STRIKES IN VIETNAM AND CHINA: CONTRASTS IN LABOR LAWS AND DIVERGING INDUSTRIAL RELATIONS PATTERNS[1]

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I. INTRODUCTION

Even though China and Vietnam have emerged from similar histories of Communist Party rule, the labor laws of the two countries are a study in contrasts. Nowhere is the distinction more marked than in the regulation of strikes. Vietnam has legislated complex provisions detailing when and how strikes can legally occur, and specifying that only when collective bargaining breaks down can the trade union apply to hold a strike. The intent is to regulate labor discontent by providing workers with a collective bargaining platform and strike procedures so as to reduce the outbreak of wildcat strikes. Chinese law, in contrast, does not mention strike actions, and as a result they are neither legal nor illegal. We therefore might expect fewer strikes in Vietnam, where legal sanctions exist to regulate them; but the reverse is the case. Vietnam witnesses waves of wildcat strikes, whereas China observes far fewer strikes. Also unexpected is that even though the strikes in Vietnam are "illegal" under the law, they are unimpeded by the authorities, who often in fact act in the interests of the strikers, whereas strikes in China which cannot be categorized as illegal are nonetheless normally vigorously suppressed by the authorities.

To understand this striking contrast in labor laws and their implementation, this paper will, in Section II, compare the course of strikes in China and Vietnam. Section III will examine the underlying factors: the differences in the two countries' labor laws and legal regulatory regimes, the tripartite dispute-resolution institutions, the labor standards established by the governments, and the relationship between the government and the official trade union. Section IV will analyze the trend lines in the two countries' industrial relations patterns.

It is appropriate to compare China and Vietnam given that both countries had a planned command socialist economy in the past, and within the past several decades both have gone a long way toward dismantling that system, turning to the market and integrating with global capitalism. Unlike most other former socialist states, which have become multiparty political systems, the two Asian neighbors remain one-party

regimes under their respective Communist Parties. As Leninist states, both countries prohibit autonomous trade unions and instead grant a monopoly to official trade unions that are under party-state control, the Vietnam General Confederation of Labour (VGCL) and the All-China Federation of Trade Unions (ACFTU). A question to address, then, is why, despite these similarities, the two industrial relations systems are diverging.

It becomes important, when comparing industrial relations and factory strikes in both countries, to ensure that the factories that are compared on both sides of the border share roughly similar characteristics. Accordingly, my field research has focused largely on factories owned and managed by Taiwanese companies. This was to ensure the factories are run by corporations with a similar style of management. Likewise, the field research has focused largely on footwear factories. Different industries are apt to possess somewhat dissimilar work conditions, hire somewhat different types of workers, and give rise to somewhat different worker grievances and different courses of industrial action. Focusing largely on one industry—shoe manufacturing—in both countries avoids the pitfalls of studying dissimilar work situations.

II. Comparing Strikes in Vietnam's HCMC Region and in China's Pearl River Delta

As noted, strikes have been far more common in Vietnam than in China. Strike waves began to erupt in Vietnam in 2006 (350 strikes) and reached a crescendo in 2008 (762 strikes), dropping to 215 strikes in 2009 (*Laodong*, 5 January 2010), a year of global economic recession. But once the economy picked up starting in 2010 the strikes resumed. They have erupted most frequently in the export sector in Ho Chi Minh City (HCMC) and the surrounding provinces, where Taiwanese-invested firms are concentrated. Firms from Taiwan, the third largest investor nation in Vietnam, operate some 2000 to 3000 factories there. According to the Taiwanese newspaper *Zhongguo Shibao* (China Times Daily), (1 July 2006), Taiwanese firms have been particularly targeted by strikers, accounting for a disproportionate number of strikes and giving rise to alarm

among the Taiwanese business community. In Binh Doung province, home to more than 500 Taiwanese factories in 2006, a strike wave that year swept more than 50 Taiwanese factories at the same time, all of which had to stop production (*Zhongguo Shibao*, 1 August 2006). The situation has continued to deteriorate. Taiwanese factory owners reportedly greet each other nowadays with the anxious query, "has your factory been affected by a strike yet?", and in 2010 bloggers began writing that only when one has not been targeted by strikers is it newsworthy.[2]

In China, the counterpart of the HCMC region is Dongguan and Shenzhen cities in southern Guangdong province, where Taiwanese factories similarly are concentrated. Labour-intensive industries relocated from Taiwan to Dongguan in abundance starting in the late 1980s.[3] As of 2008-09 Dongguan contained some 6,000 Taiwanese factories. Here too, the number of strikes has been increasing, but are negligible compared to the HCMC region. According to one report, "the number of strikes sometimes reaches three or four a day", but this included factories owned by other nationals, not just Taiwanese (*Zbonngguo Qiyejia* (China Entrepreneur), 14 February 2008). Taiwanese investors who were interviewed who own factories in both Vietnam and China do not see strikes in China as a problem.

This difference poses an interesting question, because it goes against a previous study that I participated in comparing Taiwanese business's labour practices in Vietnam and China (Chan & Wang, 2004). Our findings went against the popular belief of cultural affinity: that people with the same cultural background interact better. Instead we discovered that Taiwanese bosses treated Vietnamese workers better than they treated Chinese workers. Our article concluded that the attitude of the Vietnamese government and the official trade union toward labour violations by foreign investors has been the most salient factor in influencing Taiwanese management treatment of workers. So when newly collected data show that Vietnamese workers are actually prone to strike in protest more readily than their Chinese counterparts, this came as a surprise.

The new information comes from diverse sources. In particular, a number of research visits were made to each of these two regions, and factory managers were interviewed in both.[4] There was no attempt to conduct interviews with workers while

inside factories, but this was accomplished outside factory premises as workers left work. In Vietnam interviews were also conducted with officials of the trade union federation and the Ministry of Labour (MOLISA), with staff members of the International Labor Organization (ILO), and with monitoring companies. In China there were fewer interviews with trade union and government officials in Guangdong province, but a considerable number of interviews were held with the staff of labour NGOs in Hong Kong and Shenzhen, who have a wealth of experience working with Chinese migrant workers. In contrast, in Vietnam very few such grassroots labour NGOs exist, and there was no opportunity to get in touch with them. In both countries, extensive interview sessions were held with locally based staff members of a well-known Western-owned footwear company that sources from supplier factories in both Vietnam and China.

These field visits are complemented by a large amount of information based on documentary research. These include Chinese-language materials from Taiwan and China, media reports regarding labour disturbances in Vietnam written in Vietnamese and English, and some very detailed reports on Chinese strikes posted on the internet by international and Hong Kong-based NGOs.

Coverage of strikes in the Vietnamese press is plentiful, in particular in *Laodong* and *Nguoi Laodong*, sometimes followed up by investigative reports complete with strike photos and statistical data. The Chinese press had refrained from reporting on strikes in Guangdong's Pearl River Delta in the 1990s, but over time the press was granted greater freedom to cover stories and more Chinese became active in internet blogging. As a consequence, news about strikes started surfacing. But reports are seldom illustrated by photos of mass protests, protest banners, or police vans. Images of street actions are off limits. However, Hong Kong reporters sometimes make up for this by rushing to the scene.

Vietnam keeps a record of the number of strikes, which is regularly reported in the press. For China, I have yet to come across official statistics, possibly because "strikes" are not officially considered as legitimate collective actions. Though there are now

descriptions of strikes, there has not yet been any public discussion at the policy and law-making level. China only releases figures on “labour disputes” (*laodong zhengyi*) or “mass incidents” (*qunzhong shijian*). Such figures normally include strikes, but they are umbrella terms for all kinds of upheavals. The official statistics for ”labour disputes” entail officially recorded cases of individual or collective disputes that have been accepted for arbitration and litigation (Shenzhen Industrial Dispute Arbitration Network, 2010). The term “mass incidents” refers to collective protests with the implication that violence has taken place, some of which could be strikes. The Chinese strike figures quoted earlier in the paper are not official statistics.

In order to analyze the nature of strikes and industrial relations in the two countries, it is best first to describe one representative example of a strike in Vietnam and in China to give readers a sense what these typically are like—what instigates workers to take up collective protest action, what are the workers’ grievances, what are their demands, what is their behaviour during the strike, what is the level of worker solidarity, what actions does management engage in, how does the trade union, local government, and police handle the incidents, and finally how do the strikes end, what the terms of settlement, and what roles are played by stakeholders, including labour advocates and the major corporations that purchase from the factory.

Vietnam: A Spontaneous Strike’s Negotiated Conclusion

As a typical example, I have chosen a strike that broke out in one of the several factory sites of ABC Footwear Company (a pseudonym) in March 2006. ABC employed 50,000 workers at this one site. This is one of the earliest Taiwanese footwear factories established in Vietnam and it supplies a single Western brand-name company. As required by Vietnamese law, it allowed a trade union branch to be set up in 1996. But the trade union has not been proactive in representing workers’ interests. For example, during an interview the union chairperson described the relationship between the union, workers and the company as one of “partnership.” His attitude was that the "the trade union will stand up for workers’ interests if the company infringes the law. We will

propose suggestions to the company, but if it does not accept them it is the company's responsibility, not the union's." (Thus, implicitly, if the workers stage a strike it is not his fault but management's.) From his vantage point, the trade union has to work in cooperation with various departments in the company and it is not his job to struggle for workers' interests.

In the months leading up to the ABC strike, the trade union had notified management that workers had some serious grievances. They were unhappy that every time a new shoe model came on line, productivity initially dropped, causing a reduction in their monthly "production quantity bonus." Management's attitude was that as long as the factory did not breach the law and the client's corporate code of conduct, this was good enough. It did not heed the trade union's advice. In a round-table discussion that we held with trade-union committee members inside the factory in 2006, they expressed their frustration but at the same time said they would not push management to the point that their relationship with management became confrontational. The result: workers did not trust the trade union and some of them even publicly challenged the trade union chairperson, calling upon him to step down.

In September 2005, at a time of high inflation, the Vietnamese government had announced an increase of some 40% in the legal minimum wage for FDI enterprises (870,000 Dong [about US$55] per month for the HCMC region and Hanoi).[5] Factory managements complained that the announcement gave them too little time to arrange for a wage increase. The government then delayed the increase, to be effective as 1 April 2006. However, workers were impatient with the half-year delay, and had started a wave of strikes after the announcement. To appease the workers, the government gave in and rescheduled the date to 1 February, causing great confusion.

Despite the minimum-wage rise, after workers returned to ABC Factory from the *Tet* holidays, a wildcat strike broke out in early March 2006. On 10 March, a Friday, the company discovered call-for-strike leaflets posted on walls and placed at a number of production lines. Management had no idea who organized this, nor did the workers whom we subsequently interviewed.. Management immediately decided to give

workers a day off on Monday in the hope of averting the strike, but not all workers were informed about the day off. On Monday, some workers turned up for work, but they were blocked by striking workers from entering the factory. A few angry workers started throwing stones at the office buildings. Some office staff managed to get to their offices, but anonymous phone calls using the internal phone line intimidated them into leaving. As each staff member emerged from the factory gate, crowds of strikers gathered outside the gate cheered and applauded.

That morning, local government officials, including officials from the labour bureau and the provincial trade union, arrived to mediate the dispute. They talked to the workers and noted down their complaints. The police also showed up, but according to management “the police did nothing.” When management staff tried to take photos of the most active and vocal strikers, the police stopped them on the grounds that “it might irritate the crowd, leading to unexpected consequences.” Management pointed out that the blockade was illegal, but the police did not take any action.

Management asked the trade union to present a list of the workers' demands, but the trade union could not represent the workers, and no strike leaders would step forth from among the workers. Under such circumstances government officials and provincial trade union officials sat at the negotiating table, putting forth the workers’ demands to management representatives. The demands included 1) raising wages for senior workers; 2) contributing to social security for workers; and 3) paying a seniority allowance. Senior workers demanded a wage increase because when ABC increased the basic wage in accordance to the minimum wage rise as of 1 February, as required by the government, the junior workers’ increase was higher in proportion to their wage than that of senior workers. The latter thought this unfair and agitated for a bigger increase. The company already had an annual incremental wage system policy based on seniority, but it was not formalized. In the negotiations the workers demanded that this seniority system be included in the collective agreement—though this was an annual increment of merely VND 25,000 (about US$ 1.80). Management accepted the three demands.

The negotiations lasted three days, and during that period the workers did not return to work. But *still* they were paid. When the negotiations were wrapped up, management warned that strikers who did not turn up for work on Thursday would get a demerit and no pay. But the company could not legally fire those who did not turn up for work on Thursday because, according to the Labour Law, a company could only fire someone who has been absent from work for three successive days.

An interviewee who was representing management at the negotiation table was convinced that "the Vietnamese government is behind the scenes. On the surface it appears to be taking a *laissez faire* attitude, but whenever there's a strike, it becomes a mediator and presses businesses to accept workers' demands."

China: Violent Outbreaks in Stella Footwear Factories

This strike was widely reported inside and outside of China on the internet, including weblogs. Several such reports tracked the development of the dispute over a period of several months.[6]

Stella Footwear Company (real name) is Taiwanese owned. In 1991, like so many Taiwanese factories, it relocated from Taiwan to Dongguan city. A decade later it had expanded into five facilities in different parts of Guangdong province, two of which were in Dongguan. It employed about 60,000 workers and supplied shoes to some ten brand-name companies, including Nike, Reebok, Timberland, and Clark. None of the five Stella factories contained trade union branches.

The work hours were long at these factories, up to 11 hours a day, 6 days a week. They were paid a so-called monthly basic wage for the first 40 hours of the workweek. Like all factories in Dongguan, this basic monthly wage was 450 yuan (US$ 54.50), set exactly at the official minimum wage (similarly in Vietnam, factories pay a basic wage that is exactly the official minimum wage). With overtime, workers on average made 700 yuan a month at Stella. 80% of the workers lived in cramped company dormitories. After deducting money for rent and food, workers were left with only some 200 yuan (US$24.20) per month in take-home pay. Without the overtime work of some 20 to 26

hours a week, the workers would have had no take-home pay.

In March 2004, Stella management suddenly reduced the amount of overtime work by giving workers two more days off a month, causing a reduced income of about 100 yuan for each worker. The problem was that while work hours were reduced, the work quota remained unchanged—they would need to produce as many shoes as previously--which effectively meant an increase in labour intensity alongside a decrease in their monthly income. On pay day, when workers saw the pay cut in their wage package, they became angry. Some workers began calling in unison, “Higher wages! Better food!”, and soon afterwards a crowd of more than a thousand workers started smashing machinery, rushed into staff offices, breaking windows, looting the factory grocery store, and overturning vehicles. A corps of thirty security guards could not control the crowd. Police were called. “In the chaos the workers had no leaders, no representatives, no organization and no concrete demands. They dispersed as quickly as they rose up.” The news of the conflagration spread, and four out of five Stella factories became engulfed by violence. This on-site violence is not commonplace in Chinese industrial actions. A more normal situation is for workers to take to the streets, marching to the local authorities to seek redress. The police then arrive in large numbers to try to stop the march, which can end in violence and arrests.

In the end more than a thousand Stella workers were fired, seventy were arrested, and ten were charged by the local government for destroying property and were quickly sentenced to three to three and half years. The youngest was only 16 years old. Immediately, international and Hong Kong NGOs launched a protest campaign to release the ten convicted workers. Six Chinese lawyers, including a well-known human rights lawyer, were hired and came to Dongguan to serve as their lawyers. Campaign organizers urged the footwear brand-name companies to use their leverage to write to the Dongguan government to ask for their release. On 1 January 2005 all ten were released with suspended sentences. According to follow-up reports, work conditions reverted to what they had been in earlier months—the two days of monthly weekend overtime were restored and monthly wages remained at previous levels. The

brand-name companies organized management-worker training sessions at the factories in the hope of establishing more stable labour relations.

I was able to talk to several Stella workers outside the factory in September 2007. They related there was still a lot of overtime work and the pay was average. They also said that they were trying to organize other workers to agitate to set up a democratically elected union, which they hoped to register with the local union one level above. None of their hopes ultimately came to pass.

Comparing the Two Cases

I have chosen these two strikes in large part because they are representative of strikes in each of the two countries. One typical aspect is that in neither factory was an official workplace union involved. In ABC there was a union, but it played no role in the entire process. Despite its legal status, it was not even present at the negotiation table. At Stella, as noted, there were no unions at the five production sites. This reflects a typical phenomenon in both regions—workplace unions often do not exist in the foreign-run export factories in China, and in Vietnam, where they do exist, they are extremely weak and distrusted by workers (Wang, 2005). However, Vietnamese workplace unions, as exemplified in ABC, sometimes may still serve as a channel of communication between management and labor to diffuse extreme tensions. But when a union cannot quietly convince management to resolve grievances, bottled up frustration can turn into collective protest actions. In both countries, these strikes are "spontaneous", and in both countries there had been no orderly representation made to management on behalf of the workers before strike actions began, though some worker activists inside ABC were organizing covertly. The Stella strike in contrast exploded into mass action without any covert planning.

Herein lies one of the differences between strikes in the two countries. As strike waves spread across the HCMC region month after month and year upon year, Vietnamese workers learned from each other about how to start a wildcat strike, and

have become emboldened by the experience. Both the Vietnamese trade union federation (VGCL) and Taiwanese investors have become convinced that groups of experienced underground labour activists have emerged.[7] One Taiwanese factory owner whose factory has been affected by strikes many times in the past decade is convinced that there are "professional strikers" moving from factory to factory instigating workers to rise up. While these suspicions cannot be confirmed, they are not unlikely.

In the mid-1990s, when I first embarked upon a comparative study of factory labour in Vietnam and China, it was already clear that Vietnamese workers in the export industries were more prone to resort to strike actions than Chinese workers. In fact, due to worries about the increasing labour unrest, the Vietnamese government, when revising the Labour Law in 1994, included a chapter on strikes in the hope that by laying down strike procedures, wildcat strikes would be avoided (Chan and Norlund, 1999: 177-204). Yet strikes continued unabated and have become longer (Do Quynh Chi, 2007). From newspaper and internet reports, I have been able to collect a sample of 105 strikes that were reported during 2007, and as can be seen in Fig. 1, most of the strikes lasted one day, and rarely did they last more than five days, indicating that issues were resolved quite quickly.

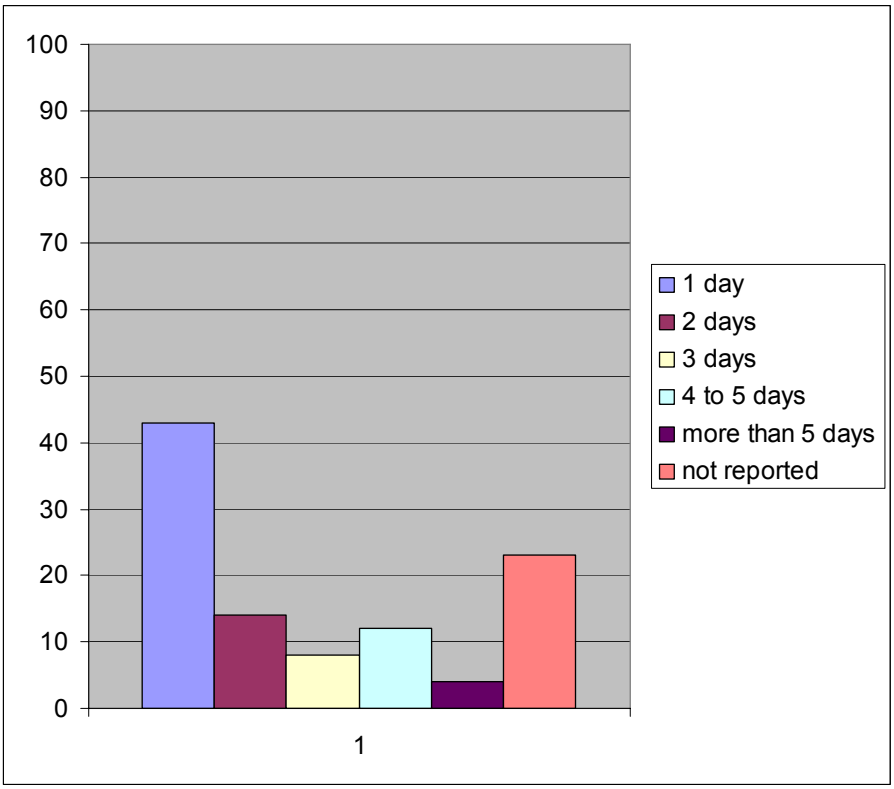

Fig. 1. Distribution of strikes as reported in newspapers from January to December 2007 (N=105).

The longest strike that I know of, which was well-documented by daily press reports, occurred at Hue Phong, a Taiwanese-owned footwear factory, and lasted from 10 April to 5 May, 2008 (*Vietnam Net*, 11 April 2008; *Vietnam Net*, 5 May 2008). This is a factory that has experienced a strike almost every other year during the past ten years, because management never honored the promised improvements agreed upon at the end of each strike.

Strikes usually peak each year a few months before and after *Tet*—before *Tet*, when workers mostly strike over year-end bonuses, and after *Tet* for better wages and work conditions. But based on 70 published strike reports in 2007 that were collected online, after the *Tet* spike early in the year, strikes broke out again later in the year. In the first five months of 2008, 280 strikes broke out, averaging 56 strikes a month. By August 400 strikes had erupted, still averaging some 50 strikes in April, June and July. In other words, by 2008, the period around *Tet* no longer marked the height of annual strike

cycles. The number of strikes climbed and stayed high all year round, reflecting the fact that the causes leading to strikes have changed. Increasingly they have to do with workers' wages not catching up with a high inflation rate, which soared to 25.5% in May 2008 (Hookway, 2008).

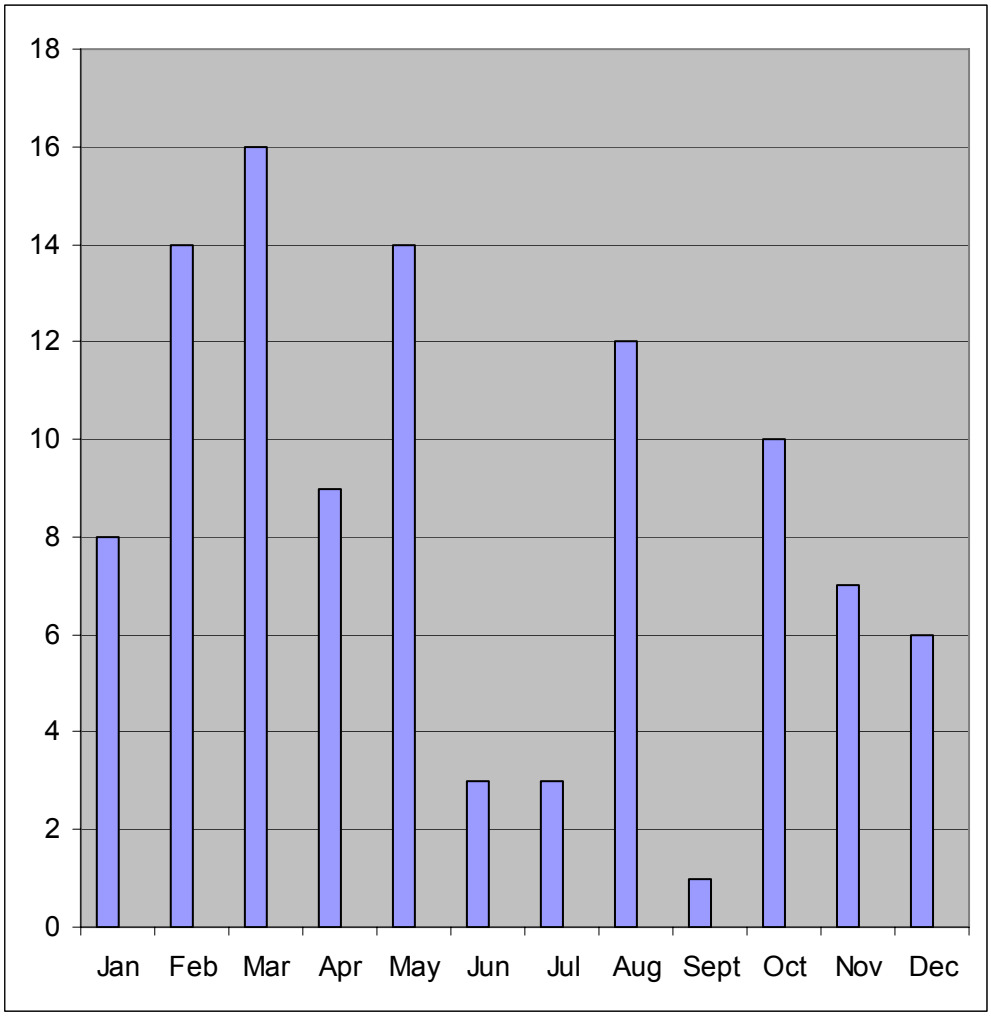

Fig. 2: Distribution of Number of Strikes in 2007 (N=88).

Workers' demands in the two countries are not the same, as well illustrated in the two case studies. At ABC, workers were asking for higher pay, better food, coverage for social security, a stepped wage structure, a seniority system, and dignified treatment. These demands are representative of those made by most Vietnamese

workers. Based on a breakdown of the 70 strike cases in 2007, the most salient cause was low pay, followed by insufficient wage increases to offset galloping increases to the cost of living. The next most numerous set of complaints was related to the *Tet* bonus. Workers claimed the bonus was not commensurate with their work contribution. Some complaints had to do with employers withholding the *Tet* bonus until after the workers have returned after *Tet*. Too much overtime was also often an issue. Workers complained about being forced to work extra hours or shifts and not being awarded the legal overtime premium. Similarly, failure to pay health and social insurance regularly surfaced as a grievance, but generally was not the catalyst in sparking collective protests. Finally, some workers also demanded a decrease in work quotas and an increase in piece rates. In short, these tend to be interest-based demands.

In contrast, Chinese workers most often strike for different reasons and their demands are different. The Stella case provides a good example. Wages here were a major issue, but the strike was not over an insufficient wage increase; on the contrary, it was over a wage decrease due to a curtailment of hours accompanied by faster-paced work. Often a wage decrease in the export industries of south China takes the form of higher deductions for meals, rent or utilities, a ploy used to obfuscate the wage decrease. This method can be used because quite a sizeable proportion of the workers there live in dormitories. In Vietnam workers usually live in private housing and so this method of wage deduction is not useful from management's perspective.

What would have confused Vietnamese workers was that Stella workers fought only to maintain their previous wage level but not for a wage rise. While Vietnamese workers fight for reduced work hours, Stella workers fought to have their reduced overtime restored! By law they are entitled to 4 days of rest a month, but they fought to go to work for 2 of those 4 days. Because they had not fought for higher pay rates they could not afford to lose two days of overtime—an amount of overtime, notably, that exceeded the legal maximum number of hours of work.. Also, instead of fighting for a reduction in their work quota, they were willing to maintain the previous quota. They did not take advantage of the strike to ask for shorter work hours and better pay.

They have a confused understanding of the integral relationship between wages and work hours and work intensity. Their expectations and demands were considerably lower than the ABC workers in Vietnam.[8]

The Stella workers' lack of understanding of the kind of demands that could improve their wage and work conditions was not unusual. In China's Pearl River Delta workers' expectations generally are low. The majority of labour disputes are over seriously delayed payments of wages. When the delay drags on for too long, in reality it becomes unpaid wages. Workers' claims of unpaid wages almost always spike just before Chinese New Year (the same holiday as *Tet*), leading to a large amount of uncoordinated labour unrest. The situation had become extremely serious in the 1990s in Guangdong province, reaching 5.6 billion yuan (about US$190 million) of unpaid wages in 1998. To appease angry workers, local governments in places like Dongguan launched "chase back-wage campaigns" (Fang, 2001). According to one survey, 72.6% of Chinese migrant workers in the early 2000s suffered varying degrees of wage defaults (*Beijing Review*, 2003). In an effort to restore "social harmony", local governments have tried to use administrative methods to reduce the problem, but even then, in 2005 owed-wage cases still made up 41% of labour dispute cases in the province (*Guangzhou Daily*, 2007). In Vietnam, delayed wage payments also exist, but these pale in significance. As Simon Clark points out, "Low wages, rather than unpaid wages, was an issue cited in one-third of reports on strikes in the period 2002-04" (2006, pp. 351-2). The irony of the protests before *Tet* and Chinese New Year is that while Vietnamese workers were protesting a delayed bonus payment or demanding a higher bonus, in China workers were trying to get paid, period.

There was one other type of serious workplace conflict in China that is often overlooked by observers—the issue of workers being denied permission to quit a job. It is a problem that does not seem to exist in Vietnamese Asian FDI factories. In China a widespread management practice has been to withhold a couple of months of workers' wages at the time of recruitment as a method of preventing workers from quitting when they want to. An inability to leave a factory with full pay and entitlements was a cause of great anxiety among Chinese migrant workers and was

often a source of serious conflict on the shop floor, because supervisors usually have had the power to decide on whether to grant workers permission to resign. Workers desperate to leave without permission have had to forfeit the amount withheld at the time they started working.

The two strike cases also show up a big difference in how the two countries' local governments and trade unions handle strikes. Generally, strikes in the HCMC region can be characterized as peaceful despite occasional skirmishes between a factory's private security guards and strikers. Take the ABC case as an example: workers stopped working and assembled outside the factory gate with banners to attract attention. Vietnamese workers generally display restraint from lashing out in violence and demonstrate a sense of solidarity. Differences among the work force may emerge when strikers try to stop workers who do not want to strike from entering the factory. Emotions can run high. The local authorities, the district trade unions, and the media will quickly learn about an incident either from the workers or from management and rush to the scene. The authorities try to calm down the crowd, look into the grievances, ask workers to choose representatives, and then begin negotiating with management on behalf of the workers for better conditions and wages. Important to note is that the local authorities and the trade union quickly take on the role of the workers' representative in negotiations with management. Often, according to Vietnamese newspaper reports, they lambast the managers for mistreating workers. The length of the strike depends on the progress of the negotiations and on whether workers are willing to accept the terms that management offers. Since most strikes last only one or two days, this means that in the face of pro-labor local authorities, management normally quickly concedes to workers' demands. In a minority of cases, when both workers and management are adamant, as in the strike at Hue Phong, the strike can last for a few weeks.

What distresses and frustrates Taiwanese investors is their conviction that the authorities side with the workers. "They are supposed to come to mediate, but basically they are here to fight for the workers. It's all one sided," complained the Hue Phong director to me in 2007. "The workers here have better protection than workers

in Taiwan!"[9] A Taiwanese newspaper reported in April 2008 (*Lianhe Bao* (United Daily), 28 April 2008):

> "Among the Taiwanese business community there is a widely circulated rumour that the reason why the strikes are getting bigger and bigger is because international foreign organizations are assisting with the strategies, transferring strike skills. For instance, when the media and riot police arrive, women workers are told to go stand at the frontline to elicit sympathy; or cases of boycotting the legal union and setting up a number of illegal unions, taking turns to bargain, each time bargaining over something different until management gets totally exhausted."

To blame the tactics on international organizations is an entirely unsubstantiated charge. But the article gives a good sense of the Taiwanese managers' exasperation. They cannot conceive that Vietnamese workers can be resourceful and capable of taking on their bosses without outside help.

Taiwanese employers' treatment of workers and their attitudes towards strikes are very different in China. In this, the attitude of the host governments is critical (Chan and Wang, 2004). Thus a Taiwanese manager lamented, "We can't use in Vietnam the methods we use in China. Definitely a no go." Why? " Because the mainland Chinese government supports us." While the Vietnam government does not let the police or factory managers suppress strikers, the Chinese local governments have no qualms in quelling strikes by sending in large numbers of riot police to intimidate workers. The Chinese and Hong Kong press repeatedly describe how workers move out onto the streets, the police arrive, and the atmosphere tenses up. Only occasionally did a strike end peacefully.

During 2008-09, in addition to unpaid wages and wage deductions for dormitory rents and food, workers' protests in Guangdong's Pearl River Delta have had to do with plant closures triggered by the rapid downturn of the global economy. When factory owners absconded, the workers often had not been paid for a few months and

lost entitlements as well. (Agence France Presse, 18 October 2008; Beijing Times, 18 October 2008). Ironically some of these factories shut down in order to relocate to Vietnam to take advantage of the lower wages there. In most cases, factory management has been breaching the labour law and the workers feel they have the right to take collective action when all other channels are blocked. Normally some of these workers first would have tried using legal means, be it through formal complaints to the local authorities and the district trade union, but when unable to get a sympathetic hearing from local authorities they draw public attention to their grievances by escalating collective protest actions. Many of these take the form of workers rushing out of the factory gate, marching in formation to the offices of the local authorities, or staging sit-ins inside or outside factory compounds. [10]A large number of police appear on the scene to cordon off the strikers and prevent them from marching, driving them back into the factory compound or dispersing the crowds. In the process, violence breaks out and workers get arrested, thrown into police vans, and later charged with disturbing the peace.[11]

Therefore, unlike Vietnamese workers, Chinese workers do not expect the state to be on their side when they explode in fury. It is desperate behaviour carried out in full expectation there exists a high chance of violent reaction. They calculate that since the factories are legally in the wrong, when the upheaval is over local government officials will use their authority to demand that management abide by the laws—raising wages to the legal minimum required, or reducing excessive overtime, or paying severance compensation. The outcome is unpredictable, but they anticipate the likelihood of violence and suppression. In contrast, when Vietnamese workers embark on a strike, going by the outcome of strikes in the previous few years they can be confident that they will have state support and that the result will end up in their favour. As a result strikes quickly spread, as workers in factories in the vicinity quickly learn to organize their own strikes.

In contrast, in China suppression by the authorities, arrests (or driving strike leaders to flee to their hometowns), and allowing management to retaliate against workers after the dust settles through mass layoffs and blacklisting, makes it difficult

for activists to form organizing cells.[12]

There have been some anomalous cases where Chinese labour protests resemble Vietnamese protests. The best documented was a series of strikes in 2005 that spread across 18 factories (16 Japanese and 2 Korean) within three months in the Dalian Development Zone in northeast China (Chen, 2010). It engulfed quite a number of factories, indicating that there was some surreptitious organizing and coordination. Like the Vietnamese workers, these strikers' demands were interest based—asking for higher wages, better benefits, and a higher overtime premium. The city authorities and the development zone trade union, on the other hand, were hostile towards the strikers. The trade union acted as a government representative. When the strikes spread, the development zone union became somewhat sympathetic to the workers' cause, but in the end, because the city government and Communist Party committee were worried that the strikes might drive away FDI, the union only played the role of mediator. Vietnamese authorities appear to be less worried that strikes deter foreign investors, perhaps in the belief that Vietnam has other advantages to offer (Lee, 2009).

III. UNDERLYING FACTORS

How do we account for the differences in the two countries' strike patterns? I have identified a few factors that warrant discussion—the relationship between the government and the official trade union, the legal regulatory regime, the tripartite dispute-resolution institutions, and the legal labour standards set by the government. Of these, the relationship between the government and trade union constitutes the macro political, institutional and legal parameters within which the other factors play out their differences.

1. Government-union relations

Both Vietnam and China are one-party states with corporatist structures. As described above, there are differences between the two in how the state handles strikes. This

difference, I believe, has historical roots. A vibrant trade union movement existed in South Vietnam in the 1960s and 1970s. In China, a genuine trade union had existed in a more distant past, before 1949, and the passage of time means there are no personal memories of this, By 1980 when China began to allow the emergence of capitalist activity, the ACFTU contained only a few elderly officials who had experienced an independent trade union movement.[13] In contrast, the legacy of a militant labour history in South Vietnam was of direct pertinence, especially in this region of Vietnam where a bureaucratic socialist system has never taken root. Some trade unionists' previous experiences likely had an influence on Vietnamese industrial-relations policy under *doi moi*.

At the Sixth Vietnamese Trade Union Congress in 1988 the party-state was willing to give space to the VGCL to operate under the slogan of "renewal, openness and democracy" (Chan and Norlund, 1998, p.184).The trade union structure was decentralized, and disagreements between the VGCL and the government over policy issues were allowed to be reported in the press. This has not been possible in China. The ACFTU has been striving for greater independence from the Chinese party-state, but any differences with the Party and other sectors of the government cannot be aired in public. The public can only construe that differences exist by reading between the lines in the media.

By the early 1990s, both countries had to enact a set of new labour laws to regulate a rapidly changing economic structure which was being challenged by expanding private and FDI sectors. Strikes in the FDI sector were of concern to the authorities in both countries, and like today the Chinese were apt to use force to suppress strikes. The Labour Law and the Trade Union Law that were passed in both countries at about the same time in the first half of the 1990s, after intense debates and several dozen drafts, with hindsight laid the foundations of divergence. As a whole these bodies of laws guarantee the VGCL more independence than that given to the ACFTU. The articles regulating collective bargaining in the Vietnam law are far more detailed. According to the Vietnamese Trade Union Law, the functions of the workplace union do not include

carrying out work to assist management. (Chan and Norland, 1998: 185). The Vietnamese laws have prohibitive articles against exploitation that are missing in the Chinese laws. The Vietnamese trade union is given the right to join international organizations and even to accept funding. The Chinese trade union law is silent on such a right. As a whole the Vietnamese Labour Law is superior to the Chinese.

It is a common belief that developing countries are lax in law enforcement. But comparing Vietnam and China, it does not seem coincidental that Taiwanese investors do not violate the Vietnamese labour laws in the same way they flout the Chinese laws. Prohibitive articles in the Vietnamese law accompanied with penalties exact consequences for violators. One consequence is that the serious problem of owed wages in China is not prevalent in Vietnam.

There is also another factor. While in both the VGCL and the ACFTU the top levels of union officials are more pro-labour than the lower levels, in Vietnam this reaches down to the district level; not so in China. As seen earlier, district-level local authorities and unions in Vietnam side with workers at times of strikes; but not their counterparts in China. There is a historical reason why district level governments in the HCMC region are more pro-labour. First, as the two countries' political systems loosened up and became more decentralized (this is more so in China, in that Vietnam only is of the size and population of a Chinese province), the behaviour of local governments has had a decided impact on the region's industrial relations system. In the HCMC region, where land had not been widely collectivized, ownership remains in the private hands of villagers and is inheritable. Provincial and district level governments, though they have an interest in attracting FDI, do not have a direct stake in renting out land and factory buildings to foreign companies. They are more ready to enforce the law and protect workers' rights than are local governments in China's Pearl River Delta. There, the land under Mao was owned by agricultural collectives. Today, in Guangdong province the agricultural collectives continue to own the land, and they are often coterminous with natural villages and the revenues are controlled by the village governments. Almost all agricultural land in the Pearl River Delta

region has become industrial zones, and in most areas the land use rights still rest with the collectives, which today are active in constructing and renting out factory buildings to foreign investors,. Villagers, as a group, have become a rentiér class. The very direct personal gains that can be made from foreign investors using migrant workers from poorer provinces contribute to the villagers' unconscionable disregard for the exploitation of the migrant workers by foreigners (Chan, Madsen and Unger, 2009: chs. 13-15).. The proportion of local villagers to migrant workers can be up to 1 to 100,. and no locals need to work at the production lines anymore. There is an unspoken alliance between the local village governments (and the levels of government immediately above them) and FDI enterprises vis-à-vis keeping the migrant production-line workers in line.

In both regions, the workplace union branches are weak. This is the level of interface between management and labour. But there is a difference. In Vietnam, as is obvious at the ABC Factory, the trade union saw itself as having a separate identity from management even though it did not aggressively represent workers' interests and was too weak to play a role later in negotiating with management, letting the district-level union do this. We also have come across a case in which the trade union of a shoe factory in Vietnam that supplies Nike and other brand-name sport shoe companies is powerful enough to negotiate with management. Because it was able to represent worker's interests, there has been no strike there except for small-scale work stoppages.

In China, the workplace union branches in the Pearl River Delta in the private factories are worse than weak; in the factories where they exist they are an integral part of factory management. Very often a local villager is sent to the factory and given the title of deputy factory manager while simultaneously also holding the title of factory trade union chair. Workers often do not even know of the existence of this virtual union.

Vietnamese workers at the ABC factory have a basic understanding of the importance of a collective agreement. For instance, they insisted that certain demands

be written into the contract even though some of those demands were already implemented in practice. In China, when talking to workers and labour NGOs, it was obvious the concept of collective bargaining is practically unknown in the Pearl River Delta. Though collective bargaining has a legal status, it was only in August 2008 that the ACFTU, with party-state backing, launched a campaign of "collective consultation", urging workplace unions to draw up collective agreements with management. The campaign fired its first shot by targeting China's hundred-some Wal-Mart stores. But close examination of the collective agreement at a Wal-Mart store that was held up as an exemplary model reveals serious procedural irregularities and a collective contract in which the staff's wages were unlikely to keep abreast of inflation. (*China Labor News Translations,* 22 September 2008).

2. The Tripartite Institutional Framework

Countries with longstanding union movements often maintain industrial peace through a well-established tripartite system that involves the state, labour, and employers. Urged by the ILO, both Vietnam and China in the early 2000s set up Tripartite Consultative Committees (TCCs) composed of the state, employers associations, and the trade union federation. These were established at various levels as platforms for three-party dialogue (Lee, 2006b). The Vietnamese TCC system is better developed than China's, where employers and labor are beginning to pursue their own goals (Lee, 2006b).

Vietnam and China both have strong states, weak workplace-level union representation, and well-organized union federations that play a role at the national level. The VGCL in Vietnam, being more independent from the state, can assert its opinions more openly than the ACFTU can in China.[14] In both countries, due to a socialist past, employers' associations are new and not well developed. The Vietnamese Chamber of Commerce and Industries (VCCI) appears to represent its members' interests better in the Tripartite Consultative Committee (e.g., Radio Voice of Vietnam, 12 February 2009) than its Chinese counterpart. Perhaps this explains a softer approach

taken by foreign investors in their handling of strikes. For instance, in interviews with a big foreign company in Vietnam, it was quite clear that an intensive tripartite dialogue took place in early 2006 when a strike wave broke out. Though the VCCI was weak, employers' interests were represented. The Chinese Enterprise Management Association by contrast has not been as well developed, and its representation on China's Tripartite Consultative Committee is weak. A study of the Chinese TCC concludes that several years after its establishment its operations still fell far below the standards set by the ILO (Shen and Benson, 2008). The fact that the VCCI has a role to play in Vietnam helps explain why the ILO office there has successfully exerted some influence in shaping the industrial relations system. As just one example, in April 2010 the ILO office in Vietnam and the Ministry of Labour jointly organized a tripartite conference to discuss draft revisions of the Labour Code and the Trade Union Law.

3. Legal Procedures Regulating Strikes

After intense debate, the Vietnamese law granted workers the right to strike, laid out in a detailed set of procedures. The Chinese Labour Law does not mention strikes at all, effectively putting this right in limbo. Strikes in China are not legalized nor are they rendered illegal. While critics take China to task for not having recognized the right to strike, it is not mentioned that there are also no provisions prohibiting strikes or defining what constitutes an illegal strike. It remains a grey area to this day. As will be seen, the pros and cons of having or not having a legal regulatory procedure *vis-a-vis* strikes are complex.

To come to grip with this, let us compare the [Old] Chapter 14 of the 1994 Vietnamese Labour Law with the Chinese Labour Law of 1994, and to also compare the New Chapter 14, revised in 2006, with the Old Chapter 14, pointing out from the workers' vantage point the advantages and disadvantages of the new Chapter. Lastly I shall compare the New Chapter 14 with China's Law on Mediation and Arbitration of Labour Disputes, passed in December 2007.

The Vietnamese Labour Law's Old Chapter 14 and China's Labour Law

The Labour Laws passed in 1994 in the two countries established institutions and procedures to channel industrial disputes through a three-stage formal proceeding: an enterprise level conciliation committee, an arbitration committee that is external to the enterprise, and lastly the court system. In practice, because the workplace unions serving as the representatives of labour on the committees are weak and often are controlled by management, workers do not go to them to resolve grievances. Instead they go directly to the arbitration committee. When dissatisfied with the decision of the committee, workers can appeal to the local court.

An important difference in the two sets of national laws is that the Chinese Labour Law does not contain provisions for collective disputes. When a group of workers who share the same grievances take management to court, their cases tend to be dealt with on an individual basis. This stems from the fact the Chinese law does not recognize nor have any mechanisms or institutions to deal with collective disputes, and by extension does not recognize strikes.

The Vietnamese Labour Law makes a distinction between individual and "collective labour disputes" and has separate sections laying down the procedures for dispute resolution (Van Thu Ha, 2008, pp. 224-6). Collective disputes are required to go through all three stages. In the event that workers want to go on strike, an application is supposed to be made to the workplace conciliation council first, which can take up to 7 days. If the workers are not satisfied with the decision, they can go to the arbitration council, which has to make a decision on the case within 10 days. If the workers are not satisfied with this decision, they "shall have the right to request the people's court to resolve the matter or to strike" (Article 172). The strike decision shall be made by the executive committee of the workplace trade union after more than half of the employees agree to proceed with the strike. With that vote of approval, the union can notify the labour bureau and the provincial trade union, explaining in writing the case and the day the strike is to take place. Workers who do not go through these steps

are prohibited from striking (Article 173, 174), but the law does not state that such strike actions are illegal. There is no mention of whether or not workers are entitled to payment for the duration of the strike.

The proof of the pudding is in the eating. Despite these pre-strike procedures, none of the known strikes in Vietnam to date has been legal, in that they have not gone through these steps nor have been led by the workplace union. As we have seen, the number of strikes has continued to rise—and these were all wildcat strikes that bypassed the procedures. The Law's Chapter 14 had been ignored. .

A revision of Chapter 14 was seen as urgently needed to contain strikes. This time, the Vietnamese government and the VGCL worked closely with the International Labour Organization (ILO) to draw up an amendment. While it is impossible to conclusively say ILO's advice has had a significant influence on the amended Chapter 14 passed in 2006, many of the key points made in an ILO discussion paper, "Industrial Relations and Dispute Settlement in Vietnam" (Lee, 2006), later appeared in the New Chapter 14.[15] These include reforms to the various dispute resolution institutions; distinguishing between disputes over rights and disputes over interests; a no work, no pay principle; simplifying and thereby shortening the procedures before a legal strike can take place; compulsory arbitration; and linking collective bargaining agreements (CBA) closely with strike procedures. In the case of wildcat strikes,

> "DOLISA officials (or conciliators) would have meetings with workers and employer(s) separately. DOLISA officials (or conciliators) would explain to workers the legal requirements of furthering their interests through negotiation, and the legal consequences if this requirement is not met. DOLISA officials (conciliators) would urge workers to return to work until the procedures of conciliation (and arbitration) would be exhausted….The above mode of DOLISA's intervention is a key step to bring the illegal situation of a 'wildcat strike' back to the legal procedure of a third party assisted negotiation (that is conciliation)." (Lee, 2006a, p. 54).

It was suggested that union and employer representatives from outside the workplace assist in the negotiations.

Subsequently the ILO office in Hanoi ran an ILO/Vietnam Industrial Relations Project advising and demonstrating to employers and the trade unions how to prevent strikes (Sunoo, 2007). The emphasis was on "social dialogue" as a vehicle to maintain industrial peace at normal times, as a way of pre-empting strikes. But since the strikes have not abated, the social dialogue solution has not been effective.

Vietnam's Labour Law: The Old Chapter 14 and New Chapter 14

The biggest difference in the old and new Chapter 14 is that the new chapter makes a distinction between rights-based collective labour disputes and interest-based collective disputes as emphasized by the ILO discussion paper. The strike procedures are spelled out in greater detail and are made less laborious.

Collective disputes can now bypass the workplace reconciliation council, which normally has been management-controlled. Eliminating this first step takes seven days off the procedures. The dispute can be handled right away at the district level by an arbitration body of "full time and part-time members from the labour administration system, union, employers and lawyers' association, or experts in industrial relations in the locality" (Article 170). Similar to some countries such as Australia, collective strike action is not allowed to take place while arbitration is in process.

At this point, a difference is made between rights-based and interest-based disputes. Rights-based disputes are those related to legal violations and are dealt with by the chair of the District People's Committee. The maximum time given to decide on a resolution is five working days (Article 170a). If the workers disagree with the resolution they can begin strike procedures.

For interest-based disputes related to issues that go beyond the legal minimum, the maximum time for the arbitration body to arrive at a decision is seven days. The decision then has to be sent to the disputants within two days. The trade union then has to organize a secret ballot. A majority yes vote is needed from among the employees of a 300-worker enterprise, and the consent of over 75% of "consulted

workers" in enterprises of more than 300 workers is needed before the union executive branch can put forth workers' demands and notify the employer of the time and place of the impending strike (Article 174b). Short of those percentages, the workers cannot legally hold a strike. The notification has to be delivered to the employer, DOLISA, and the provincial VGCL five days prior to the strike date that had been decided by vote (Article 174b). If the employer refuses to accept the demands then the strike can commence.

Since most disputes in Vietnam are largely interest based rather than purely rights based (Clarke, Lee and Do, 2006), shortening the rights-based dispute settlement period by two days does not normally shorten very much the dispute settlement procedure in Vietnam. In fact, in the lengthy debates among the relevant parties during the drafting of the amendment some participants argued that it was not possible to disaggregate disputes into these two categories. Some advocates noted that since workers' interest-based demands are unrelated to the law they should be negotiated between labour and management through collective bargaining. Successful bargaining agreed upon by both parties will eliminate the necessity of workers to resort to strikes.

While bargaining is in progress, strikes are prohibited. But a comparative study of labour disputes worldwide came to the conclusion that "In actual practice, however, even among those countries which purport to observe either or both of these distinctions, it frequently happens that the demarcation lines between rights and interest disputes, and between individual and collective disputes, tend to overlap, to become unclear, or to vanish entirely." (Benjamin, 1979, p.5). Four experienced trade union officials from Canada, the United States, Australia and an international union federation similarly have told me that the distinction is quite artificial.

The New Chapter 14 did not work. Since its passage the number of wildcat strikes has continued to rise. So far as is known, not a single new strike has been classified as legal. We can identify three main reasons why the new amendment has fallen far short of expectations. First, the interest-based dispute settlement procedure is preconditioned on the existence of collective bargaining between the workplace union

branch and management as a first step. Only when bargaining fails should the case go to the Arbitration Council. But successful bargaining in turn is preconditioned on a workplace union that is trusted by the workers as a genuine representative body. But the workplace unions are too weak in Vietnam, and as seen in the ABC case, are not trusted by the workers, nor respected by management as the workers' representatives. Without collective bargaining, the strike procedures are irrelevant. The fact that workers bypass the union to improve their work conditions attests to this failure.

The second reason is the complicated procedure to apply to hold a legal strike. One of the purposes of the amendment was to simplify and shorten the strike procedures so that it would be possible for the workers to take this legal route. But under the New Chapter 14, even after the majority of the workers have voted to hold a strike it still needs five days before they can act. This is impractical for strike organizers. Strike leaders will be easily exposed and intimidated, and divide-and-rule tactics will be used by employers to stir up differences and suspicion among workers. Strike leaders do not trust management. That is why all of the strikes are portrayed by the workers as being "spontaneous" and leaderless protests. Only in societies where a mature industrial relations system has developed, where the trade unions are reasonably strong and backed up by entrenched workplace branches, can management be trusted to bargain in good faith, and only then do most strikes abide by the legal proceedings. Obviously Taiwanese factory managers with no tradition in engaging in collective bargaining in Taiwan cannot be trusted to await complicated and lengthy pre-strike procedures without using the opportunity to ferret out the strike organizers and to get rid of them. British strike statistics show that even there most strikes in the 20th century were wildcat actions (Hyman 1989: 39-46). And that is a country with a mature industrial relations system.

The third reason is that some of the provisions in the New Chapter 14 further place workers in a disadvantageous position:

1) Workers going on strike are no longer entitled to wages and benefits.

2) Picketing is now regulated by a prohibitive clause that do not allow strikers to prevent non-strikers from going to work (Article 174dd (1)).

3) In the Old Chapter there was no definition for an illegal strike, but now Article 173 lists 7 conditions under which strikes are to be classed as illegal.

4) A three-judge committee will decide on the legality of a strike. If the strike is ruled to be illegal, then workers have to go back to work or be disciplined and even charged with criminal offences, and the striking party "shall compensate in accordance to the law." (Art.179 (1)).

The main gain for the workers in the New Chapter is: "For non-unionized establishments, a strike must be organized and led by representatives nominated by workers (hereinafter referred to as workers' representatives)…." (Article 172a). That means that at workplaces which do not have existing unions, workers have a chance to go on a legal strike after choosing their own representatives. However, the same laborious application procedures to engage in a strike apply.

It is unlikely that ordinary workers have read and analyzed the New Chapter 14. They simply join a strike that they think can help to improve their conditions. As for the small minority of the workers who have studied the new law, why should they bother to take the cumbersome legal route? Why not continue to go on strike spontaneously, as has been the case for the last decade, when the chance of winning has been shown to be high, involving little personal risk? As a result, all strikes have been wildcat, and no worker representatives have emerged who have applied to stage a strike.

Comparing Vietnam's New Chapter 14 with China's Labour Dispute Conciliation and Arbitration Law

On 1 January 2008 a new Chinese law, the *Labour Dispute Conciliation and Arbitration Law,* came into effect. A new law was needed since disputes skyrocketed from 19,000 in 1994 to 317,000 in 2006, of which 14,000 cases were collective disputes entailing demonstrations or strikes, sometimes involving violence (Brown, 2008). Like the prior Labour Law, this new law fails to make a distinction between individual and collective disputes. Nor does it make a distinction between rights-based protests or interest-based protests, nor between legal and illegal industrial

actions or strikes. The terms ‘collective bargaining’, ‘strike’ or ‘work stoppages’ are also absent. China recognized collective “consultation” as a labour right, but since this new law does not recognize collective disputes, a collective bargaining precondition is not stipulated.

The only reference to any form of collective dispute is contained in Article 7, “Where the party in a labour dispute consists of more than 10 labourers, and they have a joint request, they may recommend a representative to participate in mediation, arbitration or litigation activities.” But the procedure for these multi-disputant disputes is the same as for an individual. As noted, in practice, even when a group of workers with the same complaint applies for arbitration, they are often dealt with as individual cases.

This new law tries to rectify many of the problems that had placed workers at a disadvantage when they used legal proceedings to resolve their grievances. For instance, previously a worker had to file a complaint within 60 days from the day of the labour rights infringement. This has been lengthened to one year in the new law, which is helpful to workers who need a longer period to seek help to file a case. Now workers no long have to pay an arbitration fee, which had been a major financial burden on workers, especially when their cases had to do with unpaid wages. The maximum period given to an arbitration committee to decide whether to accept a case is now shortened to 5 days, and the maximum time for a ruling is 10 days. An arbitration ruling is now compulsory (Article 47), and because only the employee, not the employer has the right to a court appeal (Article 48), a ruling in the workers’ favour cannot be overturned by an employer’s appeal to the court or be dragged on and on at court. Due to all of these changes that are favourable to workers, within half a year of the law’s promulgation there was an explosion of cases lodged at Shenzhen city’s arbitration offices—23,785 applications, 243% more than for the same period in 2007, and of these, 22,122 cases were accepted for processing. The arbitration staff was overwhelmed (Ye, 2008).[16]

In short, in the past several years both the Vietnamese and Chinese governments felt they had to regulate the increasing numbers of strikes by revamping or passing new

laws to contain wildcat strikes from spreading. But they have taken different approaches. Vietnam introduced a legalistic, procedural, penal approach. It has always recognized the right to strike but now it also creates a class of illegal strikes. What is interesting is that while workers have refused to play by the rules, neither do the authorities enforce the law. They are not arresting and prosecuting illegal strikers, but instead are bargaining on their behalf with management. By contrast, the Chinese government's method of trying to control the spread of strikes is simply not to recognize collective industrial actions, nor the right to strike, but at the same time China cautiously continues not to make strikes illegal, leaving this in a grey area. It tries to channel all grievances through legal processes and has passed a law to make this easier for the workers. But because the state does lay down any procedure for collective actions, when strikes explode, the authorities have reacted with efforts at suppression. The contrast between the two countries can be reduced to this—in Vietnam it is a situation of "harsh laws, soft implementation"; in China it is "soft laws, harsh implementation."

4. Labour Standards: Rights-based vs. Interest-based Protests

Earlier it has been pointed out that the distinction between rights-based and interest-based disputes when adjudicating is never particularly clear-cut. Yet in conceptual terms, especially within a comparative framework regarding Vietnam and China, the distinction is useful. As already pointed out, Vietnamese labour protests tend to be interest-based while Chinese protests tend to be rights-based. Vietnamese workers' demands go further than just the minimal legal standards. They want a seniority system and job security. Chinese workers on the other hand tend to seek no more than being paid at least the legal minimum. In two case studies of strikes described by Chris Chan and Pun Ngai (2009), the workers, similar to those at Stella, rose up due to a sudden drop in wages and increase in the speed of production and their demands on wage rise, when converted to yuan per hour did not go beyond the legal minimum. Because their rights are being violated, and because they have no organized bargaining power, this is all they realistically can ask for.

In part, this distinction between the disputes in the two countries has to do with the labour standards set by the two governments. The better the government's standards, the higher the chance they are being breached by employers. China's legal regular work hours are set at a 40 hour week; Vietnam's at a 48 hour week. If a Taiwanese employer who operates factories in both countries wants to equalize the work hours he will have to violate the Chinese labour law but not the Vietnamese law.

Similarly in wage setting, Chinese local governments have been adjusting the minimum wage every year based on a formula having to do with the local cost of living, though it should be noted that the increase in the minimum wage may only cover inflation. The Vietnam government on the other hand does not adjust the minimum wage annually. In point of fact, it did not do so for six years. Since FDI employers almost always use the minimum wage as workers' basic wage, the minimum wage in Vietnam has been set very low. According to Corpwatch, during the period when the minimum wage remained stagnant Vietnam's currency dropped almost 15 percent against the US dollar, and inflation reached 28 percent (Glantz and Nguyen, 2006). To survive the high inflation Vietnamese workers were struggling for their interests rather than for their legal rights, which had not been infringed upon

When a minimum wage is low, the necessity for an employer to violate the law also decreases. Perhaps this is where the push for collective bargaining by the Vietnamese local governments (and the ILO as well) comes in, since it is not an issue of pursuing an employer through legal measures to abide by a minimum wage. This is where the Ministry of Labour and the VGCL disagree.[17] A Ministry representative in an interview in 2006 indicated this disagreement. He thought the VGCL should try to help workers achieve an acceptable wage through collective bargaining agreements. The VGCL on the other hand lobbied for an increase in the minimum legal wage. The VGCL's position was that if the minimum wage was higher, and if employers breached the law in not paying up to the minimum wage or cheated in other ways, then the cases could be dealt with by legal means. The responsibility of the VGCL to negotiate with employers on the workers' behalf would be diminished.

The VGCL adopted this stance in the knowledge that the workplace unions are

incapable of bargaining. The consequence is what is observed at ABC and elsewhere -- Vietnamese workers have to agitate for their demands, and when they do not succeed, they embark on wildcat strikes and let the local governments come in, not to crack down on an employer's violations of a law, but rather to negotiate on the workers' behalf.

IV. THE TREND LINES IN INDUSTRIAL RELATIONS PATTERNS

Without effective union representation at the foreign-owned factories, both Vietnamese and Chinese workers rely on the state to help them. They make economic demands on their employers, but make no demands regarding state policy (for instance, they do not demand that the officially set minimum wage be increased) nor political demands (for instance, they do not demand autonomous trade unionism). In both countries, strikes are aimed at appealing to local authorities. In Vietnam the workers go on strike in order to get the local state to negotiate on their behalf. In China, collective actions either take the form of violence at the workplace or street actions like marching to local government offices asking that pressure be applied to their employers. Vietnamese and Chinese workers remain at the stage of seeking protection from the government, unlike Indonesian workers, who hold mass rallies asking the government to raise the minimum wage. This reflects a difference in the state-worker relationship in the formerly "socialist" states and the developing-nation capitalist states (see, e.g., *Strait Times*, 26 June 1998).

But state power in Vietnam and China is exercised differently. The Vietnamese government uses its administrative power to demand interest-based improvements in foreign-owned factories. For instance, during the ABC strikes government representatives pushed ABC management to set up a seniority-based year-end bonus system and an incremental salary system based on years of service.[18] The government also tries to push brand-name clients to force their suppliers to set up these systems.[19] Since Vietnam emphasizes collective bargaining, this kind of issue ought to have been raised during collective bargaining before strikes erupt. .

The Chinese government does not normally resort to direct administrative intervention to get employers to provide a better deal for workers. Instead it enacted a new Contract Law that requires employers to sign open-ended contracts with employees who have already signed two fixed-term contracts and with workers who have had ten years of service (Article 14 (1) and (3)). This provides such employees with more secure employment. It is up to the employers to abide by the law, and if they do not it is up to an individual employee to use the law to fight for this legal right through arbitration. This ultimately means more litigation in China, a point that we will return to.

The Vietnamese government for its part uses the law to regulate collective industrial disputes. The elaborate dispute resolution procedures were drawn up to preempt strikes. But this method has not worked. The Chinese government on the other hand has not used any law to regulate strike disputes. The state does, however, resort to a different way to avert strikes—by individuating all labor disputes and channeling them through the arbitration and the court system, causing a proliferation of litigation cases in China over the past decade.

In turn, this has led to the emergence and proliferation of legal aid clinics, labour NGOs, labour lawyers, and paralegals in the Pearl River Delta. They help individual workers to fight to secure wage arrears and compensation for industrial injuries. Currently there are no fewer than five hundred people in the Pearl River Delta working professionally as labour-rights protectors, and among them more than twenty have had a significant influence in specific legal areas. There are many more non-professional legal practitioners who started originally as workers fighting their own personal cases and who, having learned the ropes through self-education, started helping others by becoming what in China today are called “citizens’ agents”. One who became famous in the past one and half decades has handled 6,000 cases. As these “citizen’s agents” become more knowledgeable and skilled in litigation, some workers have been awarded substantial amounts in back pay and in compensation for injuries. In one case, an employer in Shenzhen city was so infuriated that he hired thugs to smash up a legal-aid NGO office and

subsequently arranged for the NGO head's legs to be severed with a cleaver during a streetside attack.. This incident raised great alarm among the labor NGO community in Shenzhen. The rise of litigation and of citizens' agents has catapulted China's industrial relations into a new stage. In response, the Guangdong government has begun to grapple with the question of whether it should attempt to coopt and incorporate the citizens' agents and other labour-rights protectors by bringing them under its wing (*China Labor News Translations,* November 2007, December 2007, January 2008). This initiative potentially places these now-independent advisors on workers litigation in a vulnerable position, constantly subject to the mercy of the authorities (*China Labor News Translations*, January 2010).

The legal aid movement has been instrumental in raising workers' awareness of their labour rights, but the very fact that the movement is framed by the discourse on "rights protection" (*weiquan*; *wei* meaning to protect; *quan* meaning rights) further individualizes labor dispute settlements in a reactive manner. Only when labour rights are being violated, i.e., specifically minimal legal rights are being violated, do workers come forth. The Chinese language contains a compound word "*quanyi*" ("*quan*" meaning rights; "*yi*" meaning interests), but when used in China today about labour issues, the word almost exclusively refers to legal rights, not interests.

This narrow focus on legal rights has a delimiting effect on workers' consciousness. Their interests beyond the legal minimum are not protected by law and do not come within the purview of the legal aid personnel. Struggling for interests is a pro-active behavior that can best be achieved by collective bargaining. But the idea of collective bargaining has not yet penetrated the consciousness of Chinese workers. Due to institutional, legal, political, and social constraints it will be some time before China will develop an industrial relations system in which workers' interests can be voiced and genuinely represented by the ACFTU. Instead, for the time being China is headed in a direction that is becoming increasingly litigious, interrupted very sporadically by industrial violence. There have been a few known cases of workers trying to demand participatory rights in the moribund workplace-level trade union or, where a union does not exist at a factory, trying to establish

their own elected union branch under the ACFTU umbrella. But this is as yet unusual, and there are no signs that the local authorities want to enable workers to have a say in their own union branches or in collective bargaining.

The situation is different among Vietnamese workers. They have developed a knack in how to organize strikes and how to strategize and have gained valuable experience in collective solidarity in industrial actions. They have also seen how orderly albeit illegal actions can benefit their cause. So long as the national and local governments and trade union respond by rushing in to do the collective bargaining for them and to help them to negotiate better terms and conditions, they have good reason to resort to militant actions. As a Labour Ministry official told me, "The system now encourages strikes. Take children, they cry when they want something. If you give it to them they cry more. This is like workers and strikes." In Vietnam a strike pattern has become routinized. But will this last?

A problem facing the workers is that the Vietnamese government is under a lot of pressure from foreign capital. This is most prominently represented by the various Chambers of Commerce led by the China-based chapter of the American Chamber of Commence (American Chamber of Commerce, 2008), which has been speaking up in behalf of other businesses, including the Taiwanese. The message is that the Vietnamese government needs to be tough on illegal strikes and to strictly enforce Article 176 of Chapter 14. The threatening undertone is that foreign companies will disinvest. The foreign Chambers and their media outlets blame the government for not doing enough about the strikes and for not being able to control inflation, while agreeing that life has been hard for the workers (*China Post*, 2008). What the foreigner investors do not mention is that for more than a decade they have gained from a stagnant minimum wage, and that the recent wage increases have not caught up with inflation. While many of the manufacturers and brand-names have been reaping profits, there has been no offer to increase workers' wages

In light of this, thus far the warnings about disinvesting from Vietnam have been empty threats.

If inflation continues to outpace wage rises and if workers feel their families' livelihoods are being squeezed below their basic needs, will the routinized strike pattern

turn more militant and will workers take matters into their own hands to ask for more? Might workers also push the government for a higher legal minimum wage? At higher levels in the system, might the parameters of dialogue shift away from the tripartite institutions started under ILO guidance?

Whatever the scenario, looking back at the experience of the past one and half decades in Vietnam and China, cynics have been proved wrong that laws do not matter because they are not enforced. When comparing the two countries, it becomes apparent that the laws have helped set the foundations and frameworks for path-dependency evolution in the two countries' industrial-relations patterns.

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Notes

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[2] www.buycar.com.tw/20738.

[3] For further reasons why these two regions and Vietnam and China as a whole are worth comparing, see Turley and Womack, 1999, pp. 44-73.

[4] Most of these interviews with management were arranged by Prof. Hongzen Wang of Sun Yatsen University, Taiwan, and the two of us jointly carried out the interviews.

[5] The minimum wage was different for other regions: 790,000 Dong ($50) for Hai Phong, Ha Long, Da Nang, Nha Trang, Vung Tau and Can Tho: and 710,000 ($45) for other areas.

[6] See, e.g., *Zhongguo xinwen zhoukan,* 26 November 2004; *Baoxun,* 2 November 2004; CSDN net, 187 January 2006; *China Labor Watch*, 28 August 2004; 1 January 2005.

[7] A corporate HR officer and several Labour Ministry and VGCL officials all thought so when interviewed in 2006 and 2007. They did not rule out the possibility that labour activists helped instigate these strikes.

[8] For a discussion on how Chinese workers do not comprehend the relationship between work hours and wages, see Chan and Siu, 2010.

[9] Interview conducted in 2006.

[10] This was exactly what happened in the two cases of strikes described in the Chris Chan and Pun Ngai article (2009). Workers knew they would not get the support of the local government and had to take to the streets, blocking roads, triggering a large police presence resulting in violence and arrests.

[11] As the economic downturn deepened in 2009 in the export sector, resulting in larger numbers of factory closures and labor disputes, the local governments temporarily became less suppressive to avoid aggravating tensions.

[12] My contacts at grassroots Chinese labour NGOs observed that this is the general situation. It is not easy to find strike activists after a strike has been suppressed.

[13] For instance, Jiang Mingdao, former chair of the Shanghai Municipal General Trade Unions, whom I had to opportunity to meet in the early 1990s, at that time was fighting to get the Shanghai government to index wages against inflation.

[14] For instance, some unionists in Vietnam argue that workplace trade union chairs' salaries should be covered by the union and not the employers, to solidify the workplace union's autonomy. *LookAtVietnam*, www.lookatvietnam.com/2009/03/vietnam-works-for-harmonious-labour-relations.html March 18, 2008, accessed 19 March, 2009). In China, where workplace union chairs are also paid by employers, this is not a matter for debate.

[15] One ILO officer at the Hanoi office in 2006 told me that the Vietnamese government also had its own ideas and did not always take the ILO's suggestions into consideration.

[16] The great increase in cases may also have been caused by other factors such as the Contract Law that came into effect at the same time.

[17] Interview conducted with Nuygen Manh Cuong of the Labour Ministroy on 26 January 2006.

[18] Notably, state guidelines require each enterprise to develop its own salary tables and scale to be filed with the local government department for approval (Van Thu Ha, 2008: 222).

[19] Based on interviewing a human resource manager of a large Taiwanese supplier (Interview conducted on 30 November 2006 in Taiwan).