

U.S.-China Labor Law Cooperation Project



The delegation of Chinese labor contract law drafters, after a meeting with the California State Senate Labor Committee in Sacramento.

Under a contract from the U. S. Department of Labor, the National Committee and its two consortium partners – The Asia Foundation and Worldwide Strategies, Inc. – are working with the Ministry of Labor and Social Security (MOLSS) on a multi-year effort to assist the Chinese government in its efforts to strengthen protection of workers' rights and to comply with internationally recognized labor standards. Now into the second year of the program, the Committee's most recent efforts have focused on labor contract legislation. This article describes several of these activities.

First introduced in the mid-80s, China's labor contract system theoretically provides a legal mechanism for establishing employment relationships and all attendant rights and obligations of the parties, as well as a mutually agreed basis for protecting the lawful rights of the employees. However, because of the country's accelerating economic restructuring and large-scale rural-urban

migration, labor is both cheap and abundant, and workers often have little bargaining power. In practice, less than 20 percent of non-State-owned enterprises use labor contracts; those that do, have contracts that are either boilerplate or focus mostly on employee obligations, thus affording workers scant protection.

Against this background, the Chinese Government is considering legislation regulating the labor contract system. The final draft of the Labor Contract Law, after many rounds of revisions and consultations spearheaded by the MOLSS and the Legislative Affairs Office of the State Council, was formally submitted to the Standing Committee of the National People's Congress for deliberation in December 2005.

The National Committee convened the Labor Contract Law Drafting Workshop in Beijing in early June of 2005. During the two-day workshop, the Chinese drafters were able to collectively assess the most recent version of the draft

law and hash out some of the most controversial or toughest issues, including the coverage of the draft law and determination of the existence of employment relationships, termination of labor contracts, and part-time employment and the regulation of labor dispatching practices.

They also considered the extensive commentary on the draft of two international experts: Mr. John Fraser, a former Department of Labor Wage and Hour administrator, and Dr. Alan Neal, a University of Warwick law professor, senior judge before the International Labor Organization and the chairman of Employment Tribunals, brought excellent comparative perspectives to the discussion. The breadth and depth of their comments, as well as their degree of familiarity with the draft law and China's 1994 Labor Law, deeply impressed the Chinese participants. According to the post-Workshop evaluations, the two provided alternative perspectives and approaches that had not been previously considered.

In July, the National Committee brought a group of ten senior labor officials to the United States for two weeks of training and information exchange. Representing the MOLSS, the State Council, the National People's Congress and several provincial and municipal labor and social security bureaus in China, most of them were involved in drafting China's new Labor Contract Law, and half of them had attended the drafting workshop.

They had the opportunity to hear briefings from and exchange views with officials at the DOL, the National Labor Relations Board, the Federal Mediation and Conciliation Services, as well as state labor agencies and legislative committees in Michigan and California. Lectures and discussions were held with experts at academic institutions (law schools at the University of Michigan and UCLA), labor leaders (the president of Michigan's AFL-CIO) and public interest advocates from non-governmental organizations (The Legal Aid Society), professionals at employment agencies and attorneys from employment and labor law firms.

It was immediately apparent to the delegation members that the U.S. system is very different from that of China. For example, China has no central legislation on labor contract at all. With the New

Deal era enactment of the National Labor Relations Act, Fair Labor Standards Act and other legislation and regulations, employment and labor relations are the most regulated aspects of the U.S. economy. Still, "employment at will"—absent even in the U.K.'s common law system—is the operating principle in the United States where none of the laws and regulations apply. At a day-long seminar in Ann Arbor, Prof. Ted St. Antoine of the University of Michigan School of Law, who chairs the National Conference of Commissioners on Uniform State Laws, discussed the Uniform Law Commissioners' Model Employment Termination Act that he led in drafting. He also made a persuasive case for the concept of "just cause termination,"

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which incorporates the best scholarship from the United States and is far more palatable to the Chinese than the at-will employment concept.

Besides specific provisions of the draft law, the delegates were also concerned with a much larger, almost philosophical question: how to strike the balance between protecting workers' rights and maintaining robust economic growth and growth in labor market. Protection of individual workers' rights provided the impetus for the drafting of the Labor Contract Law; however, absorbing unemployed workers in urban areas and surplus labor from the country in the labor market is considered by the Chinese leadership to be crucial for maintaining social stability, and the leadership rests its claim to legitimacy on maintaining fast economic growth. This issue was the elephant in the room during most of the meetings and discussions and we made an

effort to expose the group to different viewpoints and perspectives on this and other issues.

In November, four Chinese labor officials (one each from MOLSS, the Shanghai and Yunnan labor bureaus, and the National People's Congress) came to the United States for month-long study placements. The goal was to help the Chinese participants develop an understanding of labor-related laws and regulations and the processes by which they are drafted and enacted in the United States.

The program began with a week-long orientation in Washington, D.C. This included lectures and site visits that provided an overview of labor laws and regulations in the United States and different aspects of the labor legislation and rule-making process. The group also had opportunities to meet with Labor Department and other government officials, congressional staffers, academics, NGO representatives and trade union staff involved with regulatory issues.

Each of the four then spent the next three weeks based at a host U.S. institution/agency specializing in labor related issues. Two participants were placed at the California Labor and Workforce Development Agency, the labor agency for the State of California. California Labor Secretary Victoria Bradshaw assigned Assistant Secretary of Labor Jaime Fall as their mentor; he turned out to not only be a wonderful professional mentor, but also graciously offered to host two participants in his own home. The other two were placed at the Institute for Legislative Practice at the McGeorge School of Law, University of the Pacific, with Prof. Frank Wang of the Wang Family Foundation as their mentor. He, too, was a conscientious mentor and generous with his time. Prof. Wang and Mr. Fall often worked together to arrange many professional and personal activities that helped the four visitors make the most of their time in the States. All four had the rare opportunity to participate in two high-profile, joint federal-state labor sweeps; assisted in various tasks assigned to them; and studied labor laws, regulations and the labor legislation process in the United States, including the roles played by nongovernmental entities such as academic, corporate, policy, legal and labor institutions. ■