

Worker rights and Worker empowerment

April Lai (board member, WE)

aprilens@gmail.com

Worker Empowerment (WE), a Hong Kong based organization was formed in 2005 with the mission to facilitate the empowerment process of marginalized peasant migrant workers to reclaim the basic worker rights at the workplace. WE is composed of a group of labour and women activists envisioning a community of social justice and dignity could be returned to the marginalized labour. With partnership with a Workers Centre in South China, WE provides training and advice in various aspects, such as to raise labour rights awareness throughout the migration process, organizational skill, capacity building, advocacy tactics, networking and operational skill etc. WE determines its role not to lead but articulate an autonomous worker community in conjunction with the partners in place.

Mainland workers have been losing the identity of state master since 1979 when China adopted the policy of open economy. In concert with globalizing production, liberalized economy with incentives of low taxation and lax labour standard to foreign investment; and huge surplus labour in rural China, millions of peasants have been pulled and pushed to the Special Economic Zones interplaying with capitalists and local authorities. Because of the Hukou (household registration) policy and the status of peasant and migrant, the peasant migrant workers are very often segregated in the 3D jobs (dirty, dangerous and demeaning) and expose to exploitation and health hazards. In terms of social security, they are excluded from reproduction and unemployment insurances. In practice, more employers buy worker occupational injury insurance than before but not the retirement insurance and medical insurance. Peasant migrant workers are very often not aware of the insured situation.

Mass and labour disputes are on rise. In 2007, labour dispute arbitration committees accepted 350,000 cases, an increase of 10.3 percent from 2006 and 650,000 workers involved. A double increase to 693,000 cases with 1.2 million workers involved was recorded when the Labour Contract Law and Law on Mediation and Arbitration of Labour Disputes were implemented in 2008. There were 22,000 collective cases accepted by the arbitration committees, 71 percent increase of 2007, accounting for 41 percent of the total workers involved in labour disputes.

Workers very often adopted actions such as road blockage, wild cat strike, sit-in at

factory gates, petition to the local government when collective labour disputes emerge. They hope media coverage and government intervention would get the boss at the negotiation table and settle the dispute in short period. The occurrence of collective action on the other hand, denotes the failure of reconciliation and legal mechanism in defending workers rights. “To hold on your legal weapon” (拿起你的法律武器) is somehow luxurious to many migrant workers who could not pay for the time, energy and income in the legal battle.

To provide legal counseling service is the daily work of the Workers Centre. The staff and trained workers will discuss and analyze with the workers on the conditions of workers, employers and social environment and come up the feasible action. If the company concerned is related to transnationals, WE would share the task to contact multinational, networking the stake holders for intervention and launch solidarity campaign when in need. The dispute of Heng Xin Factory over the payment on overtime, annual leave and social insurance was an example of how WE and the Workers Centre co-work together in handling labour disputes. (1)

For the individual dispute cases, the Workers Centre will assist workers gone through the possible channels of settlement, arbitration and court processing. In the meantime, the Workers Centre has made legal clarification on the claiming period of overtime payment and the labour bureau’s administrative responsibility in the court case testing.

In order to promote the legal rights among workers, the Workers Centre regularly conducts study circles, leafleting and setting up exhibition booth at the night markets and sites where workers going.

In response to government consultations on labour laws and regulations, the Workers Centre will make it a discussion topic in the Labour Group and Industrial Injured Worker Group that formed by workers from different industries. They are always in the position to give good opinion to enhance the laws and regulation relevance to workers. (2)

More than reacting to the government consultations, the Workers Centre had launched the Minimum wage hike campaign in 2007 and 2008. Again the initiatives was developed in the Labour Group when workers shared the hardship of soaring prices of daily necessities, official inflation rate was 4.8% in 2007 and rose to 5.9% in 2008.

The Group drafted a wage hike proposal and circulated it among workers for endorsement. They further sent the proposal to media, academia, NGOs, government bureaus, local and provincial ACFTU for igniting a social discussion on worker reasonable wages. The proposal was well received in media and government bureaus. Workers were excited to see the impact of their intervention in the two year minimum wages.

There was a heated debate on Labour Contract Law. Some 19,000 pieces of public opinion was received in the consultation period. Before its enforcement on the first day of 2008, employers got preparation to react the legislation by early termination with long service workers, forcing worker resignation, re-employing them as new staff on causal contracts. In order to describe the scenario precisely, the Workers Centre conducted a survey on the implementation of the Labour Contract Law in April 2008. The survey findings showed that 26.6 % of workers still did not have a contract, and that 28 % of contracts offered wages lower than the legal minimum. Unscrupulous employers were found using lots of tricks such as blank contracts, English contracts, signing two contracts in different company seals and so forth to circumvent worker's entitlements. Besides sending the findings and recommendations to the government bodies and publishing it on the website, the Workers Centre had conducted a sharing session with labour organization in the region to promote further information exchange and co-operation.

Peasant migrant workers are vulnerable to industrial accidents and occupational diseases. In 2006, there were 633,898 injury cases certified nationally and one third happened in Guangdong province. Every year about 700,000 workers contract occupational diseases. Pneumoconiosis and chemical poisoning are prevalent.

The road to compensation is rugged and sometimes unreachable. There are grey areas of legal interpretation in different courts and provinces. Unscrupulous employers are not difficult using tactics such as negation of the employment relationship and the injury certification to refuse compensation. Or some even exert their influential power over the local authorities to make worker accept less compensation. It is very difficult for injured worker to pursue the claim when no safety net exists to support the living while they are defending the claim in years. In this regard, the Workers Centre has prioritized the organizing work among the injured workers. Hospital visits are paid weekly by the staff and injured workers to deliver practical information concerning their rights. Exhibition and leafleting are being hold at the worker spots to publicize the preventive measures and the legal rights. The Workers Centre has formed an Industrial Injury Worker Group with

the victims. The group members meet regularly to share and support each other. They are always enthusiastic joining the outreach activities to extend their concern to other victims.

Being a community centre, the Workers Centre understands social, cultural and recreational aspects of a worker cannot be neglected. In fact, the literature writings, drama and songs are also powerful means to construct worker's identity. In response to the Sichuan Earthquake last year, the Workers Centre took the initiative to collect donations from workers and performing the role as NGO co-ordinator in Shenzhen to assist workers to contact the far away families.

In Nov 1993, the brutal Zhili blast happened in Shenzhen and took the lives of 87 young peasant migrant workers. It shocked us with the plight of working people behind the label of "world factory". 15 years passed, on the opposite of the old Zhili plant, DeCoro, the Italian leather furniture factory shut down. The CEO and top management absconded since 15 Jan 2009, leaving some 2,000 workers two month back wages.

Zhili and DeCoro workers are typical examples to show the weak position in securing the basic conditions of work, i.e. safe working environment and reasonable payments. More legal instruments occur in these two years with intent to protect workers job security and rights (3). However, enforcement is always the key problem. Only when worker organizations can effectively monitor the government and employers to respect worker rights, workers can be empowered to safeguard the basic employment security. WE and the Workers Centre are very conscious to build up mechanism and culture for worker participation in the management and decision making. Yet the emergence of autonomous worker organization not only requires the efforts the actors to put in but also the space accommodated by the state. That is a challenging task that WE persist to negotiate.

Notes:

(1) Heng Xin Factory, the subsidiary of Hanson Metal Factory Ltd was located in Shenzhen with 4,000-5,000 workers. Hanson was HK capital and supplier of Swath Group of cases, bracelets and bijoux components. Heng Xin used not pay workers overtime, annual leave, social insurance payment. The immediate cause of the dispute was Heng Xin changed the working hour slot; forced them signing unilaterally prepared new contracts and change workers factory cards. Workers sensed a sign of extra-ordinary and in fear Heng Xin sudden shut down. They then co-signed a letter to Heng Xin listing the demands and reasons. Yet the factory did not reply. Workers went

on strike on 21st March 2008. On the next day, some 1,000 workers walked to Longgang government for assistance. No progress was made by the government on the next two days even it had promised workers would instruct Heng Xing to settle the dispute. 273 workers on 25th March handed in employment termination notice to Heng Xing. Two groups of workers separately filed arbitration on 13th March and 26th March respectively. After arbitration failed, they pursued the rights in the Longgang Court that spilt them into individual cases that trial could take ages. Workers had contacted the media but no news was released. Later on their names were blacklisted circulating in the area. Their names, gender, age, hometown address and identity card number were put on the blacklist resulting some workers got fired in the new factories. Some of them then came to the Workers Centre for advice. WE backed up the workers by extending the pressure over Heng Xin while the Workers Centre kept communication and analysis with the workers and WE. WE searched the details of Heng Xin and Hanson and came up with feasible action plan with the Workers Centre. Upon agreeing the strategy with the Heng Xin workers, WE networked local and Swiss support organizations and sent alert letters to Hanson Metal, Swatch Group, the Watch Federation in Hong Kong and Switzerland of the misbehaviour of Heng Xin and asked their intervention for corporate social responsibility. Consequently, some 270 workers received 20,000 yuan each as compensation on 10 July 2008. They then dispersed for home or new jobs. The second group's claim believably was declined for they had received certain amount of compensation.

(2) Responses to consultation papers:

Opinion on PRC Labour Contract Law March, 2006
Opinion on PRC Employment Promotion Law April 2007
Opinion on Implementation of Labour Contract Law Ordinance May 2008
Opinion on Shenzhen Employees Industrial Injured Rehabilitation Management and Methods Law July 2008
Opinion on PRC Social Insurance Law Feb 2009/9/19
Industrial Injury Insurance Ordinance Aug 2009

(3) The approval and implementation of three major labour laws in 2008:

Labour Contract Law;
Employment Promotion Law; and
Law on Mediation and Arbitration of Labour Disputes