Commentary

Guaranteeing Freedom of Association in China’s Socialist Market Economy

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Introduction

A complaint, lodged by the International Trade Union Confederation (ITUC), alleged that the Chinese government had intervened in industrial labor disputes in Guangdong Province—specifically, at the Lide Shoes Factory of Panyu and at the Japanese-owned Cuiheng Bag Factory—in a manner contrary to the rights to freedom of association and collective bargaining provided for by two ILO Conventions, that concerning Freedom of Association and Protection of the Rights to Organize, 1948 (No. 87), and that concerning the Application of the Principles of the Right to Organize and to Bargain Collectively, 1949 (No. 98).1

Those interventions were alleged to have included physical assaults and arrests of individuals said to have supported workers pursuing their trade union rights. Seven allegations concerned arrest and detention. The eighth involved surveillance by the police. It was also alleged that individuals had been subjected to harassment, including threats to family members and violent action against family homes.

Seven of the individuals had undertaken activities through an organization known as the Panyu Workers’ Centre, which had become involved in the Lide Shoes Factory dispute. The eighth case, involving alleged police surveillance, concerned the director of the Nan Fei Yan Social Work Service Centre, an

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organization that advocates for migrant workers’ rights and provides paralegal aid to injured and sick workers in Foshan city.

Three of those from the Panyu Workers’ Centre (Zeng, Zhu, and Tang) had been tried and sentenced for offenses held to have been committed under Chinese Criminal Law—notably, “gathering people to disrupt public order.” Criminal proceedings were also pending for a fourth individual (Meng), and were anticipated for two others (Deng and Peng). The seventh individual (Chen) had been arrested and investigations had been launched, but it remained unclear whether criminal proceedings would follow.

Significance of the Decision

This case is the first formal consideration of a freedom of association complaint against China for more than a decade—a period in which active engagement by China with the work of the ILO has been noticeably enhanced, and during which important modernizing legislation has been introduced to regulate the Chinese labor market. A framework for collaboration between the ILO and China is provided by a memorandum of understanding that came into effect in 2001. Meanwhile, the highly significant Labour Contract Law 2007 and Labour Disputes Mediation and Arbitration Law 2007 (both effective 1 January 2008), together with the Employment Promotion Law 2008 (effective 1 May 2008) have radically transformed the regulatory framework for China’s developing socialist labor market, building on the foundations laid by the Labour Law 1994.

The case is particularly interesting for the extent to which and manner in which Beijing engaged with the substance of the complaint throughout the course of its response and representations. Although China has not ratified either ILO Convention No. 87 or No. 98, the responsibility for loyal implementation of the standards in those instruments follows from China’s ILO membership, in accordance with the ILO Constitution and its Declaration of Philadelphia of 1944. That obligation is reinforced by the ILO Declaration on Fundamental Principles and Rights at Work of 1998, designating those two

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2 CFA complaints against China have been considered on six previous occasions—Cases No. 1500, No. 1652, No. 1819, No. 1930, No. 2031 and No. 2189—three further complaints arising in relation to Hong Kong SAR after the return of the British concession to China (Cases No. 1942, No. 2186 and No. 2253).