**AC**

**Advocacy**

**I affirm, Resolved: A just government ought to recognize an unconditional right of workers to strike.**

**Worker Power**

**Contention One: Worker Power**

**The right to strike is the only way to leverage worker power- that builds unions, solves inequality and environmental collapse, and forges democratic consciousness**

**Bradbury, 19** – Labor Notes editor

**Solvency**

**Contention Two: Solvency**

**Unconditional right to strike is key to prevent ambiguity and loopholes that gut the aff**

**Chang, 15** – Renmin University Professor of Labour Law

[Kai, Director of the Research Institute of Labour Relations of Renmin University, Chair of the Labour Relations Branch of the China Human Resource Development Association; and Fang Lee Cooke, Distinguished Professor of Human Resource Management (HRM) and Asia Studies at Monash University, “Legislating the right to strike in China: Historical development and prospects,” Journal of Industrial Relations, 2015, Vol. 57(3), https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.920.4293&rep=rep1&type=pdf, accessed 10-10-21]

**The right to strike is a basic** human **right** in the Covenant on International Human Rights (United Nations Human Rights website: http://www.ohchr.org/ EN/Professionallnterest/Pages/CESCR.aspx). It is also the basic content of the right to collective disputes in labour disputes. This concerns an important issue in the legislation of the right to strike, that is the position of the right to strike in the legal system of citizens’ rights in China. We argue that human rights or Constitutional rights must be made more specific through further legislation. **Otherwise**, such **rights** will **only exist in notion without** any **enforcement** possibility. In China, the legislation of strike should be reified in labour laws and not merely exist as a kind of general human rights or constitutional rights in abstract. Although the Constitution in 1975 and 1978 also stipulated ‘the freedom of strike’, the meaning of this kind of constitutional right is symbolic as a declaration rather than implementational. This is because the stipulation was not re-enforced with more specific legal regulations, especially when the Labour Law (enacted in 1995) and other relevant labour regulations did not exist at the time. The legislation of the right to strike is therefore not only a necessity in the provision of a fuller set of human rights or civil rights in general, but also a necessity in providing a more comprehensive set of basic labour rights, particularly the right to organise and the right to collective bargaining (Kovacs, 2005).

The legislation of the right to strike is an important component of labour legislation. In the system of labour laws, the right to strike is not a single or isolated right, but an integral part of the system of workers’ rights. The right to strike, the right to organise and the right to collective bargaining together form the ‘basic labour rights’. These rights are interconnected and interact with each other to take effect. In particular, the right to organise is a basic right; the right to bargaining is a core right; and the right to strike is to guarantee the right to bargain (Ewing, 2013). As the basic component of labour rights to collective disputes, the right to strike is the ultimate and the highest means of defence for workers in the dispute between labour and capital. As a labour right of self-defence for workers, the effect of strike is ‘deterrent’. It exerts pressure and restriction on employers and forces them to deal with labour relations more cautiously. The implementation of the right to strike is closely related to the right to collective bargaining. Under normal circumstances, only when the bargaining fails, or the collective contract fails to perform, or the rights and interests of the workers have been violated or will suffer an encroachment and cannot be resolved by bargaining, can workers exercise the right to strike. The direct purpose of a strike is to sign or implement collective contract or other agreement. The strike is the major means that workers have to restrict employers from refusing to bargain and non-honcst bargaining in the course of collective bargaining. In China, without the guarantee of the right to collective disputes, especially the right to strike, it will be difficult for the system of collective bargaining to be effective. Therefore, the legislation of the right to strike in China should be combined with the legislation of collective contract. This will **avoid ambiguity** of the legislation **on the right to strike**. It will stipulate the nature, effect and position of the right to strike more clearly. The implementation and restriction of the right will also be more easily regulated.

As an important part of the collective labour rights, the right to strike with other contents of collective labour rights should be considered together as a bundle of rights or a holistic system of rights to make a legislative plan. In addition, in view of the equality principle in regulating labour relations, we argue that if the right to strike can be incorporated into the legislation of the right to collective disputes, then it will be beneficial to the formation of a **comprehensive** system of labour dispute rights. The significance of doing so is manifold: first, making it clear that the right to strike is an integral part of the right to collective disputes and is the right to be exercised in collective disputes; second, the employers should correspondingly have the right to lockout as a counter power; third, the exercise of the right to collective disputes should follow the procedure that deals with collective disputes.

The legislation of the right to strike involves not only legislative theories, but also the opportunity and conditions to legislate. This mainly involves two conditions.

First, the legislation of the right to strike must have a corresponding legal environment and conditions, especially a relatively comprehensive system of collective contract and labour disputes settlement. The system of collective contract in China has only been developed recently, and much remains to be improved (e.g. Brown, 2006). For example, in the overall design and detailed procedure of the labour disputes resolution system, the trade unions as a main body in the system have not been taken into account. Disputes derived from signing the collective contract cannot go through the procedure of labour disputes resolution. By contrast, disputes arising from the implementation of the collective contract can do so according to relevant regulations. However, in the ‘Regulation on Labour Disputes Settlement' (1993), there is no regulation on the resolution of disputes over collective contracts. In addition, the same regulation specifies that ‘enterprise and workers are parties of the case of labour disputes'. This means that the enterprise union is not listed as a party in labour disputes and that the legitimacy of the union’s involvement in the dispute resolution is questionable. These examples of legislative **loopholes** suggest that there is a need to amend and improve relevant laws and regulations to provide **greater** procedural and substantive **clarity**.

Second, whether or not enterprise unions really represent workers’ interests is another condition for strike legislation. Standard strikes should have the grassroots unions as the legal organisers of strikes. In some countries, self-organised strikes that bypass the union as the legal strike organising body will be deemed illegal.6 In the Chinese context, the grassroots unions, especially those in the private sector, have not become organisations that are independent of the employer and truly represent the workers’ interests. Therefore, whether or not the unions can undertake the duty of organising collective disputes or strike remains uncertain. Moreover, in situations where the union enjoying the exclusive right to organise is unwilling to or cannot organise strikes, workers will not be able to hold spontaneous strikes without violating the law, if spontaneous strikes that arc not organised by the union are outlawed. Under such circumstances, the legislation of strike is likely to have an adverse effect on workers’ capacity to strike, because they are trapped by the predicaments of the unions. In a period when the law is evasive on strikes, workers can still go on spontaneous strikes without violating the law. But after the legislation of strikes, spontaneous strikes will be most likely prohibited. Therefore, the legislation of strikes in China must seriously take into account the role of the unions and the reform necessary for them to function appropriately in the light of marketisation and legislation.

The legislation of the right to collective disputes or the right to strike must make it the basic starting point to guarantee the basic rights and interests of workers on the one hand and to maintain the stability of the society on the other. **The legislation of strikes should not be turned into** the **legislation** against, or **restricting, strikes**. In view of the current situation in China, the legislation of strikes should take the strategy of being proactive, incremental, and consistent with corresponding laws. It should be noted that Article 27, Chapter Three of the Trade Union Law (2001) has made a significant step forward towards the legislation of right to strike. In spite of the fact that the term ‘strikes' is not used in this law, its description of ‘incidents of stoppage of work and go-slow collectively’ clearly refers to strikes. This law requires that after a stoppage or go-slow occurs in enterprises or public sector organisations, the unions ‘should’ raise demands on behalf of the workers and the employer ‘should’ address its employees’ legitimate demands. The logical premise of the two ‘shoulds’ is: strike is not illegal.

This stipulation in the Trade Union Law (2001) is obviously transitional in nature, however. There remains a large gap between this rudimentary stipulation and a more comprehensive system appropriate for a market economy. The current stipulation is no more than a passive approval of strike action without any clear specification of its legality. It offers no legal protection for striking in the form of ‘criminal immunity’ and ‘civil immunity’.7 Nevertheless, this basic provision is a significant step towards the legislation of the right to strike.