



中国劳动关系学院

China Institute of Industrial Relations

Bargaining in Good Faith – Predicament and Way out of Collective Bargaining in China

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I. Protest movements led to reform in the system for coordinating collective labor relations

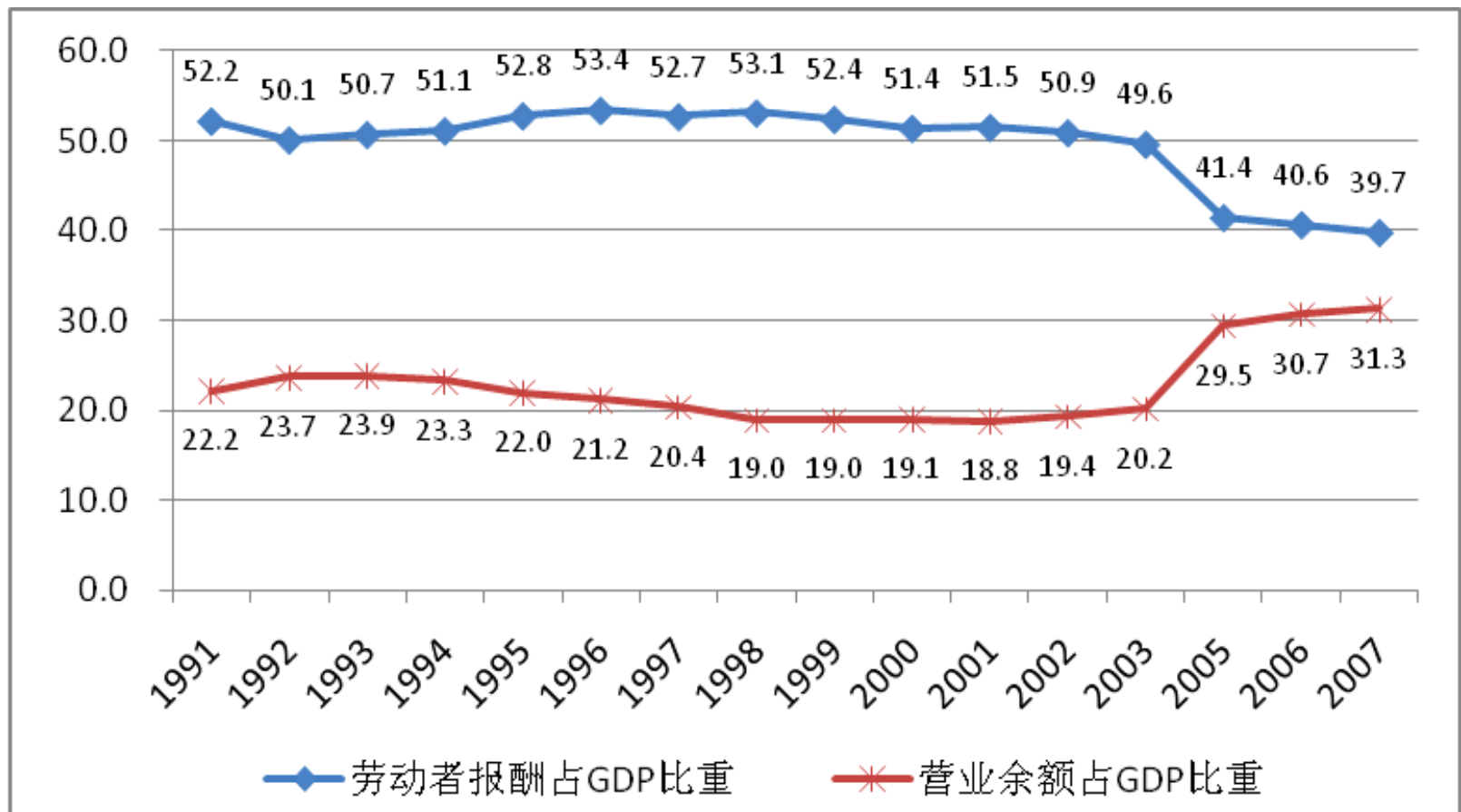


Low cost economic growth model with exploitation of cheap laborers at the core will soon be adjusted.

- **Since the beginning of the reform and open-up, the main features of China's economic growth have been to rely on the comparative advantage of migrant workers' low labor price, develop export-oriented industrialization, participate in economic globalization and form its international division of labor.**
- **At present labor struggle events occur frequently, which mainly reflects workers' rejection of "floor wage" (the minimum wage standard) as the benchmark for labor remuneration, and their view and request for participation in wage determination.**

Laborers'-remuneration-to-GDP ratio keeps decreasing

- Labor-remuneration-to-GDP ratio is lower than the world average. In 2005, the ratio was higher than that in India and Brazil, but much lower than that in developed countries, such as USA (56.9%) and G7 (50.9%).



“Rich State, Poor People”?

- **It is a fact that government’s fiscal revenue and workers’ wage feature a relationship of mutual growth and decline.**
- **The economic growth based on such a national income distribution structure is not conducive to laborers’ income growth, does not reflect laborers’ contribution to economy, cannot ensure laborers’ status as masters and realization of their dignity. Therefore, such a wealth sharing model inevitably lacks sustainability.**

The core of the new model is to take wage collective bargaining system as the basic means for wage distribution at enterprises.

- **The promulgation of “Regulations on Wage at Enterprises” becomes an important measure to regulate wage distribution acts, narrow income gaps and maintain laborers’ rights and interests for wage.**
- **“Regulations on Wage at Enterprises” includes the following contents: define wage’s contents and scope; define the implementation regulations on equal pay for equal work; regulate wage payment issues under special circumstances, such as overtime wage; strengthen the construction of wage payment guarantee system to stop wage payment delay; labor quota management, minimum wage system, government’s role in enterprises’ wage distribution, and regulations on wage distribution and senior management’s wage at SOEs. The core is whether wage collective bargaining system is to be taken as the basic means for wage distribution at enterprises.**

Debate on the extensive implementation of wage collective bargaining system

- Some people hold that laborers' main interests are to increase and stabilize employment. However, as the global economy remains in the doldrums, the labor market will undoubtedly shrink and job opportunities decrease without wage collective bargaining. This is not conducive to preserving laborers' core interests.
- Others urge to study what to do if collective bargaining fails. Is collective bargaining the only miraculous cure for coordinating labor relations? Will it influence enterprises' independent management? Does it have adverse impact on social stability? Will it be utilized for vicious intentions? Therefore, it is proposed that collective bargaining be developed in an "active but reliable" manner, and policies and legislation not be adopted by people's congress.
- The favorable condition is that labor supply and demand, and market forces are becoming increasingly balanced.
- The unfavorable condition is that wage collective bargaining requires healthy and independent trade unions and essential pressure mechanism, both of which can not be achieved in short time.
- Considering the substantial pressure for survival faced by labor-intensive enterprises, will the government share part of its interests by "transforming tax into wage" so as to provide more bargaining space for both employees and employers? This is also an essential precondition for the mechanism of regularly increasing laborers' wage.



II. Predicament of Wage Collective Bargaining System in China

History of Wage Collective Bargaining System in China

- Since “Labor Law” was promulgated in 1994, collective bargaining and collective contract systems have developed for 14 years in China. It is a “saddle-shaped” development.
- As governments at different levels adopted an economic development strategy based on cheap labor and merely focus on GDP, capital sought nothing but profit, and trade unions and working staff lacked rights and abilities, the system became a mere formality in spite of its progresses and innovations. It was not until 2008 that, the Party and the government stressed on jointly constructing and sharing a harmonious society, and establishing a wage increase system, the system regained attention.
- By the end of 2010, 1.408 million collective contracts had been signed, covering 2.439 million companies and 185 million workers. Wage collective agreement and regional and industry-wide collective contracts witnessed substantial progresses.
- Laws and regulations were promulgated or amended, including “Labor Contract Law”, “Trial Measures on Wage Collective Bargaining”, “Regulations on Collective Contract”, “Notice on Further Promoting Wage Collective Bargaining”, and “Opinions on Implementing Regional and Industry Collective Bargaining”. 22 provinces (autonomous regions and municipalities) in China formulated local laws and regulations on collective contract.

Features of Wage Collective Bargaining in China

- To eliminate pressure mechanism, employees and employers are oriented toward interest cooperation.
- Top-down collective bargaining dominated by the Party and the government
- Collective bargaining takes place mainly at the company level, but not extensively at the industry level.
- Most collective bargaining is of consultation nature. In few cases, the bargaining leads to employee-employer equal joint determination in the true sense.
- Collective bargaining has limited effects on wage increase.

Impacts of Collective Bargaining on Labor Standards


- Some research holds that the average wage of enterprises with trade unions is higher than that of enterprises without trade unions, but the gap is not significant. However, the wage inequality in enterprises with collective bargaining substantially decreases.
- Some research holds that collective contract is quite relevant to enterprises' welfare. Collective contract promote employers to fulfill the legal obligation to pay social security fees. Trade unions strengthen employers' compliance with law.
- Some research holds that trade unions are not significantly relevant to employee turnover rate, and that trade unions do not seem to be concerned about employee turnover or employee-employer conflict.
- Some research indicates that trade unions are in positive relevance to productivity. However, trade unions negatively influence or are irrelevant to enterprises' profits.

Problems with Collective Bargaining System

- In advancing collective bargaining system, China adopts a perspective different from that in industrialized market economies. The system in China is a top-down one dominated by the Party and the government, but does not aim at workers' independence. This leads to the weak foundation for social consensus on the system. Subjects have different views due to respective interests.
- Trade unions lack independence. In particular, at the enterprise grassroots level, trade unions are poorly organized, and lack ability for negotiation.
- Collective bargaining lacks a true negotiation process, and collective contracts become a mere formality.
- Collective contracts lack binding force.
- Industry-wide collective bargaining has inadequate representation.

Cause Analysis

- The top-down model for establishing trade unions obscure enterprise unions' nature.
- Trade unions at enterprises are in severe lack of independence, economically and politically attached to the employers. It's common that senior management are trade union chairmen concurrently. Trade unions are economically and politically attached to and led by employers.
- The current trade union system has a series of barriers restraining unions from effectively playing their roles:
- The work model of "Party and government dominated" trade unions results in their significant administrative features.
- It's an act seeking trifles to the neglect of essentials to restrain industry-wide trade unions but develop trade unions at enterprises.
- China legislation cannot completely ensure "laborers' three rights": the right for coalition right, right for collective bargaining and right for collective dispute. This is the fundamental reason for collective bargaining and collective contract system to have become a mere formality for over a decade.
- The legitimate rights and interests of trade unions officials cannot be effectively protected by laws, regulations and organizations at higher levels.



III. Policy Suggestions on Improving Wage Collective Bargaining System

Legal Norms for Establishing “Bargaining in Good Faith”

- During “the 12th Five-Year Plan” period, “Law on Collective Contract” and “Regulations on Collective Contract” are to be promulgated.
- The previous collective bargaining in China could not be effective. From the perspective of legislation, one reason is the failure to establish a system for bargaining in good faith. However, most countries in Europe and America have legal designs for the system of bargaining in good faith. Employees and employers bargain in line with the relevant norms to avoid the rejection of bargaining without sound reasons.
- In the nations with the system of bargaining in good faith, governments not only intervene in working conditions, but also exercise strict control over labor relations. These practices are similar to those in China.
- Legislation shall explicitly stipulate the duty to bargain in good faith of both employees and employers, i.e., the party, which bargains, reject or terminate bargaining in bad faith, may bear the corresponding legal liabilities.
- Obligatory bargaining in good faith does not compel agreement to be reached.
- Bargaining in good faith needs to be ensured by intervention of state forces.
- Section 8 of “National Labor Relations Act” in US stipulates: the employer shall meet the trade union at reasonable times and bargain in good faith. In principle, this obligation has four meanings: (I) the two parties are compelled to conduct meaningful bargaining; (II) bargaining shall be conducted in good faith; (III) significance of mandatory subject matters for bargaining; (IV) labor contracts of individual laborers shall not hamper collective bargaining.
- According to the interpretation of US Supreme Court, breach of bargaining in good faith shall be decided by National Labor Relations Board based on facts.

It's another urgent task to reform trade unions for improving China's collective bargaining system

- **Enterprise-wide trade unions shall seek “resources” and “means” from workers, and escalate the implementation of trade union direct election system.**
- **Effective measures shall be taken to promote trade unions to be independent from employers: improve the professionalization of trade union officials, and combine it with systems of direct democratic election and democratic supervision of trade union members, to strengthen members' internal constraints of union officials; increase grassroots trade unions' proportion in budget sharing, conduct experiments to have full-time union officials' wage and benefits covered by union budget, and deepen trade unions' reform for independence; strictly comply with the trade union chairmen's qualification requirements provided for by “Measures for Election of Trade Union Chairmen at Enterprises”.**
- **Cultivate workers' awareness for unity, equality and right**
- **Explore necessary pressure mechanism to enrich trade unions' right for collective bargaining**
- **Bring into play the increasingly important roles of industry-wide trade unions in coordinating labor relations and deciding labor standards, develop a balanced pattern of industry-wide and enterprise-wide trade unions**

Recent Policy Measures

- **First, actively promote “rainbow” plan, i.e., extend collective bargaining and increase the signature rate of collective contracts. This indicator shall be included into “12th Five-Year Plan”. However, due to the large number of SMEs in China, it’s not time to propose the aim of full coverage. It’s proper to decide the coverage in proportion to the number of enterprises with trade unions or the number of employees.**
- **Second, competent government departments shall guide the active but reliable establishment of regular wage increase system, include the system into the target management system of Ministry of Human Resources and Social Security and take it as the main system for future labor relations coordination.**
- **Third, cultivate the multi-leveled collective bargaining system by centering on private enterprises. SOEs shall use workers’ democratic participation as the main system carrier for wages and benefits.**
- **Fourth, regional and industry-wide collective bargaining shall become the main carrier for the construction of the above system during the “12th Five-Year Plan Period”. At present Guangdong, Beijing and Anhui are strive to advance the system construction. Sichuan has also proposed to implement the system in sub-scale companies through regional and industry-wide collective bargaining.**
- **Fifth, further improve the collective bargaining legislation and system. Legislation on strike will not be discussed in recent future, but a policy is to be issued on the mechanism for dealing with collective bargaining dispute to make up the defects with “Law on Remediation and Arbitration of Labor Disputes”. “Regulations on Wage at Enterprises” should be promulgated soon. Besides, based on the new developments in the membership of All-China Federation of Industry & Commerce, construction and coordination of the three-party system should be strengthened, innovations be made in its organization system to increase its functions. Experiments can be made first at the local level.**



Thank you for your attention!
Comments are welcomed!