apparently, the situation has reached a point of no return. It's the same everywhere in the country, as long as you work on labour issues.

— A labour NGO activist in Shenzhen, August 2016

In December 2015, the police detained a couple of dozen labour activists in Guangdong, eventually charging five of them.¹ To signal that this was part of a national political campaign and not a localised incident, Chinese state media decided to make an example of Zeng Feiyang, a prominent activist, and launched a comprehensive attack against his organisation, the Panyu Migrant Workers Centre, a prominent labour nongovernmental organisation (NGO) established in Guangzhou in the late 1990s. It did not take long before Party media outlets published lengthy features accusing Zeng of embezzling funds illegally obtained from foreign donors. Further, these reports attacked his personal character and motivations, claiming he only posed as a 'star of the labour movement' (工运之星) to advance his own interests, at the expense of workers.² Eventually, Zeng was handed a prison sentence of three years, suspended for four years. Two of his colleagues received prison sentences of eighteen months, suspended for two years, on the same charge, of 'gathering a crowd to disturb social order', while another, a former security guard named Meng Han, was sentenced to twenty-one months in jail.

Along with activists from a handful of other labour NGOs in the Pearl River Delta, Zeng and his colleagues had been at the forefront of a fundamental shift in how these organisations engaged with the labour movement. Instead of coaching workers on how to seek help through

legal channels in the event of a violation of their rights, as had been the prevalent praxis among Chinese labour NGOs since their establishment in the mid to late 1990s, in the early 2010s, these activists began telling workers that they should organise to select their representatives to bargain collectively with their employers. In a situation in which labour representation is monopolised by a single trade union solidly controlled by the Party-State, the implications were huge. As these organisations gained victory after victory and were becoming increasingly visible both nationally and internationally, the authorities intervened to put an end to their activities. This essay looks back at Chinese labour NGOs' experiment with collective bargaining, how it came to be, its significance and what is left in the aftermath.

Guangdong Province: The Hotbed of Rights-Defence NGOs

Since their appearance in the second half of the 1990s, labour NGOs have generally been classified into two broad categories: welfare-oriented organisations and rights-defence organisations (see Howell's essay in this book). Compared with NGOs in cities such as Beijing and Shanghai, NGOs in Guangdong Province, on the whole, have traditionally been oriented towards defending workers' rights. This is mainly due to Guangdong being one of the most industrialised provinces in China and its proximity to Hong Kong, whose NGOs have often nurtured or partnered with Chinese domestic NGOs, connecting them to the values and funding of the international community. Moreover, compared with those in other places in China, Guangdong NGOs were more frequently founded by workers and not a paternalistic urban elite disconnected from workers' needs.³ The rights-defence drive unfolded following the publication of Document No. 1 of 2003, which emphasised the equality of migrant and urban workers before the labour law and signalled the intention of the central government to use the law as a means to quell rising social discontent. The ensuing education campaigns to teach migrant workers to rely on the law to defend their rights—as opposed to resorting to more disruptive measures, such as strikes and demonstrations—provided an opening for NGOs to widely disseminate information on labour rights, provide legal consultation to migrant workers and encourage them to seek redress through arbitration committees and courts. Along with the passing of a set of new labour laws in 2007 (see Gallagher's essay in the present volume), this led to a dramatic increase in the number of

complaints but did not translate into better protection of workers' rights, since the labour institutions were largely unable to meet the needs of the workers. This, in turn, nurtured workers' distrust and encouraged them to keep turning to the streets to voice their demands.⁴

At first, some activists saw such a rights-defence strategy relying on legal norms and institutional channels as a way to mount pressure on the legal system, which could potentially lead authorities to carry out systemic reforms. As one NGO leader pointed out in an interview, paraphrasing Marx: 'A quantitative change can lead to a qualitative change.'⁵ However, this view proved wrong, as local authorities chose to emphasise mediation rather than strict legal enforcement.⁶ Moreover, this strategy was criticised by scholars and activists alike for sticking to a government-sanctioned, narrowly legalistic definition of rights, thus individualising conflicts and promoting divisions rather than solidarity among workers.⁷ Indeed, by exerting pressure on the authorities to reduce the gap between rights promised and rights enforced, the choice of labour NGOs to focus on legal mobilisation compensated for institutional dysfunctions, thus exempting the authorities from carrying out systemic reforms.⁸

From Legal Mobilisation to Collective Bargaining

Several underlying factors led to the shift from legal mobilisation to collective bargaining in the early 2010s. From a pragmatic point of view, the costs and delays of going through an inefficient legal system had a disheartening and demobilising effect on migrant workers. It often happened that workers seeking compensation had to spend more than the amount to which they were entitled, not to mention the huge waste of time the whole process entailed.⁹ Moreover, as dramatically epitomised by the Honda strike of 2010, workers had begun to demand what was not provided by law, such as pay rises (see Chan and Hui's essay in the present volume). Such interest-based demands, which cannot be dealt with through the legal system, in other contexts are generally resolved by collective bargaining in the workplace, but the Chinese legal system allows only a watered-down, nonconfrontational form of 'collective negotiation' (集体协商)—a process based on an assumption of substantial unity of interests between companies and workers and largely piloted by the official union, which has notoriously approached its role in a formalistic way.¹⁰ In light of these shortcomings, to this day, most collective contracts in China simply reaffirm minimum standards already provided by the law.

Faced with workers' despair, a handful of Guangdong NGOs (no more than five, including Zeng Feiyang's Panyu Migrant Workers Centre) decided to change strategy hoping to have a broader impact on the system and bring about political change.¹¹ These organisations were in a good position to initiate such a groundbreaking move under the authoritarian regime. First, each was set up and mainly staffed by workers who had long-term, firsthand experience in rights defence and were committed to defending the rights of their fellow workers. Second, they were partnering with an experienced NGO in Hong Kong that could provide them with the financial autonomy and mentorship necessary to push the experiment forward.¹²

Above all, such an attempt at collective bargaining would not have been possible if the political situation had not been favourable to it. During the Seventeenth Party Congress in 2007, President Hu Jintao had emphasised the need to rely on people's participation to solve social contradictions. This participatory ideology was relayed in Guangdong by Wang Yang, the ambitious provincial secretary in power from November 2007 to January 2013, who sought to boost his political career by capitalising on the reformist tradition of the province to promote a 'social management' model that saw popular participation and social dialogue as the pillars of social stability. The demographic situation was also favourable, insofar as the structural labour shortage (民工荒) that had affected the province from time to time since 2004, had settled from the beginning of the 2010s, giving greater bargaining power to workers.

Teaching Workers How to Bargain

As the leader of one of these NGOs told a journalist in 2014: 'We wish to turn collective striking into collective bargaining and help workers organise their own unions to truly represent their interests.'¹³ NGOs did not seek to represent workers but rather to train them to directly engage with employers and, when necessary, with official unions and local authorities. The counselling programs led by NGOs aimed to coach workers on four points: 1) how to frame contentions and prioritise demands; 2) how to turn 'a temporary rally into a stable group solidarity';¹⁴ 3) how to elect representatives; and 4) negotiation strategies.

Through a study of more than forty cases, Froissart has elaborated an ideal type of NGO-led collective bargaining.¹⁵ This type meets the

sociological definition of collective bargaining agreed on by Western theorists as a sociopolitical practice based on a voluntary and autonomous organisation of workers that aims to rebalance an inherently conflictual and unequal relationship between employees and employers to improve working conditions.¹⁶ In the cases she analysed, the negotiations were initiated and conducted with employers by democratically elected worker representatives. In China's legal and institutional context, which strongly imbalances labour relations in favour of employers—in particular, by not recognising the rights to strike and organise autonomously—NGOs taught workers how to rebalance this relationship while at the same time circumscribing their demands and modes of action to avoid repression.¹⁷ When neither foot-dragging, occupation of factory premises, nor strikes (actual or threatened) were enough to persuade employers to cave in, workers learned how to put pressure on trade unions and local authorities to help them bring employers to the negotiating table and act as guarantors of genuine collective bargaining.

Maintaining unity and solidarity among workers throughout the negotiation process was key to its success, especially as employers, but also trade unions and local authorities, often resorted to tactics of divide and rule. In most successful cases, negotiations culminated in a collective agreement signed by the workers' representatives and the management, and then submitted for all employees' approval. In some cases, negotiations compelled employers to fully comply with the labour law, including repayment of overdue salaries and social insurance contributions—an outcome that could not have been achieved through individual legal cases, especially as officials usually pressured workers to compromise on their legal rights to ease the financial burden on employers. In other cases, collective bargaining allowed workers to negotiate what was not in the law, such as salary increases and layoff plans. Between 2011 and 2015, workers obtained hundreds of billions of yuan in wages, layoff compensation, social insurance and housing fund contributions and other benefits through collective bargaining.¹⁸

NGOs also strived to advance a long-term political agenda. Together with worker representatives, activist lawyers and Hong Kong partners, they drew up a code of conduct (released in October 2013) formalising past collective bargaining experiments to serve as a template for future cases and as a reference to influence Guangdong labour law.¹⁹ They also reflected on ways to promote lasting independent representation of workers and,

although collective bargaining was not systematised at the workplace, NGOs encouraged workers to reform grassroots unions and workers' committees through their practice.²⁰

The Significance of Collective Bargaining

Labour NGOs have enabled the emergence of an authentic 'worker-led collective bargaining' that is substantially different from both Party-State-led collective bargaining triggered by *ad hoc* interventions of high-ranking trade union officials and 'collective bargaining by riot', spontaneously initiated by workers.²¹ Indeed, unlike riots, the type of collective bargaining that emerged in Guangdong Province in the first half of the 2010s was well-planned, organised and nonviolent. In some cases, it included several rounds of negotiations that unfolded over months and were based on constructive dialogue between the workers, the employers, the trade union and local authorities. Guangdong NGOs played a fundamental role not only in raising workers' awareness of their collective rights and interests, but also in coaching them on how to exercise these rights by promoting their unity, solidarity and organisational capacities. By exercising their rights to organise autonomously, to democratically elect representatives and to bargain collectively even though these rights were not granted by law, workers emerged as a political force able to change the rules of the game in the workplace, engage over the long term with employers, trade unions and local authorities and change the way the latter dealt with labour conflicts. Indeed, by foiling the tactics of the local authorities to depoliticise labour conflicts and forcing them instead to act as guarantors of collective rights, workers, supported by NGOs, proved they were able to negotiate authoritarianism.²²

The Guangdong NGOs supporting collective bargaining had become fully fledged worker organisations, not only in the sociological sense of the term (formed by workers), but also in a broader political sense. Although some NGO staff were sceptical about the term 'labour movement'—partly out of fear of the term's sensitivity and partly because they had not yet achieved stronger and broader worker solidarity beyond the workplace and beyond Guangdong Province—NGOs truly were the brains of this movement, infusing it with short-term strategies but also a longer-term agenda, which could have challenged the very foundations of the Chinese authoritarian regime had it been allowed to continue.²³

The End of the Experiment

The crackdown of 2015 had a chilling effect not only on the labour NGOs at the forefront of collective bargaining, but also on those engaged in traditional rights defence.²⁴ Many organisations chose to subordinate themselves to the authorities and focus on less-sensitive activities, such as those related to corporate social responsibility and welfare provisions, or by abandoning any semblance of formal organisation and going underground to operate as individual activists.

Although some organisations did not immediately abandon collective bargaining, they significantly adjusted their approach, becoming more selective in their case screening process, warning workers of the potential dangers and avoiding potentially disruptive situations.²⁵ Still, even this watered-down version of collective bargaining was too much for the Party-State. In January 2019, the Chinese authorities proceeded with the coordinated arrest and indictment for ‘gathering a crowd to disrupt public order’ of an additional five labour NGO activists who in the past had played some role in promoting collective bargaining. This happened in the wake of another crackdown that targeted workers at Shenzhen Jasic Technology, a company specialising in the manufacturing of welding machinery (see Elfstrom’s essay in the present volume). During the summer of 2018, Jasic workers, prodded by underground Maoist activists, mobilised to demand, among other concessions, the right to establish their own workplace union—a request that was met with harsh, coordinated repression by the employer and the local government, which in turn triggered expressions of solidarity from groups of Marxist students all over the country.²⁶ Significantly, although labour NGOs were not directly involved in the Jasic mobilisation, the Party-State attempted to blame a Shenzhen-based labour NGO with ties to Hong Kong civil society. After this round of arrests, what remained of labour NGOs from the previous crackdown was decimated.

As the Chinese authorities reined in the most militant sections of Chinese civil society through a mix of new legal rules and coercion, the crackdown on labour activists that took place first in 2015 and again in 2019 put an end, at least temporarily, to Chinese labour NGOs’ experiments with collective bargaining. While the increased repression and narrowing political spaces for grassroots activism in Xi Jinping’s China warrant pessimism, this by no means signals the end of the Chinese labour NGO nor the extirpation of the seeds planted by these activists.