

Labor Reform in the Workers' State: The Chinese Experience

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INTRODUCTION

Labor law in many countries is an amalgamation of both private and public law.¹ According to the private law model, which is closely associated with freedom of contract and laissez-faire capitalism, the state's role is largely confined to providing a stable basis for the development of private economic relations. Under the public law model, which is relevant to an understanding of both modern capitalist and socialist countries, the state plays an active, interventionist role in shaping economic relations. In the labor area, it supplies the content of the employment relationship through statute and administrative

1. On the distinction between public law and private law, see generally KAHN-FREUND'S *LABOUR AND THE LAW* 29-51 (P. Davies & M. Freedland eds. 1983); J. MERRYMAN, *THE CIVIL LAW TRADITION* 90-100 (2d ed. 1985).

regulation, e.g., regarding minimum wages and maximum hours of employment.

In contemporary China, the public law aspect of labor law has been virtually exclusive. From the late 1950's until just recently, the Chinese government has unilaterally determined the obligations and entitlements of the work force,² particularly with respect to those individuals employed in state industrial enterprises.³ However, in recent years, through a series of regulations governing employment in state industrial enterprises, the Chinese government has acknowledged a need for private law in the field of labor relations. Within certain important boundaries, the parties in an employment relationship are now free to negotiate the terms of employment. In this context, the state's primary role is to serve as a referee, intervening only if called upon to settle disputes.

The growth of private law in the labor area is consistent with recent changes in China's economic and legal systems which are designed to overcome the deficiencies of a bureaucratic planned economy. During the past decade, the central government, disappointed with the performance of large economic units, has encouraged the entrepreneurial efforts of individuals, families, and small business entities in an attempt to invigorate the economy.⁴

2. The conception of the role of the state as a source of individual rights and obligations has been a fundamental principle of Chinese law over the centuries. See, e.g., R. Edwards, *Civil and Social Rights: Theory and Practice in Chinese Law Today*, in HUMAN RIGHTS IN CONTEMPORARY CHINA 44-45 (1986).

3. State enterprises and collective enterprises have been the two major forms of industrial undertakings since the socialization of industry in the 1950's. State enterprises are directly integrated into a national or regional planning system and receive state subsidies and investment funds. Collective enterprises are generally smaller in scale; if linked to the formal planning system at all, it is through subcontracting relationships with state enterprises. In theory, collectives are responsible for their own profits and losses, and are generally not eligible for state investment funds. On the differences between state and collective enterprises, see A. WALDER, COMMUNIST NEO-TRADITIONALISM: WORK AND AUTHORITY IN CHINESE INDUSTRY [hereinafter COMMUNIST NEO-TRADITIONALISM] 39-48 (1986); M. WHYTE & W. PARISH, URBAN LIFE IN CONTEMPORARY CHINA 29-33 (1984); Wong, *Ownership and Control in Chinese Industry: The Maoist Legacy and Prospects for the 1980's*, in JOINT ECONOMIC COMMITTEE, 99TH CONG., 2D SESS., 1 CHINA'S ECONOMY LOOKS TOWARD THE YEAR 2000, at 581 (Comm. Print 1986) [hereinafter CHINA'S ECONOMY].

4. However, by giving economic actors greater freedom in their activities, the central government also intends that they assume greater risks. The evidence from samplings of public opinion suggest that most Chinese workers want job choice but at the same time are reluctant to deal with the risks of job-switching. In one poll, approximately 60 percent of respondents gave an affirmative response to the question: "Would you change your current occupation if it were possible to do so?" However, approximately 55 percent indicated that even though they had no interest in their current jobs, they would not readily quit to look for alternative (presumably more satisfying) employment. *Laodong Zhidu Gaige yu Shehui Xinli*, Gongren Ribao, Jan. 2, 1987, at 4. For one worker's reflections, see *Zhenyang Kandai Gaigezhong de Laosao*, Gongren Ribao, Sept. 9, 1987, at 3.

The recent labor reforms,⁵ which infuse greater free choice into various aspects of the employment relationship, currently affect only a small proportion of the work force, but raise questions about China's commitment to economic progress and the repercussions of such a commitment on political values. Although China is not the first socialist country to retreat from centralized planning or to legitimize private ownership of productive assets, China's promotion of economic activities normally associated with capitalist societies has occasioned admiration from Western observers. In China, however, the labor reforms have provoked a controversy as to whether or not these reforms are too fundamental a departure from socialist principles.⁶

While no socialist country provides an unconditional guarantee of employment by law, job security for some part of the work force has been a distinctive feature of socialist systems. The Chinese central government, however, has openly stated that the contract employment regulations are intended to assault job security⁷ which is believed to cause the stagnation of productivity and efficiency.

Regardless of the question of whether job security is a necessary underpinning of socialist society, an important and separate issue is whether a given labor reform is likely to achieve its goal of promoting economic efficiency. Can economic efficiency be realized if reforms occur incrementally, or must all necessary changes occur at once? While experimental regulations were promulgated at the local level,⁸ it was six years before the central government promulgated even "provisional" national regulations.⁹ This period of experimentation

5. For translations of the recent regulations, see *infra* Appendices A-E.

These reforms introduce greater free choice in areas such as hiring and dismissal. See *infra* text Part III. For an article on the general subject of current labor reforms, see Chang, *Breaking The Iron Rice Bowl: The New Labor Regulations*, E. ASIAN EXEC. REP., Dec. 15, 1986, at 9. See also Zheng, *An Introduction to the Labor Law of the People's Republic of China*, 28 HARVARD INT'L L.J. 385 (1987).

6. See, e.g., Jiang Yiwei, *Suoyou Zhigong Shixing Hetongzhi, Bu Fuhe Qiye de Shehui Zhuyi Xingzhi*, 1 JINGJI TIZHI GAIGE 11-13 (1985), discussed *infra* notes 154-56 and accompanying text.

7. *Guanyu Jiji Shixing Laodong Hetongzhi de Tongzhi* (Notice on Active Trial Implementation of the Contract Employment System) [hereinafter Ministry Notice], 6 GUOWUYUAN GONGBAO 213 (1983), *trans. in* 2 COMMERCIAL LAWS & BUSINESS REGULATIONS OF THE PEOPLE'S REPUBLIC OF CHINA [hereinafter COMMERCIAL LAWS] 324 (S. Wai ed. 1984); *Laodong Zhidu de Zhongda Gaige*, RMRB, Sept. 10, 1986, at 1.

8. See *infra* note 104.

9. For a discussion of these provisional regulations, see *infra* text Part III. Such a cautious approach does not preclude, however, the possibility that the negative consequences of implementing various new rules have not been fully anticipated or obviated. For instance, the contract employment system perpetuates the inequalities between new and old workers which have been a major source of tension among workers in China. *Sources of Labor Discontent in China: The Worker-Peasant System*, 6 CURRENT SCENE 11 (1968).

indicates that the central government has proceeded cautiously in the area of labor reform. For example, although current labor regulations give workers an expanded right to choose their employment, wages and fringe benefits are still determined by the central government. Although the government seems to recognize that labor may not be put to its highest and best use in a system of fixed wages, there is no sign that wages will ultimately be set by supply and demand.

Critical studies of the Chinese economy have noted the difficulty in developing local support for the central leadership's plan. Strict enforcement of the labor reforms is frustrated by collusion among lower-level government administration, enterprise management, and the work force.¹⁰ Local labor officials and enterprise administrators appear to be reluctant to promote changes which will result in increased labor turnover, unemployment,¹¹ or social unrest.¹² Local labor officials' reluctance to make changes which might disturb the status quo and unwillingness to force enterprises to adopt reforms are reflected both in the language of local regulations¹³ and in various enforcement measures.¹⁴ Local resistance to reforms helps explain why the uniform application of the reforms is effectively undermined.

Despite the revival of the Chinese legal system in the late 1970's, the recent labor reforms illustrate that the development of mechanisms for the implementation and interpretation of the law has lagged behind the promulgation of the law itself. For example, national regulations governing a system of labor arbitration designed to resolve controversies arising out of private contracting were issued a year after the regulations promoting contract employment were issued.¹⁵

10. The relationships between lower-level government administration, enterprise management and the work force are analyzed in two articles: Walder, *The Informal Dimension of Enterprise Financial Reforms*, in 1 CHINA'S ECONOMY, *supra* note 3, at 630 (1986); Walder, *Wage Reform and the Web of Factory Interests*, 109 CHINA Q. 22 (1987).

11. The term "unemployment" will be used in this article, although Chinese sources continue to use the term "waiting for employment," to characterize those individuals who are willing and able to work but who do not have jobs. This is based on the ideological belief that "unemployment" in the strict sense occurs only in capitalist economies.

12. This conclusion is based on interviews which the author conducted at various locations in China, primarily in Beijing, Shanghai, and Shenzhen, between August 1985 and January 1987. Those interviewed included officials from the Ministry of Labor and Personnel, officials from local labor bureaus, enterprise administrators, trade union officials, and contract workers. In addition, the author conducted interviews in Hong Kong between October 1986 and May 1987 with emigres from China. This group included former enterprise administrators, industrial engineers, and workers who had been employed in state enterprises.

For reasons of confidentiality the author has not revealed the identity of the individuals interviewed.

13. See *infra* note 340.

14. See *infra* note 324.

15. See *infra* note 162.

The tension between the central government's commitment to a policy of reform and local opposition to this policy highlights the need for establishing effective enforcement mechanisms. The central government can ensure progress only when such local enforcement mechanisms are in place.

The difficulties experienced by China in orienting itself to new priorities and in using law as an instrument for change need not come as a surprise. For the outside observer, they provide a fascinating insight into the dynamics of the legal process in the world's most populous country. While no prediction should be made as to the eventual outcome of legal reforms, current attempts to reform China's labor laws will no doubt influence the future development of the Chinese labor system.¹⁶ Through an analysis of regulations issued by the State Council and its subordinate Ministry of Labor and Personnel, this article intends to examine closely the goals of the new contract employment system and related reforms. The practical difficulties of reform will be discussed through an analysis of the experiences of various locales in China where reforms have been implemented on an experimental basis.

I. THE CONTEXT OF THE LABOR REFORMS

A. *The Catalyst for Change: Economic Development*

Since 1977 when the Four Modernizations program was officially launched, the chief concern of the Chinese government has been to promote economic development and greater participation in the global economy.¹⁷ In order to spur productivity in both the agricultural and industrial sectors, the government has encouraged the development of a "socialist commodity economy."¹⁸ The role of central

16. Even if these reforms are not fully implemented, they will likely be the seeds of future reforms. Contract employment was a feature of an earlier reform program developed under the leadership of Liu Shaoqi and Deng Xiaoping in the 1960's, but became a casualty of the Cultural Revolution. See generally, Howe, *Labour Organization and Incentives in Industry, Before and After the Cultural Revolution*, in *AUTHORITY, PARTICIPATION, AND CULTURAL CHANGE IN CHINA* 233 (S. Schram ed. 1974).

17. See *THE CHINESE ECONOMIC REFORMS* (S. Feuchtwang & A. Hussain ed. 1983). The Four Modernizations program refers to the modernization of industry, agriculture, defense and science. Although the program was first announced in 1977, it gained momentum with the ascent of Deng Xiaoping and his supporters at the Third Plenum of the 11th Central Committee of the Chinese Communist Party in December 1978.

18. The term "socialist commodity economy" describes an economic system where production and sales decisions are increasingly made by the enterprise in response to the market forces of supply and demand, rather than in response to directives from the government planning bureaucracy. The planning bureaucracy plays a reduced role in allocating inputs to production, setting prices for finished goods, and marketing output. See *Zhongguo Zhongyang Guanyu Jingji Tizhi Gaihe de Jueding*, RMRB, Oct. 21, 1984, at 1, trans. in *FOREIGN BROAD-*

planning has decreased, as the economy is increasingly being driven by a new market sector in which economic units can sell output produced after fulfilling their requirements under the state plan.¹⁹

The trend away from central planning has extended to the area of labor allocation. Before the recent labor reforms, labor in urban areas was allocated by administrative assignment. One major reason for the central government's disenchantment with this administrative allocation of labor was the practical inability to ensure employment for all eligible job-seekers.²⁰ Since the early 1980's, the government has officially retreated from a commitment of guaranteed work for all and now approves alternative forms of employment, including self-employment.²¹

Since the successful implementation of the dual planned-market system in the agricultural sector, the government turned its attention to reform of the urban industrial economy, particularly state enterprises.²² A recurring theme in policy statements has been the need to overcome a lack of "vitality" in state industries.²³ Although the industrial output of state enterprises has continued to increase, these gains, when compared to the success of reforms in the largely rural economy, have not satisfied government expectations.²⁴ Because state enterprises generate such a large share of industrial output, significant gains in this sector are necessary if China is to achieve its goal of quadrupling annual industrial and agricultural output value by the end of the century.²⁵

The central government has blamed the current lack of vitality in

CAST INFORMATION SERVICE-CHINA REPORT [hereinafter FBIS] Oct. 22, 1984, at K1 [hereinafter Decision on Reform]; Naughton, *Finance and Planning Reforms in Industry*, in 1 CHINA'S ECONOMY, *supra* note 3, at 618.

19. See Keidel, *Incentive Farming*, CHINA BUS. REV. Nov.-Dec. 1983, at 12-14; Naughton, *The Profit System*, *id.* at 14-18; 'Major Reform' of Planning System Slated, *trans. in* FBIS, Oct. 11, 1984, at K1.

20. See RISKIN, CHINA'S POLITICAL ECONOMY 265-68, 352-56 (1987).

21. See Emerson, *Urban School-leavers and Unemployment in China*, 93 CHINA Q. 1 (1983); Feng Lanrui & Zhao Lükuan, *Urban Unemployment in China*, 3 SOC. SCI. IN CHINA 123-139 (1982). Those individuals who choose self-employment, however, do so at the risk of losing the chance to ever get a more secure job.

22. See Decision on Reform, *supra* note 18. For distinctions between state and collective enterprises, see *supra* note 3.

23. Decision on Reform, *supra* note 18, at K-4.

24. See, Delfs, *Discovered Drama of the Countryside*, FAR E. ECON. REV., Mar. 20, 1986, at 81-82. Industrial growth during most of the period since 1949 has been attributable to high rates of investment rather than to the efficient use of either capital or labor. See WORLD BANK, CHINA: SOCIALIST ECONOMIC DEVELOPMENT 115-16 (1983).

25. The goal of quadrupling output value is stated in Decision on Reform, *supra* note 18, at K-5. In 1985, state enterprises accounted for 70.4 percent of the gross value of industrial output, and collective enterprises accounted for 27.7 percent. Individually-run businesses and other forms of industrial undertakings accounted for the remainder. ZHONGGUO TONGJI

industrial enterprises on the "excessive and rigid control" of government planners and on the interference of Communist Party officials in production decisions at the factory level.²⁶ Local labor bureau officials in charge of labor allocation,²⁷ faced with high unemployment among urban middle school graduates have pressured enterprises to hire additional workers regardless of actual needs.²⁸ This overstaffing has led to a decline in labor productivity.

Another factor that has resulted in low productivity has been the disassociation of skill and effort from reward. National wage increases since 1977 have raised individual income levels after two decades of wage stagnation, but most workers have gained proportional increases regardless of the quality or amount of work they contributed.²⁹ Since 1949, the link between performance and reward has never been direct, due partly to an ideological bias against material incentives and partly to the leveling effects of work group behavior.³⁰ The connection between performance and reward virtually ceased to exist during the Cultural Revolution (1966-76) when a serious breakdown in work discipline occurred. Since then, while the more flagrant forms of misconduct such as absenteeism, have been brought under control, wages are still based less on the quality of performance than on the seniority of the worker.³¹

The current irrational price system shows the limits of individual effort, with or without job security, and adds to the difficulty of obtaining a meaningful measure of an enterprise's profitability or of worker productivity. Official prices for goods and services which are established under the state plan reflect neither costs of production nor scarcities, yet these prices inevitably affect the prices charged within the market economy.³² As a result, when compared to international standards, energy and raw materials are underpriced while manufactured goods are overpriced. Thus, the pricing system systematically

NIANJIAN 1986 (STATISTICAL YEARBOOK OF CHINA 1986) 227 (1986) [hereinafter STATISTICAL YEARBOOK OF CHINA 1986].

26. See Decision on Reform, *supra* note 18, at K-4.

27. See *infra* note 74 for a discussion of the system of labor allocation.

28. See Taylor, *Labor Force Developments in the People's Republic of China, 1952-83*, in 1 CHINA'S ECONOMY, *supra* note 3, at 258.

29. See WALDER, COMMUNIST NEO-TRADITIONALISM, *supra* note 3, at 201-05, 228-29.

30. The work group is the lowest level in the hierarchy of factory organization and is responsible for parcelling out bonus funds to its members. See WALDER, COMMUNIST NEO-TRADITIONALISM, *supra* note 3, at 95, 111-13.

31. See Fischer, *Chinese Industrial Management: Outlook for the Eighties*, in 1 CHINA'S ECONOMY, *supra* note 3, at 562-63; WALDER, COMMUNIST NEO-TRADITIONALISM, *supra* note 3, at 201-05, 228-29.

32. RISKIN, *supra* note 20, at 341-49, 352.

overrewards certain sectors and penalizes others.³³

Even while the important task of price reform remains uncompleted, the central government instituted the contract employment system in 1986 in order to help revitalize industry.³⁴ In contrast to the prior system of bureaucratic allocation, whereby urban middle school graduates were assigned to state enterprise jobs essentially for life, the contract employment system attempts to give both employers and employees a wider range of choices. Since the employment relationship is for the duration specified in the contract, either party may discontinue the relationship, either once the contract expires, without being penalized, or during the contract term with an obligation to pay damages. In principle, this system should allow labor to gravitate to those sectors where demand for labor exists, thereby relieving enterprises of the burden of supporting unnecessary workers. In addition, by allowing workers to change jobs the contract employment system promotes diffusion of technical knowledge,³⁵ reduces overspecialization, and responds to changes in individual attitudes towards work.³⁶

B. *The Problems and Limited Attempts at Correction*

1. Rewards Based on Status Rather than Performance

While China does not yet have a labor code,³⁷ there is a customary presumption in favor of indefinite, or permanent, employment.³⁸ This presumption, which may be overcome by an agreement between the parties,³⁹ may be implied from various administrative regulations⁴⁰ which deal with fixed term employment or which restrict the

33. See Carver, *China's Experiment with Fiscal and Monetary Policy*, in 1 CHINA'S ECONOMY, *supra* note 3, at 129-30 (1986); Field, *China: The Changing Structure of Industry*, *id.* at 533-34; Naughton, *Finance and Planning Reforms in Industry*, *id.* at 625-26; Tian Jiyun *Urges Reform of Price System*, *trans. in* FBIS, Jan. 10, 1985, at K2.

34. See *supra* text accompanying note 32.

The central government, although committed to strengthening the role of market forces in the economy, has stated that labor power and essential natural resources such as land are not commodities, and therefore their value is not to be determined by the laws of supply and demand. See Decision on Reform, *supra* note 18, at K-8. The implication is that bureaucratic determination will continue to play a dominant role in the setting of wages and fringe benefits.

35. See WORLD BANK, 5 CHINA: LONG-TERM ISSUES AND OPTIONS 144 (1985).

36. Opinion surveys suggest that with a rise in the standard of living the Chinese people, especially younger generations, increasingly view work as a means of personal fulfillment and self-actualization. See Guo Yonggang, *infra* note 336 at 3; *Workers Reject 'Iron Ricebowl'*, S. China Morning Post, Jan. 5, 1987, at B1.

37. See *infra* note 131 and accompanying text.

38. RISKIN, *supra* note 20, at 354-56.

39. LAODONG FAXUE (Labor Law) 122 (Guan Huai ed. 1983).

40. Guanyu Zuohao Qiye Bianzhi Dingyuan he Laodong Ding'e Gongzuo de Tongzhi (Notice on Improving Manpower Allocation and Determination of Work Quotas in Enter-

employer's power to dismiss "permanent" workers.⁴¹

Although life tenure has been the basic pattern of employment in state enterprises, it has by no means been the exclusive form of employment. Historically, the labor force of state enterprises has been divided into two basic groups: the permanent work force and the temporary work force.⁴² Generally, a worker's status as either permanent or temporary is fixed at the time of his initial employment and will not change thereafter, although a small number of temporary workers with special skills or good work records may be able to gain permanent status.⁴³ The employees who have permanent status, whether through initial assignment or through a change in status, are recorded on the official employment register of the enterprise and receive their wages from a wage fund supplied by the state. Such workers and their families enjoy the full range of fringe benefits provided by the employer, such as subsidized medical care, housing, and educational facilities.⁴⁴ Permanent workers enjoy immunity from dismissal, except in cases of egregious misconduct such as chronic absenteeism, criminal behavior, or political offenses.⁴⁵ Even if their employer partially or totally ceases operations, permanent workers are usually assured of full wages or relocation by the state to other

prises) sec. 3, 9 LAODONG GONGZI WENJIAN XUANBIAN (Selected Documents on Labor and Wages) 153, 156 (1986).

41. *Id.*

42. On labor market segmentation, see generally, Piore, *Notes for a Theory of Labor Market Stratification*, in LABOR MARKET SEGMENTATION 125-50 (1975).

Walder distinguishes between four groups of industrial workers (in descending order of privilege): 1) permanent workers in state enterprises, 2) workers in urban collective industry, 3) temporary workers in urban enterprises, and 4) rural workers in collective town and village industry. WALDER, COMMUNIST NEO-TRADITIONALISM, *supra* note 3, at 39-56. He argues that whereas labor market segmentation in market economies results from microeconomic decisionmaking, in China, it results from governmental policy and regulation. *Id.* at 40. This governmental control is exemplified by the more privileged groups whose wages and fringe benefits are directly budgeted by the state.

As Walder notes, the government is not well-informed about the numbers of temporary workers employed or about the ways in which such workers locate jobs, and as a result, their patterns of compensation are subject to great variation. *Id.* at 49. The regulation of temporary employment may be an attempt to formulate minimum standards in an area where the government has tacitly left much initiative to individual enterprises.

43. WALDER, COMMUNIST NEO-TRADITIONALISM, *supra* note 3, at 57-58.

A temporary worker may achieve permanent status when the enterprise is authorized to expand its regular work force. *Id.* Also, from time to time, national and local regulations permit large scale conversions. A recent example is a regulation in Shanghai which permitted 2400 construction workers to achieve regular status. LAODONG GONGZI WENJIAN XUANBIAN, *supra* note 40, at 203-4. For a discussion of the conversion of contract workers to permanent status, see *infra* text Part III(B).

44. WALDER, COMMUNIST NEO-TRADITIONALISM, *supra* note 3, at 40.

45. *Id.* at 42.

permanent jobs.⁴⁶ Such workers can expect an increase in income over their working lives and a pension upon retirement.⁴⁷

In comparison to permanent workers, temporary workers are relatively unprivileged. These workers tend to be engaged in occupations such as construction, hauling, and cleaning, which are disdained by permanent workers.⁴⁸ Although they may be employed in regular production jobs alongside permanent workers, they are not included in the official employment register.⁴⁹ Consequently, their wages, which are usually lower than those of the average permanent worker,⁵⁰ are paid out of other budget items, sometimes on a clandestine basis.⁵¹ Furthermore, temporary workers do not enjoy the same range of fringe benefits, such as a pension upon retirement.⁵² Although they may in fact be employed by the same enterprise for many years, they do not have the same claim to job security as do permanent workers.⁵³ The state does not recognize an obligation to subsidize the wages of temporary workers or to find alternative employment for these workers if their employer runs into economic difficulty.⁵⁴

Although there are no studies or statistics to prove that temporary workers are more diligent than permanent workers, the view that a shift away from permanent employment will increase productivity seems to be generally accepted.⁵⁵ Nevertheless, the proportion of temporary workers in the state enterprise work force, at least in the last decade or so, has remained small, approximating ten percent of the total state enterprise work force.⁵⁶ Since temporary workers tend to perform certain types of unskilled or manual work, it is not certain that employees hired under the contract employment system will be more suitable than permanent employees in a wide range of jobs.

2. Mismatch of Skills to Job Requirements

Beginning in the late 1950s, job vacancies in state enterprises were filled through administrative assignment by the government's

46. *Id.* at 42, n.12.

47. *Id.* at 42.

48. *Id.* at 50.

49. *Id.* at 54.

50. *Id.* at 41.

51. *Id.* at 51, 53.

52. *Id.* at 44-45, 54.

53. *Id.* at 54.

54. See LAODONG GONGZI WENJIAN XUANBIAN, *supra* note 40.

55. WALDER, COMMUNIST NEO-TRADITIONALISM, *supra* note 3, at 50.

56. The following table shows the percentage of temporary workers of the total work force for the period from 1975 to 1984.

labor and education bureaus.⁵⁷ Neither the employer nor the potential employee had much formal control over the process. Although the Chinese Government had long perceived deficiencies in this system of job allocation,⁵⁸ the system of administrative assignment did serve two important government goals. One was to control the growth of the urban population and maintain urban living standards by limiting permanent state sector employment to those with urban household registration. The other was to allocate jobs between industries, geographic areas, and occupations.⁵⁹

Under the urban household registration system, which until recently served as an effective deterrent to clandestine migration from the countryside,⁶⁰ a person could not move into a city legally and obtain urban household registration unless he already had a job in

Table I. Temporary Workers & Staff in State Industrial Enterprises

| Year end | Total Work Force (millions) | Temporary Work Force (millions) | Temporary as a percentage of total |
|----------|-----------------------------|---------------------------------|------------------------------------|
| 1975 | 64.26 | 5.13 | 8.0 |
| 1976 | 68.60 | 6.64 | 10.0 |
| 1977 | 71.96 | 8.547 | 11.9 |
| 1978 | 74.51 | 9.043 | 12.0 |
| 1979 | 76.93 | 9.122 | 11.8 |
| 1980 | 80.19 | 9.69 | 12.0 |
| 1981 | 83.72 | 9.967 | 11.9 |
| 1982 | 86.30 | 10.023 | 11.6 |
| 1983 | 87.71 | 9.471 | 10.8 |
| 1984 | 86.37 | 8.758 | 10.1 |

Sources: ZHONGGUO LAODONG GONGZI TONGJI ZILIAO, 1949-1985 (Statistics on China's Labor and Wages, 1949-1985) 35 (1987); ZHONGGUO TONGJI NIANJIAN 1985 (STATISTICAL YEARBOOK OF CHINA) 216 (1985).

However, in recent years the temporary work force in state enterprises seems to have increased both in absolute terms and relative to other segments of the state enterprise work force. See *infra* text accompanying note 311-13.

57. The Chinese Communist Party strove to assert government control over labor allocation in the areas under its administration in the 1930's. See Zhonghua Suweiai Gongheguo Laodongfa (Labor Code of the Chinese Soviet Republic) art. 5; ZHONGGUO LAODONG LIFA, ZILIAO HUIBIAN (Chinese Labor Laws, A Compendium of Materials) 367 (1980). Even then, the Party most likely viewed administrative assignment as the only alternative to the dominance of private job contractors, many of whom had underworld connections.

58. CONGRESSIONAL RESEARCH SERVICE (L. ORLEANS) FOR HOUSE COMM. ON SCIENCE AND TECHNOLOGY, 98TH CONG., 2D SESS., THE TRAINING AND UTILIZATION OF SCIENTIFIC AND ENGINEERING MANPOWER IN THE PEOPLE'S REPUBLIC OF CHINA 50-61 (Comm. Print. 1983) (discussing allocation of professional manpower); *Flow of talent held up by personnel system*, China Daily, Aug. 16, 1984, at 4.

59. WHYTE & PARISH, *supra* note 3, at 16-22, 37-41.

60. *Id.* at 16-22. The relaxation of controls in the last several years has resulted in large transient populations in major cities. See, *Transients a Headache for Public Security*, China Daily, Aug. 12, 1988, at 1, col. 1.

that city.⁶¹ Conversely, the labor and education bureaus would not assign an individual a job unless he had urban household registration.⁶² Besides helping to control the growth of the urban population, administrative assignment, rather than wages,⁶³ was used as a means of effecting job allocation between industries, geographic areas, and occupations.⁶⁴ During the 1950's, a period when the remaking of social and cultural attitudes was stressed, the relatively objective and impersonal nature of bureaucratic decision-making restrained the use of family and personal connections to obtain jobs, which was prevalent in "feudal" Chinese society before 1949.⁶⁵

The disadvantages of job assignment for both the individual and the employer have been discussed in the Chinese media for several years.⁶⁶ Job assignments were often made without regard to the individual's interests, aptitude, or training, a particular problem in the case of professionals.⁶⁷ Since only one state sector assignment would be made, a person generally could not quit and find another state sector job. Moreover, it was impossible for the enterprise to dismiss a worker on the ground that the worker was unsuitable for the job.⁶⁸

In addition to the problematic effects of administrative assignment, state enterprises were plagued with difficulties arising out of the so-called "substitution system". Under this system, a retiree from a permanent job in a state enterprise could designate one of his children

61. WHYTE & PARISH, *supra* note 3, at 17-18.

62. *Id.* at 18.

63. EMERSON, *supra* note 21, at 255-57; C. HOWE, EMPLOYMENT AND ECONOMIC GROWTH IN URBAN CHINA 1949-1957, at 132-40 (1971); *See also*, C. HOFFMANN, THE CHINESE WORKER 62 (1974).

64. C. HOWE, *supra* note 63, at 138-40.

65. WHYTE & PARISH, *supra* note 3, at 11-12.

66. *See supra* note 58.

67. *Id.* Before and after the Cultural Revolution, regulations were issued to encourage units to move cadres into jobs which utilized their training. *See* ZHONGHUA RENMIN GONGHEGUO RENSHI ZHIDU GAIYAO (An Overview of the Chinese Personnel System) 103-12 (Cao Zhi ed. 1985). For a discussion of morale problems among rank and file workers, see LAODONG ZHIDU GAIGE XUESHU TAOLUNHUI LUNWEN XUANJI (A Collection of Essays from the Symposium on Reform of the Employment System) 107 (1985).

The difficulties faced by both professionals and workers in trying to change jobs are reflected in the low registration and placement rates of government job transfer centers. *See* Obstacles to Exchange of Talent Decried, Joint Publication Research Service [hereinafter JPRS] CEA 85 040, Apr. 25, 1985, at 113-15 (only ten percent of registered job seekers successful); *Laodongli Guanli Shang de Yixiang Zhongyao Gaige*, Shanxi Ribao, Nov. 8, 1985, at 2 (placement rate of 28 percent); Chen Qiusheng, *Gongren Heli Liudong Zuli Chongchang*, Wen Hui Bao (Shanghai), Nov. 19, 1986, at 2 (29 percent of registered job-seekers successful). Even when a skilled worker is not being properly utilized in his present job and is able to locate alternate employment, his employer is likely to block the move. In Shanghai, about half of all workers seeking transfer cannot do so because their employers would lose a portion of the wage allocation. *Id.*

68. *See supra* note 58.

to succeed him as a permanent employee in the same enterprise, although not necessarily in the same position as that held by the parent.⁶⁹

69. The worker's right to designate a successor became generally accepted and recognized by administrative regulation as early as 1953. ZHONGGUO LAODONG LIFA, *supra* note 57, at 32-36. See also Guowuyuan Guanyu Gongren Tuixiu, Tuizhi de Zanxing Banfa (Interim Procedures for Worker Retirement) art. 10, in GUOYING GONGYE QIYE FAGUI XUANBIAN (Selected regulations for state industrial enterprises) 267-71 (1982); Guowuyuan Guanyu Yangge Zhixing Gongren Tuixiu, Tuizhi Zanxing Banfa de Tongzhi (Notices on Interim Procedures for Strictly Controlling Worker Retirement) para. 4, GUOYING GONGYE QIYE FAGUI XUANBIAN 278-82 (1982); Guowuyuan Guanyu Renzhen Zhengdun Zhaozhou Tuixiu, Tuizhi Zhigong Zinu Gongzuo de Tongzhi (State Council Circular on Regularizing the Hiring of Children of Retired Workers), 13 Laodong Gonzi Wenjian Xuanbian (Selected Documents on Labor and Wages) 162 (1986), [hereinafter Hiring Circular] *trans. in* COMMERCIAL LAWS, *supra* note 7, at 304-5.

Originally the substitution system was intended to relieve the financial hardship of families of deceased or disabled workers at a time when the social insurance system had only recently been established. However, the substitution system would not have persisted in China if it had not proved advantageous to both the employer and the work force. From the enterprise's point of view, it is administratively simpler to hire relatives of incumbent employees than to hire members of society at large. WHYTE & PARISH, *supra* note 3, at 258. Compare discussion of U.S. experience in P. DOERINGER & M. PIORE, INTERNATIONAL LABOR MARKETS AND MANPOWER ANALYSIS 139-40 (1971). The substitution system is also more likely to produce recruits who possess similar work attitudes as those of incumbent employees and who, because of personal ties to incumbent employees, will be more concerned about their work performance. Furthermore, hiring through the substitution system apparently required only *pro forma* approval from the labor bureau and allowed the enterprise a limited form of autonomy in hiring vis-a-vis administrative allocation. WALDER, COMMUNIST NEO-TRADITIONALISM, *supra* note 3, at 58; WHYTE & PARISH, *supra* note 3, at 24, n.40. The substitution system also reinforced worker discipline, because the loss of employment meant not only the loss of the employee's job, but also the loss of insuring a future job for the employee's children in a job market that will become increasingly tight. See WHYTE & PARISH, *supra* note 3, at 37-38.

From the work force's point of view, the substitution system created job opportunities at a time when middle school graduates had few options. In the early 1970's, unemployed middle school graduates were forcibly relocated to the countryside; in the late 1970's there was serious unemployment among those who returned, with or without official permission, to the cities. Emerson, *supra* note 21, at 7. Furthermore, since unmarried children tend to live with their parents and pool their economic resources, the combination of one family member's retirement and receipt of a pension and another family member's subsequent employment will increase overall family income. See WHYTE & PARISH, *supra* note 3, at 173-74. During the period from 1979 to 1983, four to five million people took early retirement, often on spurious claims of ill-health, in order to open up places for their children. Thus, more than a third of the net increase in the retired population was associated with the substitution system. Qiu, *Woguo Shehui Baoxian de Fazhan* (Development of Social Insurance in China) in SHEHUI BAOXIAN YU ZHIGONG FULI JIANGGAO (Essays on Social Insurance and Workers' Benefits) 59-60 (1986). The substitution system affords the working class a formal mechanism for providing for its children, in contrast to the politically powerful, who can provide for their children through informal means. See *Chinese Officials Still Give Preference to Kin, Despite Peking Policies*, Wall St. J., Oct. 29, 1985, at 1; Louise do Rosario, *A new Chinese class*, FAR E. ECON. REV., Sept. 18, 1986, at 46-48.

The substitution system runs counter to the policy of distributing jobs through bureaucratic allocation rather than through personal relationships. However, the substitution system illustrates the inability of revolutionary government policy to uproot completely the traditional

The substitution system was prone to abuse because it gave even less consideration to qualifications than did the system of administrative assignment. That parents chose as successors the least competent among their children was implied by relaxed hiring criteria applied to substitutes.⁷⁰ Parents would frequently select children who were physically unfit to take over their production jobs. For example, knowing that the management of a coal mine would not readily send women into the pits, miners would designate their daughters to substitute for them.⁷¹ Even if the child appointed by substitution could not fill the position which was being vacated by the parent, enterprises were obligated to hire the child. As a result, the substitution system aggravated overstaffing practices and resulted in internal imbalances between supply and demand of labor. The substitution system also produced outflows of experienced workers and inflows of untrained workers.⁷²

Due to restraint on productivity caused by administrative assignment and the substitution system, the central government has recently instituted a number of policies to restore merit selection and to restrict operation of both of these practices in the allocation of state sector industrial jobs. In 1980, local labor bureaus abandoned the system of unilateral assignment and adopted a system of "introduction" of candidates.⁷³ Under this latter system, a state enterprise which intends to hire additional workers is still required to submit a hiring plan for approval by its supervisory organization (*zhuguan bumen*) and the local labor bureau.⁷⁴ However, in contrast to the earlier prac-

social structure. In addition, the substitution system probably offered practical advantages to the government and the employing enterprise. For example, from the perspective of the government and the enterprise, it may have induced compliant attitudes among the work force, because, as mentioned above, losing a job in a state enterprise ruined not only the worker's own life chances, but also those of one of his children in an increasingly tight labor market.

70. The relaxed hiring criteria previously applied to substitutes are evident from a State Council regulation issued in 1983. The regulation mandated that previously hired substitutes submit to an examination, and those with mental defects or disabilities be dismissed. See *Hiring Circular*, *supra* note 69, at 304-5.

71. See LAODONG HETONGZHI WENJIAN YU JINGYAN HUIBIAN (A Collection of Documents and Reports on the Contract Employment System) 282 (1985).

72. See LAODONG ZHIDU GAIGE XUESHU TAOLUNHUI LUNWEN XUANJI, *supra* note 67, at 89; interview notes (Oct. 17, 1986).

73. See Provisional Regulations of the Ministry of Labor and Personnel on Examination and Selective Recruitment of Workers, COMMERCIAL LAWS, *supra* note 7, at 326-27; *Beijing-shi Zhixing Guoying Qiye Zhaoyong Gongren Zanxing Guiding de Shishi Xize* (Implementing Rules for Beijing Municipality with respect to the Provisional Regulations on the Hiring of Workers in State Enterprises) 10 LAODONG GONGZUO XINXI 4-6 (1986) [hereinafter *Beijing Rules*]. *Decision on Solving Urban Employment Problems*, BEIJING REV., Feb. 8, 1982, at 21-24; *New Employment Policy*, BEIJING REV., Aug. 25, 1980, at 4-5.

74. An enterprise's ability to hire additional workers is a function of both enterprise-specific factors such as its past labor productivity and expected growth in production, and

tice, once the hiring plan is approved, the enterprise may now prepare notices describing the number of job vacancies, the nature of the vacant positions, the requirements for each position, the wages and fringe benefits, and the job locations. These notices are then posted at the labor offices of local street committees.⁷⁵

In order to promote the open merit recruitment system, some cities, such as Beijing,⁷⁶ require applicants for state sector jobs to take a city-wide standardized written examination.⁷⁷ Based on their score, applicants may indicate preferences among the jobs advertised, although formal assignments are made by a committee of labor administrators.⁷⁸ Applicants may also be required to undergo character and physical fitness⁷⁹ examinations. Although assignments are made by a committee of government labor administrators, they are subject to the final approval of the enterprise. Therefore, if, for example, a job applicant does not pass a physical examination, the enterprise may be entitled to reject such applicant.⁸⁰

Even with the adoption of open merit recruitment, significant constraints on both applicants and employers persist. Enterprises still may not engage in formal hiring without official approval. Moreover, ordinarily they must hire from among those individuals with urban

social factors such as the need to provide employment to the population. For an example of relevant enterprise-specific factors, see WORLD BANK, *supra* note 35, at 143-44. Information on enterprise performance and hiring needs is referred up through the enterprise's supervisory organization, and eventually reaches the State Planning Commission. The State Planning Commission prepares manpower plans which are then broken down at each lower level of the government bureaucracy. The actual number of workers a given enterprise may hire is determined by its supervisory organization. WORLD BANK, CHINA: SOCIALIST ECONOMIC DEVELOPMENT 61-62 (1983).

Like other aspects of the industrial planning process, there is a tendency at each level to overstate requirements. Perhaps due to the central government's recent concern about over-staffed enterprises, enterprise administrators have stated that new hiring must be carefully justified and their requests are sometimes scaled down. Interviews with enterprise administrators (March 7, 1986; April 8, 1986; Oct. 17, 1986; and Nov. 13, 1986).

75. The local street committee is a lower level organ of municipal government. For a description of the organization of city government, see WHYTE & PARISH, *supra* note 3, at 22-24.

76. See Beijing Rules, *supra* note 73, sec. 11(1).

77. In other cities, enterprises prepare and administer their own written examinations. This is the case in Shanghai. See interview notes (Nov. 11, 1986). According to an administrator with the Ministry of Labor and Personnel, a system which uses standardized examinations and centralized assignment procedures tends to be more objective and fair than one which leaves such matters to individual enterprises. See interview notes (Jan. 8, 1987). However, granting enterprises more autonomy, especially in hiring, has been identified as an important goal of the economic reforms. Decision on Reform, *supra* note 18.

78. See Beijing Rules, *supra* note 73; interview notes (March 12, 1986, Jan. 8, 1987).

79. See Beijing Rules, *supra* note 73.

80. The Beijing Rules, *supra* note 73, are not clear on this point.

household registration.⁸¹ Furthermore, in some cities, the labor bureau limits a given firm's ability to hire qualified personnel by allowing it to hire individuals only from a particular geographical area within the city.⁸²

With respect to the substitution system, a State Council regulation was issued in 1983 to control early retirement,⁸³ and to require examination of substitutes on their intellectual, moral, and physical qualifications. This regulation, however, was not fairly implemented.⁸⁴ These issues, however, have become largely academic with the abolition of the substitution system in 1986.⁸⁵

3. Imbalances of Labor Supply and Demand

In general, the Chinese labor force, both in urban and rural areas, is characterized by an oversupply of unskilled labor and an undersupply of skilled labor and professional manpower. It has been estimated that by 1990, there will be one-hundred million excess laborers in the countryside and ten million in the cities.⁸⁶ In the late 1970's and early 1980's, government authorities faced a formidable task in dealing with the problem of youth unemployment which resulted from a combination of individuals who graduated from middle school during this period and who did not continue on to higher education⁸⁷ and of individuals who had graduated before this time period but had been assigned to the countryside during the Cultural Revolution and had later returned to the cities.⁸⁸ At that time, a

81. See *id.*; see also Hiring Regulations, *infra* note 159, art. 12.

82. This is true in Beijing and Shanghai. See interview notes (March 7, 1986; March 12, 1986; April 11, 1986; November 11, 1986).

Requiring enterprises to hire from the immediate vicinity has a rational basis which is that it helps prevent lengthy commutes for workers and an additional strain on the inadequate public transport system. Interview notes (Nov. 11, 1986).

83. See Hiring Circular, *supra* note 69.

84. Beijingshi Zhaoshou Tuixiu Gongren Zinü Zanzing Banfa (Interim Procedures for the Recruitment of Children of Retired Workers), BEIJINGSHI SHEHUI JINGJI TONGJI NIANJIAN 76-77 (1985).

Interview subjects in various enterprises have reported that substitutes were either not examined at all, were required only to submit to a physical examination, or were given an in-house examination if they did poorly on the publicly administered one. See interview notes (Aug. 19, 1985; April 8, 1986; and Oct. 17, 1986). For reports on abuses of the examination system, such as having a stand-in appear for the examinee, see *Yi Chang Han Jian de Zhaosheng Zuobi Shijian*, Gongren Ribao, Feb. 26, 1985, at 2; *Quxiao Yi Bai Ling Jiu Ming You Wubi Xingwei Kaosheng de Luqu Zige*, Gongren Ribao, Feb. 6, 1986, at 2; and *Tian-shuishi Zhaogong Kaoshi Chuxian Yanzhong Zuobi Xingwei*, Gongren Ribao, Jan. 7, 1987, at 2.

85. See *supra* notes 69-72 and accompanying text.

86. See *Labor Minister on Reforming Personnel System*, FBIS, Mar. 5, 1985, at K3.

87. See WALDER, COMMUNIST NEO-TRADITIONALISM, *supra* note 3, at 58-59.

88. Emerson, *supra* note 21, at 7.

number of strategies were utilized to absorb these individuals into the work force, including outright overstaffing of state enterprises,⁸⁹ use of the substitution system,⁹⁰ expansion of employment in the collective sector,⁹¹ and removal of the ban on self-employment.⁹²

The problem of urban youth unemployment has abated considerably in recent years causing a shortage of recruits for certain industrial jobs in cities such as Beijing and Shanghai.⁹³ Even when the unemployment rate is high, however, the unwillingness of unemployed urban youth to take certain jobs is implied from the fact that urban enterprises had to hire peasants for certain manual jobs which are particularly strenuous, dirty, or monotonous.⁹⁴ For this reason, enterprises often hire peasants to do work of a temporary or seasonal nature,⁹⁵ to do heavy manual work such as construction and hauling,⁹⁶ and to fill jobs, such as mining, which may have long-term adverse health effects.⁹⁷ With the shrinkage of the urban labor pool, industries which had not previously experienced difficulty in hiring, such as the textile industry, are now looking to the rural population for workers.⁹⁸

The employment of rural peasants in urban industry presents two potential sources of difficulty. First, it negates government efforts to control the size of urban populations especially since many of these workers are not officially registered with the public security appara-

89. Taylor, *supra* note 28, at 258.

90. *Id.*

91. *Id.* at 236-37.

92. *Id.*

93. Liu & Wang, *Guanyu Beijing Shi "Zhaogong Nan" Wenti de Diaocha Baogao*, 1 ZHONGGUO LAODONG KEXUE 25-28 (1987); *The Emperor's Ugly Daughter Repents*, S. China Morning Post, Aug. 24, 1986, at 13; Suzhou, *Jiangsu Suffers Labor Shortage*, JPRS CEA 86-003, Jan. 7, 1986, at 105; Si "Shui" *Bian Huo*, Yuque Liang Li, Zhongguo Laodong Renshi Bao, June 18, 1986, at 3; *Changzhou Shi Yonggong Zhidu Fasheng Shenke Bianhua*, 11 ZHONGGUO LAODONG 26 (1985).

94. An administrator with a labor service company, describing the situation in the mid-1980's when the youth unemployment rate was low, stated that urban youth preferred unemployment to doing "dirty" jobs. See interview notes (November 13, 1986).

95. Hiring without labor bureau approval is technically illegal. Nonetheless, this type of hiring does occur. The labor bureau may be unaware of such illegal hiring, may suspect that it is being done but not investigate, or may definitely know that illegal hiring is taking place and choose to look the other way. See generally WALDER, COMMUNIST NEO-TRADITIONALISM, *supra* note 3, at 48-54.

96. *Id.* at 50. See Emerson, *supra* note 21, at 250-53.

97. LAODONG HETONGZHI WENJIAN YU JINGYAN HUIBIAN, *supra* note 71, at 281-302, 311-19; *Nongmin Lunhuangong Shi Kuangshan Shengchan Jianshe de Zhongyao Liliang*, Zhongguo Laodong Renshi Bao, July 23, 1986, at 3.

98. See Si "Shui" *Bian Huo* Yuque Liang Li, *supra* note 93; see also Caiqu Cuoshi *Diaodong Fangzhi Zhigong Jijixing*, Gongren Ribao, Jan. 12, 1986, at 1; Qian Yu *Nongcun N Qingnian Zou Jin Shanghai Liangjia Fangzhi Chang*, Zhongguo Laodong Renshi Bao, Feb. 18, 1987, at 1.

tus.⁹⁹ Second, to the extent that urban youth unemployment exists, peasant contract workers may be hired to do jobs which urban residents who would be willing to work at such positions could otherwise fill. For example, hiring peasant workers has aggravated the problem of youth unemployment in the provinces of Henan and Shandong.¹⁰⁰

II. THE CONTRACT EMPLOYMENT SYSTEM AS INTRODUCED IN 1983

With his attacks on the lifetime employment system, colloquially referred to as the "iron rice bowl," in the 1950's,¹⁰¹ Liu Shaoqi, then a member of the top leadership, seems to have foreseen the labor problems, such as the reward of status rather than performance, the mismatch of skills to job requirements, and the imbalance of labor supply and demand, that would besiege Chinese society in the 1970s and 1980s. Steps to solve some of these problems, such as the application of material incentive systems and other "practical" means, and the curtailment of Maoist techniques such as exhortation and voluntarism, were taken only after the implementation of the Four Modernizations plan brought China's labor problems clearly into focus. The contract employment system is the first major structural change in the labor system to respond to these problems.

The February 1983 Notice of the Ministry of Labor and Personnel on Active Trial Implementation of the Contract Employment System (the "Ministry Notice"),¹⁰² is the first significant attempt to use the legal system to solve the problems in the labor system,¹⁰³ and has resulted in the nationwide implementation of the contract employment system.¹⁰⁴ The Ministry Notice represents a consensus developed out of experimentation with the contract employment system at

99. WHYTE & PARISH, *supra* note 3, at 17-22. One estimate is that there are over 200,000 peasants in the city of Guangzhou, of whom less than a quarter hold temporary registration permits. See *Jiaqiang dui Jincheng Laodongli de Zonghe Quanli*, *Zhongguo Laodong Renshi Bao*, June 25, 1986, at 2.

100. See Ni Songxin, *Guanyu Dangqian Laodong Jiuye de Xingshi he Xuyao Yanjiu Caiqu de Zhengce Cuoshi*, 4 *ZHONGGUO LAODONG KEXUE* 8-11 (1987).

101. Although these views have been associated with Liu, particularly when he was attacked by Mao's supporters during the Cultural Revolution, it is not clear how closely he espoused them. See generally, HOWE, *Labour Organization and Incentives in Industry*, in *AUTHORITY, PARTICIPATION, AND CULTURAL CHANGE IN CHINA* 233-56 (S. Schram ed. 1974); Walder, *Industrial Organization and Socialist Development in China*, 5 *MOD. CHINA* 233, 257-63 (1979).

102. Ministry Notice, *supra* note 7.

103. See *supra* text Part I(B) for a discussion of the problems in the labor system.

104. The contract employment system began to be tested in various cities around China in 1980. However, based on available information, local labor bureaus did not issue relevant regulations until after implementation of the contract employment system had already begun. Only in some instances did local regulations precede the Ministry Notice. Thus, in general,

the local level beginning in 1980. Given its general and hortatory language and the fact that it does not provide sanctions for noncompliance,¹⁰⁵ the Ministry Notice has the effect of a policy statement which outlines general goals, rather than an administrative regulation which sets forth objectives for immediate implementation.

The Ministry Notice blames job security and the relatively egalitarian system of reward distribution for the low levels of productivity.¹⁰⁶ The primary objective of the contract employment system promoted by the Ministry Notice is to change the basic pattern of employment in state enterprises, where the vast majority of workers enjoy life tenure. Various wage reforms have been adopted to forge a closer link between material reward and individual achievement.¹⁰⁷ If wage reform is the positive incentive used to inspire the work force to produce a greater amount of output, then undermining the pattern of life tenure is the negative incentive.

In addition to undermining job security and reforming the wage system, the contract employment system aims to create a controlled free market in labor by granting both enterprises and job-seekers greater autonomy to form employment relationships.¹⁰⁸ As the Min-

law followed practice; the "obligation" of an enterprise to hire contract workers was not initially a *legal* obligation.

By mid-1984, the contract employment system was implemented to some degree in all 29 provinces, nationally administered cities and autonomous regions. *Contract Workers Expand to 650,000*, China Daily, June 19, 1984, at 1. The contract employment system was implemented in foreign enterprises in Shenzhen since 1980, interview notes (Jan. 21, 1986); in Shanghai since 1980, LAODONG HETONGZHI WENJIAN YU JINGYAN HUIBIAN, *supra* note 71, at 230; in Beijing since 1981, interview notes (Dec. 12, 1985); in Shashi since 1982, SHASHI LAODONG HETONGZHI JIESHAO (An Introduction to the Contract Employment System in Shashi) 1 (Ge Fuguang ed. 1984); and in Qingdao since 1982, *Laodong Hetongzhi Shi Zheyang Tuikai de*, Zhongguo Laodong Renshi Bao, Mar. 19, 1986, at 2. Shanghai and Beijing began to issue relevant local regulations in October and December, 1982 respectively. LAODONG HETONGZHI ZHUANJI (Collection of Materials on the Contract Employment System) 18-23, 39-42 (1983). Shashi's regulations were issued in April 1983. See SHASHI LAODONG HETONGZHI JIESHAO, *supra*, at 1.

105. This exclusion of sanctions for noncompliance is a general problem with administrative regulations in the labor area. See Xia Jizhi, *Dui Wo Guo Laodong Renshi Fagui Xianzhuang de Yanjiu*, 9 ZHONGGUO LAODONG 4-5 (1985); Pinard, *The People's Republic of China: A Bibliography of Selected English-Language Legal Materials*, in CHINA'S LEGAL DEVELOPMENT 264-66 (John R. Oldham ed. 1986).

106. See Ministry Notice, *supra* note 7, at 213, para. 1.

107. These reforms include: permitting enterprises to retain a percentage of above-target profits for distribution as bonuses to the work force, allowing enterprises to pay individuals per unit of output, tying a portion of wages to the profitability of the enterprise (the so-called "floating wage" system), and widening pay differentials between unskilled and skilled jobs, light and heavy manual labor, and production and administrative work. See Decision on Reform, *supra* note 18. A pessimistic view of the effectiveness of these policies is expressed in FISCHER, *supra* note 31, at 559-63; WALDER, *Wage Reform and the Web of Factory Interests*, *supra* note 10.

108. See *infra* text part III(B).

istry Notice states, contract workers must be selected on the basis of merit, and the employment relationship must be founded on "equality and mutual benefit."¹⁰⁹ In addition, the contract employment system aims to balance the supply and demand of labor, with a special emphasis on urban middle school graduates.¹¹⁰

A. Contract Employment: An Attempt at Definition

The paradigm of contract employment differs in substantial respects from that of permanent employment. It contemplates that the employment relationship comes into existence through a formal written agreement between the worker and the enterprise, rather than in response to a unilateral directive issued by an administrative department. The duration of the employment relationship is fixed by an express agreement between the parties, not by the customary presumption that the employment relationship will continue indefinitely. The parties to the contract each enjoy greater freedom to terminate the employment relationship than previously allowed by law. In addition, conflicts arising out of the employment relationship may be resolved through a formal system of third party dispute resolution.

Numerous official statements and scholarly articles have taken pains to distinguish contract employment from temporary employment.¹¹¹ The Ministry Notice states that enterprises may continue to hire temporary workers for temporary positions, although it does not define "temporary."¹¹² However, despite this failure to provide a definition of what constitutes temporary work, the Ministry Notice seems to illustrate a shift in conceptual meaning, with the term "contract employment" being used to describe the recent reform of the employment system as a whole and the term "temporary employment" being used to describe the older forms of casual hiring.

In contrast with temporary workers as traditionally defined, contract workers are on the official roster of the enterprise and are paid out of the regular wage fund, the same state wage fund used to pay permanent employees. They are to be treated equally with permanent workers with respect to fringe benefits, admission to the Communist

109. Ministry Notice, *supra* note 7, at 214, para. 4.

110. *Id.* para. 5. See *supra* text Part I.

111. See, e.g., *Explanations on Labor Contract System*, JPRS 83062, June 3, 1983, at 81-82; *He Guang Discusses Labor Contract System*, Gongren Ribao, Dec. 22, 1984, at 1-2, *trans. in* FBIS, Jan. 15, 1985, at K18-20; *Renmin Ribao Discusses Labor Contract System*, *trans. in* FBIS, Sept. 15, 1983, at K13-17.

112. Ministry Notice, *supra* note 7, at 214, para. 4. Defining temporary work is made even more difficult by the fact that many different terms, including "contract workers" (*hetonggong*), have been used to characterize categories of temporary employees. See also, WALDER, COMMUNIST NEO-TRADITIONALISM, *supra* note 3, at 52-3.

Party, Communist Youth League, or trade union,¹¹³ and participation in political studies, technical education, and professional training.¹¹⁴

Although contract workers are to be treated on par with permanent workers, a fundamental inequality between the two types of workers exists with respect to the degree of job security enjoyed. In the case of the permanent worker, the issue of unemployment hardly ever arises, and his retirement pension is paid as a current expense by the enterprise from which he retires.¹¹⁵ The same is not true of the contract worker; he has to worry about what will happen if his contract is not renewed.¹¹⁶ In order to equalize treatment of contract workers, it would be necessary to ensure economic protection for the contract worker who is no longer employed due either to periods of unemployment or to his retirement from the work force.

The pension system for contract workers outlined in the Ministry Notice is administered by local governments rather than by each specific enterprise.¹¹⁷ Enterprises which have employed contract workers, individual workers, and local finance organs contribute to the local pension fund.¹¹⁸ Under this system, if a contract worker is employed by several enterprises over his working life, the amount each enterprise contributes to the pension fund is proportional to the number of years the worker is employed in that enterprise.

In addition to the differing pension systems for permanent and contract workers, institutional responsibility for income substitution during periods of unemployment, retraining and reemployment also

113. Historically, temporary workers have been excluded from trade union activities. *Sources of Labor Discontent in China: The Worker-Peasant System*, *supra* note 9, at 24-25. This exclusion is significant because trade unions administer entertainment and educational facilities. Vermeer, *Social Provisions and the Limits of Inequality in Contemporary China*, 19 *ASIAN SURV.* 856, 865 (1979). The problem of exclusion persists. See *infra* note 335.

114. Ministry Notice, *supra* note 7, at 214, para. 6.

115. See SHASHI LAODONG HETONGZHI JIESHAO, *supra* note 104, at 17.

116. See *infra* text Part III(B)(6).

117. The Ministry Notice's discussion of pensions seems to anticipate a centrally administered pension scheme for contract and permanent employees in state enterprises. This scheme is in the experimental stage in certain provinces and certain industries. ZHONGGUO JINGJI NIANJIAN (Almanac of China's Economy) IV-45 (Xue Muqiao ed. 1985); *New Beijing Pension Fund*, S.China Morning Post, Oct. 2, 1986, at 7; *Shanghaishi Quanmin Suoyouzhi Qiye Tuixiuwei Tongchou de Zanzing Guiding*, 21 SHANGHAI LAODONG 4, 4-6 (1986); *Wuxishi Tongchou Guanli Tuixiu Zhigong Yanglao Baoxian Fei*, *Zhongguo Laodong Renshi Bao*, Jan. 29, 1986, at 1.

Until recently, each state enterprise was responsible for supporting its retirees out of its own profits. It has been argued that this system should be reformed to 1) expand coverage to workers who did not have permanent status and 2) diffuse the financial burden of those enterprises with a high proportion of retiring workers throughout society by means of a centrally administered system. Nie Lisheng, *Retirement System Ripe for Reform*, *China Daily*, Dec. 23, 1985, at 3.

118. Ministry Notice, *supra* note 7, at 214-15, para. 6.

differs. In the case of the permanent worker, a single employer is responsible for virtually every aspect of an employee's daily routine throughout his life.¹¹⁹ This employer control over a worker's life is not true for contract workers. The Ministry Notice stipulates that once the labor contract of an employee who holds urban household registration has been terminated, or merely not renewed, the "labor service company,"¹²⁰ takes responsibility for the worker. Labor service companies provide training and employment primarily for middle school graduates.¹²¹ Labor service companies have been given the responsibility to provide job training, job placement, interim employment in shops or factories run by the labor service companies themselves, payment of unemployment compensation, and administration of pension funds for contract workers holding urban household registration.¹²² According to the Ministry Notice, unemployed contract workers with rural household registration, however, should return to their "communes, brigades and teams."¹²³ It is clear that an urban labor service company has no responsibility to support, train or locate jobs for people without urban household registration.

B. *Contract Form and Content*

The Ministry Notice lays down guidelines for both the form and the content of a labor contract. In terms of form, the Ministry Notice merely requires that the contract be in writing.¹²⁴ Although the Ministry Notice does not explain why a written contract is required, the reasons for the Statute of Frauds requirement of a writing in American contract law most likely support the Ministry Notice's requirement.¹²⁵ First, a writing serves an evidentiary function in the event of

119. See *supra* note 44 and accompanying text.

120. Labor service companies operate at every level of government, from the Ministry of Labor and Personnel down to the neighborhood street committee in urban areas and the village in rural areas. The labor service companies operating at the urban district or street committee level are the ones which would be most directly involved with helping unemployed contract workers, as discussed *infra* notes 283-86 and accompanying text. For a general description of the organization and operation of labor service companies, see White, *The Changing Role of the Chinese State in Labour Allocation: Towards the Market?*, 3 J. COMMUNIST STUD. 129, 137-40 (1987).

121. *Labour Companies Offer More Jobs*, 36 BEIJING REV. 9, 9-10 (1985); Taylor *supra* note 28, at 256.

122. In some places, the pension system is administered by a separate labor insurance company. See ZHONGGUO JINGJI NIANJIAN, *supra* note 117; LAODONG HETONGZHI WENDA (Questions and Answers on the Contract Employment System) 85 (Xia Jizhi ed. 1985).

123. Ministry Notice, *supra* note 7, at 214, para. 5. This is an odd statement in view of the dismantling of the commune system which has been taking place under the Four Modernizations program.

124. *Id.*, para. 4.

125. See, e.g., U.C.C. § 2-201 (1977).

a dispute. Second, the parties to the contract take their respective rights and obligations more seriously if these rights and obligations are memorialized in a writing.¹²⁶ Signing a contract may further the goals of the contract employment system by making workers more conscious of their obligations under the contract.¹²⁷

In terms of content, the Ministry Notice requires the inclusion of provisions covering production or work tasks, the contract period, the term of probation or apprenticeship, the wage rate, insurance and welfare benefits, labor protection, terms for cancellation or modification of the contract, liability for breach of contract, and any other applicable rights and obligations of the parties.¹²⁸ The Ministry Notice, however, does not explain why certain terms must be included in the contract and why other terms need not be included. One reason why certain terms are mandatory may be that a court or other institution in charge of dispute resolution cannot fashion a remedy if the contract is silent or vague on an essential term. What constitutes an essential term, however may be a function of the court's willingness to look beyond the written document to the process of negotiation and other parol evidence in order to determine what the parties actually agreed. As in other legal systems, a Chinese court may imply terms of a contract from various sources, such as statutes, judicial decisions, administrative regulations, collective bargaining agreements, and the custom of the industry and/or workplace.¹²⁹

Although China does not as yet have a labor code,¹³⁰ many

126. Ren Fushan, *Laodong Hetongzhi Yinggai Tuiguang Dao Quanti Zhigong*, in LAODONG ZHIDU GAIGE XUESHU TAOLUNHUI LUNWEN XUANJI, *supra* note 67, at 179.

127. In the past, as a matter of custom, written contracts were sometimes signed with temporary workers. WALDER, COMMUNIST NEO-TRADITIONALISM, *supra* note 3, at 52-53. Also, written contracts may have been part of an enterprise's reporting obligation to the labor bureau. By administrative regulation, enterprises had to notify the labor bureau about temporary employees even though such workers were not paid out of the official wage fund. LAODONG HETONGZHI WENDA, *supra* note 122, at 60; ZHONGGUO LAODONG LIFA, *supra* note 57, at 40.

128. Ministry Notice, *supra* note 7, at 214, para. 4. Regulations applicable to employment in joint ventures with foreign investors provide a somewhat more inclusive list of mandatory terms, including provisions for dismissal, resignation, and labor discipline. See Zhonghua Renmin Gongheguo Zhongwai Hezi Jingying Qiye Laodong Yingli Guiding (Provisions of the People's Republic of China for Labour Management in Chinese-Foreign Joint Ventures) (promulgated July 26, 1980), 1 CHINA'S FOREIGN ECONOMIC LEGISLATION 20 (1982); Procedures for the Implementation of Provisions of the People's Republic of China for Labour Management in Chinese-Foreign Joint Ventures, 1 CHINA LAWS FOR FOREIGN BUSINESS 7871 (1987).

129. For a discussion of British labor law, see e.g., KAHN-FREUND'S LABOUR AND THE LAW, *supra* note 1, at 29.

130. A labor code was in effect in areas under Communist control in the 1930's. Since 1949, numerous drafts of a labor code have been considered for adoption by the National People's Congress, but none have been promulgated as of yet. A labor code was not specifi-

aspects of the employment relationship are covered by administrative regulation. For example, wage scales,¹³¹ for various occupational categories were established by administrative regulation in the 1950's.¹³² The regulations prescribe procedures for determining assignment to a given wage grade on a particular wage scale,¹³³ and promotions in wage grade are regulated by national wage readjustments.¹³⁴ Moreover, while labor discipline is said to be a necessary element of the contract, it too is covered by national regulations¹³⁵ and is no more a subject of mutual negotiation than are wage grades. Thus, in China as elsewhere, much of the content of a labor relationship is determined by sources of law¹³⁶ which the parties are powerless to change by contract.

C. Theoretical Problems

The development of a socialist commodity economy in China has been accompanied by the growth of supporting legal institutions and the search for an appropriate ideological framework. Recently enacted laws and regulations, such as the 1982 Constitution and its 1988 revisions,¹³⁷ the Economic Contract Law,¹³⁸ and the General Principles of Civil Law,¹³⁹ all have in common an acknowledgment of

cally mentioned in a recent article on China's future legislative agenda, see *NPC Faces Heavy Task of Legislation*, China Daily, Aug. 1, 1988, at 3.

131. KORZEC & WHYTE, *Reading Notes: The Chinese Wage System*, 81 CHINA Q. 248, 250-52 (1981).

132. *Id.*

133. The amount of base pay one receives is predetermined by one's wage grade. *Id.*

134. WALDER, COMMUNIST NEO-TRADITIONALISM, *supra* note 3, at 201-05, 224-25. There were major national wage readjustments for industrial workers in 1977, 1979, 1983, and 1985. This pace of readjustment contrasts sharply to the pace during the period from 1963 to 1976 when wages for the vast majority of workers were frozen. *Id.* at 225.

135. See *infra* text part III(D) for a general discussion of dismissal.

136. Employment contracts which the author has read frequently restate or refer to administrative regulations.

137. Art. 11 of the PRC Constitution as amended in 1988 reads in pertinent part as follows:

The State allows the existence and development of the individual economy subject to limitations set by statutes and regulations. The individual economy serves as the supplement to the socialist public-owned economy. The State will protect the legitimacy and interests of the individual economy, provide it with guidance, and exercise supervision and administration.

THE CONSTITUTION OF THE PEOPLE'S REPUBLIC OF CHINA [hereinafter PRC CONST.] art. 11 (1982).

138. Although the Economic Contract Law technically does not apply to contracts between individuals or between individuals and business entities, under Article 54 it may be used by the courts for "reference" purposes in adjudicating disputes arising out of such contracts. H. ZHENG, CHINA'S CIVIL AND COMMERCIAL LAW 70 (1988) at n.2 and accompanying text.

139. The Civil Law mainly regulates "horizontal" economic and property relationships

the individual as an independent legal actor with the right to undertake economic activities and reap the benefits from them. However, the recognition of such rights in a still small number of individual businessmen who operate outside the state sector carries different political implications and practical consequences than does the recognition of such rights in the vastly larger state enterprise work force.¹⁴⁰

Generally speaking, the introduction of the contract employment system is consistent with evolving concepts of individual economic and property rights.¹⁴¹ In order for an employment contract, which entails a bilateral exchange of values, to have legal substance, the worker must have something to exchange, i.e., rights in his own labor power. However, a legal and political system which legitimizes individual ownership of labor power is perilously close to the system of capitalist exploitation condemned by Karl Marx.¹⁴² Given Marx's denunciation of "freedom of contract", it is remarkable that the Chinese labor reforms have adopted contract employment as a fundamental policy. Not surprisingly, Chinese political economists take pains to distinguish freedom of contract under capitalism from contract employment under socialism.¹⁴³

between the parties of equal status, including individuals. It does not apply to "vertical" economic, administrative, or regulatory relationships. *Id.* at 24-25. Thus, state enterprise employment contracts would not come into its scope and would be governed by other laws, such as those discussed in this article.

140. *Id.* at 13-15.

141. *Id.* at 33-36.

142. For the classic formulation of Marx's views, see the chapter on the purchase and sale of labor power in 1 K. MARX, *CAPITAL* 270-80 (B. Fowkes ed. 1977).

Max Weber, in a spirit not far removed from that of Marx, states:

The formal right of a worker to enter into any contract whatsoever with any employer whatsoever does not in practice represent for the employment seeker even the slightest freedom in the determination of his own conditions of work, and it does not guarantee him any influence on this process. It rather means, at least primarily, that the more powerful party in the market, i.e., normally the employer, has the possibility to set the terms, to offer the job "take it or leave it," and, given the normally more pressing economic need of the worker, to impose his terms upon him. The result of contractual freedom, then, is in the first place the opening of the opportunity to use, by the clever utilization of property ownership in the market, these resources without legal restraints as means for the achievement of power over others.

MAX WEBER ON LAW IN ECONOMY AND SOCIETY 188-89 (M. Rheinstein ed. 1954).

The power of the employer has been considerably restrained in most Western countries by the rise of unions and the collective bargaining process, as well as by the enactment of protective legislation. Notwithstanding these formal controls, freedom of contract continues to mask a fundamental disparity of economic power.

143. See generally, Shi Ren, *Laodongli Suoyou Zhi Wenti Taolun Shuping*, in JIANGUO YILAI LAODONGLI SUOYOU ZHI LUNWEN XUAN (A Collection of Essays on the Ownership of Labor Since the Founding of the People's Republic of China) 460-79 (Xu Jiewen & Gu Kewu ed. 1982); Gu Kewu, *Guanyu Laodongli Suoyou Zhi Wenti de Guandian Jieshao*, in *supra*, at 480-520.

According to the Marxist view of capitalism, the worker owns only his own labor power, which he must sell on unfavorable terms to the capitalist, who monopolizes ownership of the means of production.¹⁴⁴ Under socialism, on the other hand, the state owns the means of production, including the assets of all state enterprises, on behalf of the working class.¹⁴⁵ In order to eliminate the theoretical possibility of the state's playing the capitalist role by exploiting the worker, some Chinese political economists view the worker as an owner of his own labor power and a co-owner of an undivided interest in the means of production.¹⁴⁶ These theorists believe that a state enterprise worker, as a co-owner, cannot be exploited as a wage earner in that enterprise.¹⁴⁷

Consistent with the foregoing theory, the worker's ownership interest in the means of production does not result from his own personal efforts but is, rather, a gift of the socialist revolution, an inviolable right he enjoys as a member of the working class.¹⁴⁸ The value of his ownership interest is determined through China's continued economic development and the accumulation of productive wealth, which benefit the nation as a whole. On the other hand, the worker's entitlement to receive a wage is derived ultimately from a constitutional right and obligation to work.¹⁴⁹ His compensation is supposedly calculated on the basis on his individual contribution, and therefore, is within his direct and immediate control. Differentials in compensation are justified as reflecting variations in contribution. In a socialist system, just as in a capitalist one, an employment contract concerns the exchange of labor power for appropriate compensation.¹⁵⁰ The worker has a property interest in his own labor power and is free to alienate this labor power, subject only to such restrictions as are necessary to protect his welfare or the welfare of others.¹⁵¹

144. MARX, *supra* note 142.

145. PRC CONST., *supra* note 137, arts. 6-7 (1982).

146. *See supra* note 143.

147. A separate, and even thornier problem is the status of workers in enterprises with foreign participation. Most clearly in the case of enterprises which are wholly-owned subsidiaries of foreign companies, there is no evidence of ownership by the local work force. For a discussion of this problem, see *Workers' Status in 'Three Kinds of Enterprises'*, FBIS, Apr. 23, 1985, at K11-13.

148. PRC CONST., *supra* note 137, Preamble, arts. 1, 6-7.

149. *Id.*, art. 42.

150. *Id.*, art. 6. The principle of remuneration is stated: "From each according to his ability, to each according to his work."

151. There is a companion debate to the question of the status of the worker under an employment contract in the controversy over whether workers can *own* shares in the enterprise which employs them. The sale of shares in an enterprise shifts the burden of raising capital away from the state, spreads the risk of poor performance to the various owners of these shares, and substitutes equity ownership for cash rewards as a form of profit-sharing. The

The views discussed above would find the contract employment system, even if eventually expanded to the entire state enterprise work force, to be fundamentally compatible with socialism. Other political economists and government officials, however, find the contract employment system too similar to the system of "wage labor" criticized by Marx.¹⁵² An outspoken opponent of the contract employment system, at least in a universalized form, is the influential political economist Jiang Yiwei.¹⁵³

Jiang's opinions, as officially published, are expressed in general and oblique language which leaves much to implication.¹⁵⁴ Nonetheless, he finds the very notion of an employment contract under socialist conditions to be ideologically infirm: if the worker is a co-owner of the nation's productive assets, he cannot be also a mere employee of the state.¹⁵⁵ Jiang does not separate, as do other political economists, the worker's ownership interest in productive assets from that in his own labor power. However, Jiang does see merit in employment reforms which purport to motivate workers to greater productivity.

In an effort to justify differentials in reward among workers, he seems compelled to accept the practical reality of labor force segmentation as a basic premise. In his view, the three distinct groups of workers—permanent, contract, and temporary—have differing rights and responsibilities vis-a-vis the enterprise. He believes that permanent workers form the core of the work force, are entitled to the fullest rights of participation in management, including voting rights, and should benefit, or suffer, most directly from the enterprise's performance. If the enterprise performs poorly, a permanent worker should suffer not only a loss of bonus but also a deduction from his basic wage. Jiang's thesis, that greater rights should carry with them greater responsibilities, is fully consistent with the central govern-

question of whether a worker can own shares in the state enterprise which employs him is a novel theoretical question since a state enterprise is nominally owned by the state on behalf of the whole people. If workers are considered to be co-owners of the enterprise, then neither selling them an ownership interest nor distinguishing them through share ownership from other members of the population seems to be justified.

On the subject of the securitization of state enterprises, see generally Chao & Yang, *The Reform of the Chinese System of Enterprise Ownership*, 23 STANFORD J. INT'L L. 365 (1987). Another variation on this approach is to require new workers to make loans to the enterprise, which repays these debts with interest after a predetermined period. Although this lending practice is most common in collective enterprises, it also occurs in state enterprises. Either way, the sale of shares conflicts with socialist theory. See *Qiye Shiyong Nongmin Jizigong de Jige Wenti*, Zhongguo Laodong Renshi Bao, June 25, 1986, at 3; Ye Tan Jizi Zhaogong, *id.*

152. WHITE, *The Politics of Economic Reform in Chinese Industry: The Introduction of the Labour Contract System*, 111 CHINA Q. 365, 378-81 (1987).

153. Jiang Yiwei, *supra* note 6, at 11. See also, WHITE, *supra* note 152, at 300.

154. WHITE, *supra* note 152, at 380.

155. Jiang Yiwei, *supra* note 6, at 11.

ment's commitment to link contribution with reward. But Jiang does not appear to recognize that workers with permanent employment are insulated from the worst consequences of enterprise performance, the loss of their jobs. While considering permanent employment to be a superior, distinguishing feature of socialism, he is reconciled to the existence of class divisions within the worker population.¹⁵⁶

III. THE 1986 AND 1987 REGULATIONS

A. Introduction

On July 12, 1986, the State Council promulgated the following four sets of regulations which were designed to consolidate ongoing reforms of the employment system with respect to hiring and dismissal: (1) Provisional Regulations on the Implementation of the Contract Employment System in State Enterprises (*Guoying Qiye Shixing Laodong Hetongzhi Zanzing Guiding*) (hereinafter "Contract Employment Regulations"),¹⁵⁷ (2) Provisional Regulations on the Hiring of Workers in State Enterprises (*Guoying Qiye Zhaoyong Gongren Zanzing Guiding*) (hereinafter "Hiring Regulations"),¹⁵⁸ (3) Provisional Regulations on the Dismissal of Workers and Staff for Work Violations in State Enterprises (*Guoying Qiye Citui Weiji Zhigong Zanzing Guiding*) (hereinafter "Dismissal Regulations"),¹⁵⁹ and (4) Provisional Regulations on Unemployment Insurance for Workers and Staff in State Enterprises (*Guoying Qiye Zhigong Daiye Baoxian Zanzing Guiding*) (hereinafter "Unemployment Insurance Regulations").¹⁶⁰ A fifth set of regulations, the Provisional Regulations on the Resolution of Labor Disputes in State Enterprises (*Guoying Qiye*

156. Jiang does assume that there would be mobility between the various groups in the work force based on performance, including demotion of permanent workers. *Id.* at 13. However, his approval of a segmented labor force, another feature of capitalism which Marx deplored, is ironic. See generally, MARX, *supra* note 142, at 781-94 for a discussion of the "industrial reserve army."

157. *Guoying Qiye Shixing Laodong Hetongzhi Zanzing Guiding* (Provisional Regulations on the Implementation of the Contract Employment System in State Enterprises) (promulgated July 12, 1986), RMRB, Sept. 10, 1986, at 2, *trans. infra*, Appendix A [hereinafter Contract Employment Regulations].

158. *Guoying Qiye Zhaoyong Gongren Zanzing Guiding* (Provisional Regulations on the Hiring of Workers in State Enterprises) (promulgated July 12, 1986), RMRB, Sept. 10, 1986 at 2, *trans. infra*, Appendix B [hereinafter Hiring Regulations].

159. *Guoying Qiye Citui Weiji Zhigong Zanzing Guiding* (Provisional Regulations on the Dismissal of Workers and Staff for Work Violations in State Enterprises) (promulgated July 12, 1986), RMRB, Sept. 1, 1986 at 2, *trans. infra* Appendix C [hereinafter Dismissal Regulations].

160. *Guoying Qiye Zhigong Daiye Baoxian Zanzing Guiding* (Provisional Regulations on Unemployment Insurance for Workers and Staff of State Enterprises) (promulgated July 12, 1986), RMRB, Sept. 10, 1986 at 2, *trans. infra* Appendix D [hereinafter Unemployment Insurance Regulations].

Laodong Zhengyi Chuli Zanxing Guiding) (hereinafter "Labor Dispute Regulations"),¹⁶¹ was promulgated in July 1987 to create a grievance mechanism for employment contract disputes and dismissals for cause.¹⁶²

The regulations issued in 1986 consolidate reforms which have been implemented to some degree for several years. For example, the experiment with contract employment, which has been complemented by the adoption of open merit recruitment and the establishment of an unemployment compensation scheme,¹⁶³ began in 1980. Furthermore, the 1986 regulations have precursors in regulations issued since 1983 by the State Council and the Ministry of Labor and Personnel, which were further implemented by regulations issued at the provincial and municipal levels.¹⁶⁴ All of the 1986 regulations focus on improving the permanent employment system.¹⁶⁵ Taken as a whole, they aim to raise the quality of recruits to the work force and to relax standards for dismissing workers who are seriously insubordinate or who are redundant.¹⁶⁶

161. Guoying Qiye Laodong Zhengyi Chuli Zanxing Guiding (Provisional Regulations for the Resolution of Labor Disputes) (promulgated July 31, 1987), RMRB, Sept. 10, 1986, at 3, *trans. infra*, Appendix E [hereinafter Labor Dispute Regulations].

162. *Id.* Technically, the Contract Employment Regulations and the Hiring Regulations apply only to "workers," including industrial workers directly engaged in production as well as workers in commerce and service occupations. The Dismissal Regulations, the Unemployment Insurance Regulations, and the Labor Dispute Regulations apply not only to workers but also to "staff," i.e., including not only those who perform support functions, such as lower-level clerical duties, but also cadres in management positions. See interview notes (July 11, 1988).

163. See *supra* text accompanying note 122.

164. See *supra* note 104.

165. Under the permanent employment system in state enterprises, little attention was paid to the worker's suitability for or interest in the job, and dismissals were permitted only in a narrow range of circumstances. See *supra* text Part I(B).

166. As in Western practice, Chinese sources distinguish between dismissal for cause, such as the misconduct of the employee, and dismissal for economic or other reasons beyond the employee's control, such as redundancy. Dismissal due to redundancy, aimed at reducing the work force, is defined by one author as "dismissal or long-term layoff of one or more workers for reasons of an economic, structural, or technological character, intended either to reduce the number of workers employed in an undertaking or to alter the composition of the workforce." YEMIN, *WORKFORCE REDUCTIONS IN UNDERTAKINGS* 4 (1982); WALDER, *COMMUNIST NEO-TRADITIONALISM*, *supra* note 3, at 72-74. See interview notes, (Nov. 15, 1986).

Five terms are used in Chinese to describe termination of employment: *kaichu*, *citui*, *chuming*, *jiegu*, and *tuizhi*. The meanings of these terms somewhat overlap. The first three terms involve a termination due to a breach of work rules; the latter two terms involve dismissals relating to redundancy.

Kaichu, variously translated as "expulsion" or "firing," carries overtones of moral culpability or fault, and is generally applied to a worker who has been convicted of a criminal offense or who has been sent for labor re-education. Under this type of employment termination, the worker loses accumulated seniority and cannot collect unemployment compensation.

B. The Contract Employment Regulations

The Contract Employment Regulations are the most important of the recently promulgated regulations because they potentially affect all hiring of unskilled labor by state enterprises. After their effective date,¹⁶⁷ the Contract Employment Regulations purport to cover all hiring of workers for regular production jobs in state enterprises (except as otherwise provided by law)¹⁶⁸ as well as hiring of workers for jobs of a temporary or seasonal nature. They include provisions on hiring, employment contract formation, wages, and fringe benefits. However, the core provisions which deal with compensation, unemployment benefits, and retirement benefits do not apply to certain categories of contract workers: those with rural household registration who are employed in mining, construction, loading, and transportation,¹⁶⁹ and those with urban household registration who are engaged

WHYTE & PARISH, *supra* note 3, at 242 n.14. Under *citui*, or "dismissal," which is used to describe dismissals for incompetence, however, the worker retains seniority and is entitled to collect unemployment compensation. See FAXUE CIDIAN (Law Dictionary) 707-10 (1979). Dismissal rarely occurs among the permanent work force, and dismissals for incompetence or insubordination apparently occur only in enterprises with foreign ownership or management. See, e.g., *How Shangri-La Broke China's Iron Rice Bowl*, S. China Morning Post, Aug. 14, 1986, at B5.

Chuming, or "expungement," generally applies when a worker has been absent from work for a prescribed period without leave. The worker loses accumulated seniority and does not receive unemployment compensation. See *infra* text Part III(D).

167. See *supra* note 157. They became effective October 1, 1986.

168. See *supra* note 162. Although workers outside the ambit of contract employment, may still be hired on a permanent basis, they will most likely be hired into industries with serious recruitment problems, such as coal mining, salt production, forestry, and mineral prospecting. The Contract Employment Regulations do not apply to demobilized servicemen or graduates of technical, vocational, or tertiary level educational institutions, and these individuals will continue to be assigned jobs through unified placement. There has been some limited experimentation in allowing university graduates to choose their own jobs or at least to express preferences. See Scott, *Tinkering with Reforms to China's Universities*, FAR E. ECON. REV., Oct. 23, 1986, at 60-63. There have also been reports of individuals refusing assignments, especially when such individuals possess special skills or training. See WHYTE & PARISH, *supra* note 3, at 375-76. For example, a labor administrator for a public transportation company in a major city reported that out of 500 ex-servicemen allocated to the company as drivers in 1985, only six accepted the assignment. The remainder were employed by taxi companies. Interview notes (Apr. 9, 1986).

169. The practice of hiring peasant labor for such occupations was codified in a series of regulations issued by the State Council in 1984. See LAODONG HETONGZHI WENJIAN YU JINGYAN HUIBIAN, *supra* note 71, at 28-56. The distinguishing characteristics of these regulations as compared to those issued in 1986 include: 1) under the standard arrangement, a county or village supplies a group of workers to work in these occupations under contract, although individual employment contracts are also permissible; 2) the usual term of employment under these contracts is three to five years; and 3) peasant workers are treated equally with permanent or urban contract workers with respect to worker's compensation but not in the case of other benefits.

in temporary or seasonal work.¹⁷⁰ These excluded categories of contract workers are covered by separate regulations.¹⁷¹

1. Categories of Workers

The regulations draw a distinction, albeit not a clear one, between regular and temporary contract employment in terms of the duration of employment. Temporary work lasts for less than one year, whereas regular employment lasts for one year or longer.¹⁷² Regular contract employees are divided between short-term or rotation contract workers¹⁷³ who are employed for a period of one to five years, and long-term contract workers who are employed for five or more years.¹⁷⁴ However, the regulations do not address the case where a temporary labor contract is renewed, perhaps repeatedly. This omission is noteworthy because the duration of the contract is otherwise the controlling factor in determining whether core provisions of the regulations apply.¹⁷⁵ Evidence¹⁷⁶ suggests that labor bureaus, the primary enforcement authority of labor laws and regulations in China, have not looked beyond the label of temporary employment to the nature of the work being performed or to the continuity of employment in cases where enterprises hired nominally temporary workers to avoid having to pay social insurance contributions.¹⁷⁷

The Contract Employment Regulations state as a general rule that contract workers are to be treated equally with permanent workers regarding work,¹⁷⁸ training, participation in democratic management, political honors, and material incentives.¹⁷⁹ However, the scheme established by the regulations creates inequalities between permanent and contract workers because the latter, by definition, do

170. Contract Employment Regulations, *supra* note 157, art. 33.

171. *Id.*

172. Contract Employment Regulations, *supra* note 157, art. 2.

173. A rotation worker is employed under a contract between a rural village and an enterprise, whereby the village undertakes to supply a fixed number of workers on a rotating basis. This form of contract employment occurs frequently in the mining industry. *See supra* note 97 and accompanying text.

174. Contract Employment Regulations, *supra* note 157, art. 2.

175. The regulations could have contained qualifying language that nominal periods of employment would be presumed to be dispositive of whether employment is temporary or not, and that such a presumption would be rebuttable.

In some countries, once a temporary labor contract is renewed, it receives the benefit of legislative protection afforded to contracts of longer duration or to permanent employment. YEMIN, *supra* note 166, at 58.

176. *See* interview notes (Dec. 12, 1985, Jan. 21 and June 18, 1986).

177. *Id.*

178. Contract Employment Regulations, *supra* note 157, art. 3.

179. *Id.*

not have the same claim to job security as the former. In addition, contract workers receive less favorable treatment than permanent workers with respect to various benefits such as health insurance coverage for non-work-related illness or injury. Furthermore, the regulations are silent as to whether contract workers must be accorded certain vital fringe benefits normally provided to permanent workers, such as housing, health insurance for dependents, and schooling for dependents.

2. Hiring Procedures

The 1986 regulations do not give an enterprise the autonomy to determine its quota of new hires or to hire those who apply directly to the enterprise for a job. According to the regulations, contract workers are to be hired through a system of open competition administered by the local labor bureau.¹⁸⁰ Although competitive examinations for state sector jobs had been offered for several years and insider hiring had been officially discouraged before the 1986 regulations were promulgated, enterprises were still permitted to fill vacancies through the substitution system until the substitution system was abolished in 1986.¹⁸¹ This new system of open competition is intended to prevent individuals from being hired through the substitution system and generally to ensure that qualified people are hired.

Despite the new freer methods for hiring workers, administrative regulations still leave little room for negotiation as to the terms of the employment contract. The Contract Employment Regulations require that each worker serve a three to six month apprenticeship.¹⁸² In addition, where the contract employment system has been implemented on an experimental basis, the form of the contract has frequently been predetermined by the local labor bureau; the enterprise, not to mention the worker, has little choice but to accept the contract "as is".¹⁸³ Therefore, the contract may serve only to remind the worker of regulations of which he may not otherwise be aware¹⁸⁴, but

180. *Id.*, art. 4. This system of open competition is consistent with the Hiring Regulations, *supra* note 159, which categorically prohibit "insider" recruitment of workers' children unless they qualify through examination. However, under national and local regulations, there are some exceptions to this system of open competition. See ZHONGGUO LAODONG LIFA, *supra* note 57, at 34-36. For example, children of artisans are not subject to these regulations. Salem, *Design for the Future*, FAR E. ECON. REV., Dec. 18, 1986, at 107. Children of workers who joined the work force before a certain date or who reached retirement age before a certain date are also excepted. Interview notes (Nov. 13, 1986 and Jan. 8, 1987).

181. See *supra* note 85 and accompanying text.

182. Contract Employment Regulations, *supra* note 157, art. 6.

183. See, e.g., SHASHI LAODONG HETONGZHI JIESHAO, *supra* note 104, at 32-34.

184. Although major regulations are published and discussed in the newspapers, complete collections of regulations are not publicly available. Therefore, a worker with a grievance

in any event may be powerless to change. Whether the dispute resolution process¹⁸⁵ will consider these employment agreements to be adhesion contracts and thereby accord special protection to the worker remains to be seen.

3. Contractual Requirements

Under the Contract Employment Regulations, every labor contract must cover production or work responsibilities, the period of apprenticeship, the term of the contract, working conditions, compensation, labor insurance and fringe benefits, labor discipline, liability for breach, and other matters deemed essential by the parties.¹⁸⁶ The regulations require that the employment contract be consistent with national policies and laws. It must also embody principles of "equality and voluntariness" and "unanimity reached through consultation".¹⁸⁷

Despite the basic requirements for labor contracts stipulated in the national regulations, many contracts are not reduced to writing, are contrary to laws or policies, or are concluded without free and equal bargaining.¹⁸⁸ Existing enforcement mechanisms do not yet adequately address these issues, nor do the regulations address the legal validity of "three-sided" contracts between worker, enterprise, and labor intermediary.¹⁸⁹ Furthermore, the regulations do not refer

is in a difficult position to dispute decisions of factory administration, which has unrestricted access to the written law and to the interpretation of the law by labor authorities. Not surprisingly, the complaints office of the Shanghai Labor Bureau estimates that more than half of the inquiries it receives are requests for information. See interview notes (Nov. 15, 1986).

185. See *infra* text Part III(F).

186. Contract Employment Regulations, *supra* note 157, art. 8. The Ministry Notice sets forth these same mandatory provisions and further requires contract provisions regarding termination and modification of the contract. See Ministry Notice, *supra* note 7. These latter subjects are covered in some detail in the 1986 regulations. Employment contracts which the author has seen generally adhere to the formal requirements set forth in the regulations. For example, see the standard form employment contract in SHASHI LAODONG HETONGZHI JIESHAO, *supra* note 104, at 32-34.

187. Contract Employment Regulations, *supra* note 157, art. 7. Although these terms are not defined in the regulations, they most likely refer to fairness in the negotiation process. By way of comparison, Chinese economic contract law recognizes the invalidity of contracts where there has been no true mutual agreement, for example, due to material mistake, duress, or fraud. ZHENG, *supra* note 138, at 65.

188. Dong Liming & Sun Xinhe, *Fangxiang Yao Jianchi, Gaige Xu Peitao*, 9 ZHONGGUO LAODONG KEXUE 8-10 (1986).

189. The labor intermediary is typically the leader of the rural production team or brigade. Blecher, *Peasant Labour for Urban Industry: Temporary Contract Labour, Urban-Rural Balance and Class Relations in a Chinese County*, 11 WORLD DEVELOPMENT 731-45 (1983); WALDER, COMMUNIST NEO-TRADITIONALISM, *supra* note 3, at 52-54.

These "three-sided" contracts are particularly common when workers are hired from rural areas. The failure of the regulations to address the legal validity of such contracts is likely due to the fact that most peasant workers are covered by special regulations. See *supra* notes 95-98.

to collective contracts negotiated by the trade union on behalf of workers in a plant or industry.¹⁹⁰

It is not clear why the State Council deemed certain provisions to be essential to the Contract Employment Regulations, while other subjects were omitted. Labor Minister Zhao Dongwan's press statement, which accompanied publication of the regulations in *People's Daily* does not explain the drafting history.¹⁹¹ It may be that the provisions required by the regulations are customarily included in labor contracts in China so that the regulations codify existing practice, or that the labor laws of other countries (particularly socialist ones) were consulted and that these laws included the same provisions.¹⁹²

4. Termination

There has been much discussion in the media about the extent of power to terminate an employee which the 1986 regulations grant to enterprises.¹⁹³ In fact, the power to modify or terminate a labor contract¹⁹⁴ prior to expiration is severely circumscribed, and the enterprise has less flexibility than it previously had in some places under preexisting local regulations.¹⁹⁵ The enterprise can seek modification

190. Huang & Huang, *Jiti Hetong Chuyi*, 4 FAXUE YANJIU 58 (1985).

A collective contract, which covers the fulfillment of the relevant production plan, the improvement of work organization and working conditions, and the betterment of workers' material welfare, is an agreement between an enterprise or branch of industry and workers' representatives. It is said to include a statement of 1) all targets set forth in the production plan, 2) the respective responsibilities of management and the union with regard to plan fulfillment, 3) training, compensation, rewards, discipline, work times, rest periods, occupational safety and health, improvement of workers' material welfare and cultural activities, 4) procedures for spreading innovation and consolidating labor discipline, and 5) measures for contract enforcement. H. GUAN, LAODONG FAXUE 354-57 (1987); Joint Directive of the Ministry of Heavy Industry and the National Committee of the Heavy Industry Trade Union on the Signing of Collective Contracts in the Producing Factories and Mines (Apr. 11, 1955), *Labor Laws and Regulations in Communist China*, JPRS Report No. 7, July 17, 1957, at 27-28. According to interviewees, at present, collective contracts may be found in, for example, machine plants and textile factories in Beijing. Interview notes (Dec. 2, 9, 1985). Since compensation and fringe benefits in China (as in the Soviet Union) are determined by administrative regulation rather than by collective bargaining, the collective contract does not have the same significance as does its Western counterpart. The relative unimportance of the collective contract, which reappeared in 1979 after a twenty-year hiatus, reflects the tangential position of the enterprise trade union, which is largely concerned with the administration of welfare facilities and functions as an adjunct of the Party organization in a factory.

191. See *Laodong Zhidu de Zhongda Gaige*, RMRB, Sept. 10, 1986, at 1.

192. LAODONG HETONGZHI WENDA, *supra* note 122, at 61.

193. See, e.g., *Cracking the Iron Rice Bowl*, TIME, Oct. 6, 1986, at 13; *New Rules Shatter the Iron Rice Bowl*, S. China Morning Post, Oct. 5, 1986, at 11.

194. Unless the parties agree to renew the contract, it expires automatically at the end of the contract term. However, if a contract is not renewed, it is treated as if it were terminated for purposes of making severance payments. See *infra* note 233 and accompanying text.

195. Under rules previously in effect in Shenzhen, Guangdong, Hubei, and Shashi, an

of the contract only if the enterprise has been authorized to change its production line or if there is a "comparable change in circumstances."¹⁹⁶

Under the Contract Employment Regulations, the enterprise may terminate the contract in only four situations:¹⁹⁷ (1) if the worker proves unsatisfactory during the apprenticeship period, (2) if the worker exhausts his official sick leave for nonwork-related illness or injury, and still is unable to return to work, (3) if the worker should be dismissed for cause pursuant to the Dismissal Regulations,¹⁹⁸ or (4) if the enterprise has been officially notified of impending bankruptcy or has been declared bankrupt.¹⁹⁹ As a standard feature of local regulations, the contract automatically terminates without further action by the enterprise if the worker has been expelled for disciplinary violations, expunged for excessive absenteeism, sent for labor reeducation, or convicted of a crime.²⁰⁰

The regulations add little to the power of enterprises to terminate an employment contract under previously existing national regulations which already allowed dismissal for cause.²⁰¹ The Contract

enterprise could resort to dismissal for economic reasons short of bankruptcy. For the Shenzhen regulation, see SHENZHEN TEQU JINGJI KAOCHA (A Study of the Economy of the Shenzhen Special Economic Zone) 259-62 (Fang Sheng ed. 1984). For the Shashi regulations, see SHASHI LAODONG HETONGZHI JIESHAO, *supra* note 104, at 10-13.

196. Contract Employment Regulations, *supra* note 157, art. 10.

197. *Id.*, art. 12.

198. See *infra* text Part III(D).

199. Under local regulations in effect in Shenyang, Wuhan, and other cities, enterprises which face losses are given one year to improve their performance or may be liquidated. *Bankruptcy Threat Spurs Ailing Factory*, S. China Morning Post, Dec. 12, 1986, at 1; *Beijing Approves Controversial Bankruptcy Law*, S. China Morning Post, Dec. 3, 1986, at B1; *Chinese Economists Press for Bankruptcy Legislation*, S. China Morning Post, Nov. 15, 1986, at B3. It should be noted that the government already has the authority to close down enterprises which have incurred losses for more than two consecutive years. Guoying Gongye Qiye Zhanxing Tiaoli (Provisional Regulations for State Industrial Enterprises), in GONGYE QIYE GUANLI WENJIAN XUABIAN (Selected Documents on Industrial Enterprise Administration) 4 (1983).

In terms of workers' job security, the difference between enterprise closure and bankruptcy seems to be that in the latter case, workers are not simply reassigned to new jobs but must take the initiative in finding new work, albeit with the assistance of the labor authorities. For example, when a small factory in Shenyang was officially declared bankrupt in August 1986, workers expressed surprise that they had not been merely redistributed among other enterprises in the same administrative jurisdiction. *Dui Jiu Guannian de Yige Zhongda Chongji*, Gongren Ribao, Aug. 4, 1986, at 1.

The national Bankruptcy Law for State Enterprises, promulgated in Dec. 1986, was to become effective only in Nov. 1988. See *Bankruptcy Law To Go Into Effect in November*, China Daily, July 28, 1988 at 2, col 1. On the Bankruptcy Law, see generally ZHENG, *supra* note 138, at 159-88.

200. For an explanation of terms in the text, see *supra* note 166.

201. Since nonrenewal of a contract apparently does not require the enterprise to provide justification, the enterprise may achieve flexibility with respect to work force reduction by keeping workers on short-term contracts. From the worker's perspective as well, flexibility

Employment Regulations authorize dismissal only when the contract has become impossible to perform or for worker misconduct.²⁰² An enterprise does not have the power to terminate workers who are redundant, unless the enterprise is threatened by bankruptcy.²⁰³

The Contract Employment Regulations set forth circumstances where termination by the enterprise is expressly prohibited. These include: (1) where the contract term has not yet expired, unless specific grounds for termination exist, (2) where the worker has been certified as suffering from a work-related illness or injury, (3) where the worker is on official sick leave for nonwork-related illness or injury, (4) where a female worker is pregnant, on maternity leave, or nursing a child, or (5) under circumstances as otherwise provided by law.²⁰⁴

The Contract Employment Regulations also constrain the contract worker from terminating the contract. Each contract worker is required to have a "labor handbook" (*laodong shouce*), a personnel record in standard form issued by the Ministry of Labor and Personnel.²⁰⁵ The labor handbook is supposed to contain a complete record of an individual's employment history, including reasons for job changes. Thus, a contract worker normally requires the current employer's cooperation in changing to another job.²⁰⁶

Under the regulations, a worker may terminate the contract prior to expiration without penalty only for specified reasons. These reasons include: (1) where working conditions have been officially certified as unsafe or unhealthy, (2) where the enterprise is unable to pay wages as specified in the contract, (3) where the worker undertakes higher education with the enterprise's approval, (4) where the enterprise fails to carry out the terms of the contract, or (5) where the enterprise has violated law or policy, and has injured the worker's

may be possible only if the worker enters into a short-term contract. See *supra* note 108 and accompanying text. For a discussion of the regulations authorizing dismissal for cause, see *infra* note 256-58 and accompanying text.

202. Contract Employment Regulations, *supra* note 157, art. 12.

203. *Id.*

204. *Id.*, art. 14.

205. *Id.*, art. 5. The regulations do not explicitly state whether the worker should have physical possession of this booklet. Typically, permanent workers do not keep their dossiers (*dang'an*), which are left on file with the enterprise personnel department, nor do workers even have a right to examine its contents. See WALDER, COMMUNIST NEO-TRADITIONALISM, *supra* note 3, at 91-92.

206. Possession of the dossier, which contains a person's complete occupational history, including any disciplinary violations, is one of the means used to enforce control over the work force. An enterprise can effectively prevent an employee from taking another position by refusing to release his dossier. WALDER, COMMUNIST NEO-TRADITIONALISM, *supra* note 3, at 91-92; Interview notes (May 21 and Dec. 3, 1986).

rights.²⁰⁷ A worker may also terminate the contract to take a job with an enterprise in another jurisdiction if the new enterprise has demonstrated a need for someone of his qualifications and the local labor bureau where he is currently employed approves of the worker's act of termination, or as national regulations otherwise permit.²⁰⁸ The national regulations omit any reference to personal reasons as a justification for termination.²⁰⁹ The regulations do not sanction job-switching in order to increase one's income or better utilize one's talents, despite numerous policy statements urging the exercise of personal initiative and stressing the importance of maximizing individual ability.²¹⁰

Regardless of which party terminates the contract, a month's advance notice is required.²¹¹ In the event of breach, the aggrieved party may maintain a cause of action for damages.²¹² If the enterprise terminates the contract, it must "solicit the opinion" of the trade union and report its action to its supervisory organization and the local labor authorities.²¹³ Although the enterprise's supervisory organization and the local labor bureau are not required to approve contract termination, in practice, they often exert pressure on enterprises to retract dismissal decisions.²¹⁴

5. Compensation and Benefits

The Contract Employment Regulations state that contract workers are to be treated equally with permanent workers with respect to

207. Contract Employment Regulations, *supra* note 157, art. 15.

208. *Id.*, art. 11.

209. Local regulations in Guangdong, however, have allowed contract workers to change jobs in order to rejoin a spouse or to care for aged parents. Reported in 6 *Guangdong Laodong* 16 (1985). Similar regulations exist in Henan. See *Henan Yunxu Bufen Hetongzhi Gongren Zai Hetongqi Nei Liudong*, *Zhongguo Laodong Renshi Bao*, June 18, 1986, at 1.

210. See, e.g., State Council Notice on Promoting Labor Mobility Among Scientific and Technical Personnel, *Zhongguo Laodong Renshi Bao*, July 23, 1986, at 1.

211. Contract Employment Regulations, *supra* note 157, art. 16.

212. *Id.*

213. On paper at least, the regulations grant the trade union a lesser role in overseeing dismissals than did both the 1950 Trade Union Law, *Important Labour Laws and Regulations of the People's Republic of China* 9 (1961), under which it has a right to protest dismissals and initiate dispute resolution, and the 1982 Regulations on Rewards and Punishments for Enterprise Staff and Workers, GUOYING GONGYE QIYE FAGUI XUANBIAN, *supra* note 69, at 258, which require union or representatives' congress approval for such action.

214. See *Profitable Plant Fights Petty Party Resistance*, FAR E. ECON. REV., Oct. 9, 1986, at 30-31. The public security apparatus may also urge enterprise retraction of dismissal decisions. One interview subject described efforts to dissuade his unit from dismissing a worker who had been arrested for engaging in prostitution and conditionally released. Interview notes (Nov. 14, 1986). On the role of the work unit in handling cases of deviant or criminal behavior, see WHYTE & PARISH, *supra* note 3, at 240-42.

all matters concerning compensation and fringe benefits.²¹⁵ The regulations nonetheless provide that contract workers may receive a wage supplement of fifteen percent of their basic wage to offset any inequalities.²¹⁶ In some places where the contract employment system has already been implemented, contract workers have been entitled to a special allowance because their employment is deemed to be less secure than that of permanent workers.²¹⁷

Contract workers are to be treated on par with permanent workers with respect to benefits such as job-related illness or injury, pregnancy and childbirth, funeral expenses, survivors' benefits, hardship allowances, official holidays, and personal leave with pay.²¹⁸ In addition, contract workers are to receive comparable subsidies covering, *inter alia*, commuting expenses, winter heating costs, and food purchases.²¹⁹ However, the regulations treat contract workers differently from permanent workers with respect to benefits for non-work-related injury or illness.²²⁰ Depending upon accumulated seniority, a permanent worker is entitled to receive sixty to one-hundred percent of his salary as sick leave pay for up to six consecutive months. To receive full pay, a permanent worker only needs eight years' seniority. After six months, the permanent worker may receive forty to sixty percent of his salary, the amount depending upon seniority, until he returns to work, is certified disabled, or dies. There is no limit on the period of time he may collect reduced sick leave pay.²²¹

In contrast to a permanent worker, a contract worker is normally

215. Contract Employment Regulations, *supra* note 157, art. 7.

216. *Id.*, art. 18.

217. For example, in Guangzhou, the special allowance is generally 10 percent of the basic wage, and workers receive an additional 1-2 yuan per month after the first three years of service up to a maximum of 20 yuan. *Guangzhou Promulgates Contract Regulations*, JPRS, CEA 85-006, Jan. 19, 1985, at 100-1; interview notes (Dec. 27, 1985).

In Shanghai, the wage supplement is increased during the first five years of service, up to a maximum of 20 yuan per month. LAODONG HETONGZHI WENJIAN YU JINGYAN HUIBIAN, *supra* note 71, at 237. Contract workers at a steel mill visited by the author were receiving a supplement of three yuan per month, on a base salary of 45 yuan, or less than 10 percent. Interview notes (Aug. 19, 1985).

218. Contract Employment Regulations, *supra* note 157, arts. 18, 20, 22, 24.

219. *Id.*, arts. 18, 24. For a general discussion of the range of benefits and wage supplements enjoyed by the state enterprise work force, see WALDER, COMMUNIST NEO-TRADITIONALISM, *supra* note 3, at 59-67; WHYTE & PARISH, *supra* note 3, at 57-106.

220. See *supra* note 179 and accompanying text.

221. Zhonghua Renmin Gongheguo Laodong Baoxian Tiaoli (Labor Insurance Regulations of the People's Republic of China) art. 13(b), ZHONGHUA RENMIN GONGHEGUO LAODONG FAGUI XUANBIAN (Selected Labor laws and Regulations of the People's Republic of China) 324 (1985). Generous rules on sick leave, coupled with the relative ease of obtaining medical certification of illness, have led to the widespread abuse of such benefits. WALDER, COMMUNIST NEO-TRADITIONALISM, *supra* note 3, at 182-84; interview notes (Oct. 21 and Nov. 14, 1986).

entitled to three months to a year of paid sick leave, depending upon accumulated seniority, on the same terms as permanent workers (i.e., sixty to one-hundred percent of his salary for the first six months with reduced benefits thereafter).²²² However, if he cannot return to work after one year, the enterprise has grounds to terminate the contract.²²³ In that event, the enterprise must pay the worker a special allowance equal to three to six months' basic wages. Contract workers with more than twenty years' accumulated seniority may receive sick leave pay for more than one year, apparently at the enterprise's discretion.²²⁴ The regulations do not explicitly address the issue of benefits, such as housing, health coverage for dependents, and schooling for the children of married contract workers. In areas where the contract employment system has already been implemented, the question of housing is a serious obstacle to the realization of the goal of equal treatment for all workers.²²⁵

6. Social Labor Insurance

Although long term contract workers have apparently received pensions in the past,²²⁶ the contract employment system extends this practice to all qualifying workers (except peasant contract workers and urban temporaries who are excluded from coverage by the regulations). The regulations stipulate that the enterprise must contribute fifteen percent of total wage expenses for contract workers²²⁷ to a

222. Contract Employment Regulations, *supra* note 157, art. 21.

223. *Id.*, art. 12. Dismissal in this situation is permissive, not mandatory. Enterprises can be more generous if they wish. One interview subject described the case of a contract worker with a good record who was transferred into a less demanding job when he developed a chronic health problem. Interview notes (Nov. 14, 1986).

224. Contract Employment Regulations, *supra* note 157, art. 21.

225. See Yang, *Jiejue Hetongzhi Gongren Zhufang Wenti de Genben Tuijin Shi Zhufang Shangpinhua*, *Zhongguo Laodong Renshi Bao*, July 30, 1986, at 2. See also LAODONG ZHIDU GAIGE XUESHU TAOLUNHUI LUNWEN XUANJI, *supra* note 67, at 11.

A contract worker who changes employers will probably lose his seniority for the purposes of housing assignment, even though the regulations provide that a such a worker must be employed at least at the same wage grade if he continues working at the same kind of job. This loss of seniority then looms very large since even permanent workers must stand in housing queues for several years. For example, at the Capitol Iron and Steel Company in Beijing, one of the largest and most profitable steel mills in the country, it was not until the end of 1986 that all workers who entered the company before 1975 were be accommodated in company housing. Interview notes (Apr. 8, 1986).

226. WALDER, COMMUNIST NEO-TRADITIONALISM, *supra* note 3, at 45.

227. Contract Employment Regulations, *supra* note 157, art. 26. This figure includes bonuses and wage supplements. Interview notes (Nov. 13, 1986).

The terms "basic wage" and "standard wage" are often used interchangeably. See LAODONG GONGZI SHOUCI 462 (Zhuang Qidong ed. 1984). Under local regulations, the amount contributed by the enterprise has varied from 15 percent of the contract workers' payroll (in Guangzhou) to 16 percent (in Shashi) to 20 percent (in Shanghai and Qingdao).

"social labor insurance fund" for such workers; the workers themselves are to contribute no more than three percent of their standard wages.²²⁸ The social labor insurance fund, created by the regulations, is to be managed by a special office of the local labor bureau.²²⁹

The social labor insurance fund covers pensions, post-retirement health insurance, funeral expenses, dependents' benefits, and hardship allowances. The amount of an individual's pension depends upon the length of time contributions have been made on his behalf, the amount of money credited to his account, and his average wage during a base period.²³⁰ Under local regulations, contract workers were in fact treated less favorably than permanent workers: contract workers were required to work for more years than permanent workers in order to qualify for a pension and/or the percentage of pre-retirement salary to be paid to contract workers was lower than the percentage paid to permanent workers.²³¹

Since most contract workers are new entrants to the work force, financial security during periods of unemployment constitutes a basic concern. The Contract Employment Regulations provide severance payments from the enterprise to workers who have been dismissed or whose contracts have not been renewed.²³² Under the regulations, a worker is entitled to one month's wages²³³ for every year of service, up to a maximum of twelve, if his contract is not renewed, if he is dismissed on account of disability, or if he resigns for bona fide reasons such as dangerous or unhealthy working conditions or the enterprise's failure to pay wages.²³⁴ He is not eligible for severance pay if he is dismissed for cause or if the contract terminates automatically,

See Guangzhou Promulgates Contract Regulations, JPRS, CEA 85-006, Jan. 19, 1985, at 100-1; interview notes (Dec. 27, 1985); SHASHI LAODONG HETONGZHI JIESHAO, *supra* note 104, at 18; Zhang Demin & Yu Faming, *Qingdaoshi Laodong Hetongzhi Gongren Shixing Laodong Baoxian de Diaocha*, 6 ZHONGGUO LAODONG 15 (1985).

228. Contract Employment Regulations, *supra* note 157, art. 26.

229. Contract Employment Regulations, *supra* note 157, art. 26.

The social labor insurance fund is created from contributions which are deposited in special bank accounts and earn interest at the same rate as personal saving accounts. It should be noted that in some cities, the social labor insurance scheme now applies to both contract and permanent workers. *See supra* note 117.

230. Contract Employment Regulations, *supra* note 157, art. 27.

231. SHASHI LAODONG HETONGZHI JIESHAO, *supra* note 104, at 18-23; Zhang & Yu, *supra* note 227, at 15.

232. Contract Employment Regulations, *supra* note 157, art. 23. The Unemployment Insurance Regulations provide another form of support. *See infra* text Part III(E).

233. This severance payment is evidently based on the worker's wages at the time of separation from his employer. This is the method of calculation used for paying severance to people emigrating from China. *See* interview notes (Oct. 14, 1986; Oct. 17, 1986; Oct. 25, 1986; Apr. 15, 1987).

234. Contract Employment Regulations, *supra* note 157, art. 15.

as it does, for example upon criminal conviction.²³⁵

7. Implementation and Dispute Resolution

The Contract Employment Regulations grant the local labor bureau the power to supervise and investigate implementation of employment contracts, as well as the authority to direct the recruitment process,²³⁶ receive notification of dismissals,²³⁷ and administer the social labor insurance fund for contract workers.²³⁸ However, despite the powers given by law, in practice, local labor bureaus have not uniformly applied their extensive administrative powers to all aspects of implementation. While they have often prescribed the form of the contract and closely supervised the recruitment of workers with urban household registration, they have not scrutinized the hiring of peasant "temporary" contract workers even though they may be aware that such hiring has circumvented regulations.²³⁹ Thus far, employers who have been reprimanded for hiring such workers without authorization have merely been forced to dismiss the workers without further penalties.²⁴⁰ In addition, the local labor bureaus have not rigorously enforced the payment of social insurance contributions on behalf of regular contract workers.²⁴¹

If a dispute arises between parties to a labor contract and they are unable to resolve their differences through "mutual consultation," the dispute may be submitted to the bureau's labor arbitration committee.²⁴² The arbitrators' decision is not binding, however, and the dissatisfied party may then bring suit in the courts. This three-step process of dispute resolution — mutual consultation (or mediation), arbitration, litigation — has been the norm under local regulations as well.²⁴³

C. The Hiring Regulations

The Hiring Regulations open the recruitment process to competi-

235. *Id.* art. 23.

236. *Id.* art. 28. See also, Hiring Regulations, *supra* note 158, art. 10.

237. Contract Employment Regulations, *supra* note 157, art. 28. See also Dismissal Regulations, *supra* note 159, art. 8.

238. Contract Employment Regulations, *supra* note 157, art. 28. See also Unemployment Insurance Regulations, *supra* note 160, art. 12.

239. See discussion *infra* note 324.

240. Under local regulations now in effect in Beijing, enterprises discovered to be employing peasant workers illegally are subject to fines if they do not promptly discharge them. Beijing Rules, *supra* note 73, arts. 3, 18.

241. Interview notes (Dec. 12, 1985, Jan. 21 and June 18, 1986).

242. Contract Employment Regulations, *supra* note 157, art. 31. For a discussion of the Labor Dispute Regulations, see *infra* text Part III(F).

243. See *infra* note 291 and accompanying text.

tive selection and abolish practices such as the substitution system, which favor workers' children. The substitution system, which allows a worker to retire and designate one of his children to succeed him,²⁴⁴ took root very quickly after the founding of the PRC in 1949. Despite efforts by the government to displace the traditional family structure because it is deemed to be a remnant of feudalism, the substitution system has persisted for various practical and economic reasons. Generally, it has allowed families to expand, or at least maintain, their total income.²⁴⁵ During the Cultural Revolution, it permitted young people to enter the urban work force, thereby avoiding assignment to the countryside.²⁴⁶ In a deteriorating job market, particularly in the late seventies and early eighties, the substitution system was one of few avenues to a regular job in the state sector. Even now, although an open recruitment system has been promoted for some years under both national and local regulations, and the substitution system has been abolished, there have been reports that family connections are still used to obtain employment in state enterprises.²⁴⁷

A limited substitution system is still allowed pursuant to an exception not expressly referred to in the Hiring Regulations. By national regulation,²⁴⁸ workers who were originally from the countryside and entered the work force before 1958 may continue to designate one child with rural household registration as a substitute.²⁴⁹ However, this exception to the general abolition of the substitution system will not help peasant workers who moved to urban areas after 1958 and who may have gained permanent status. In addition to the special class protected by national regulation, various exceptions may exist under local rules with tacit approval by the central government.²⁵⁰

The Hiring Regulations expressly require that enterprises hire women where "appropriate."²⁵¹ However, in the last several years,

244. Regarding the substitution system, see *supra* notes 69-72 and 83-86 and accompanying text.

245. See *supra* note 69.

246. WHYTE & PARISH, *supra* note 3, at 40 n.24.

247. See, e.g., Yu Lulu, 'Back Door' Favouritism Still a Problem, *S. China Morning Post*, Oct. 31, 1986, at 8; *Neizhao Biduan Xi*, *Zhongguo Laodong Renshi Bao*, June 25, 1986, at 2.

248. This regulation, which evidently is internal (*neibu*), was described to the author in an interview with a government official on Jan. 8, 1987. The author has been unable to locate this regulation in any publicly available sources. See also, *supra* note 180.

249. Interview notes (Jan. 8, 1987).

250. For example, by local regulation in Shanghai, workers who reached retirement age on or before September 30, 1986, even if they actually retire at a later date, are also permitted to designate one child as a substitute. Interview notes (Nov. 13, 1986).

251. Hiring Regulations, *supra* note 158, art. 8. The basis for this provision is Article 48 of the 1982 PRC Constitution, which guarantees sexual equality.

enterprises have exercised their growing autonomy by hiring fewer women.²⁵² Enterprise administrators have stated that they hire as few women as possible, for a variety of reasons. One reason given is that women are less capable of heavy manual labor and are therefore less versatile than men. Another reason given is that protective regulations allowing time off for maternity leave and child care impose an economic cost on the enterprise. In addition, the fewer the number of female employees, the fewer number of places necessary in enterprise nurseries and schools. Lastly, women are considered unable to work efficiently because of household and child care responsibilities.²⁵³ The new regulations demonstrate a concern for the problem of gender discrimination in employment, but additional enforcement mechanisms are necessary to effectuate these provisions. The fact that the regulations require employment of women only where "appropriate" creates an opportunity for enterprises to define job requirements in ways that discriminate against women.

The Hiring Regulations include a provision which covers the consequences of noncompliance, a provision which is unique among the four regulations issued in 1986.²⁵⁴ Any hiring in contravention of the regulations is null and void, and those enterprises responsible for such illegal hiring are subject to administrative discipline.²⁵⁵ This may suggest that the likelihood of bribery and corruption is much greater

252. The unemployment rate for female urban middle school graduates is greater than that for their male counterparts. TAYLOR, *EMPLOYMENT AND UNEMPLOYMENT IN CHINA: RESULTS FROM THE 10 PERCENT SAMPLE TABULATION OF THE 1982 POPULATION CENSUS*, PEOPLE'S REPUBLIC OF CHINA 23 (Bureau of the Census Foreign Economic Report ed. 1985); Zhuang Jianguo, *Shanghai Shiqu Daiye Nü Qingnian Jiuye Wenti Diaocha Fenxi*, 21 LAODONG KEXUE YANJIU ZILIAO 9-17 (1985).

253. Interview notes (Aug. 19, 1985, Jan. 30 and Apr. 9, 1986). For a discussion of discriminatory practices in hiring, layoff, compensation, and conditions of employment, see *Zai Gaigezhong Nü Zhigong de Hefa Quanyi Yinggai Shoudao Baohu*, Gongren Ribao, Mar. 23, 1985, at 1; see also *Factories Employing More Women Suffer Losses*, FBIS, Mar. 30, 1988, at 39.

254. The Labor Dispute Regulations also provide for penalties. See Labor Dispute Regulations, *supra* note 161, art. 29.

255. Hiring Regulations, *supra* note 158, art. 13. Factory management would be subject to discipline under the Regulations on Reward and Punishment for Enterprise Staff and Workers, discussed, *supra* note 213. Administrative penalties for governmental officials, including labor bureau staff, are set forth in Guowuyuan Guanyu Guojia Xingzheng Jiguan Gongzuo Renyuan de Jiangcheng Zhanxing Guiding (State Council, Provisional Regulations on Rewards and Punishments for Government Administrative Staff), 6 ZHONGHUA RENMIN GONGHEGUO FAGUI HUIBIAN (A Compendium of Laws and Regulations of the People's Republic of China) 198-202 (1957), *trans. in* COHEN, *THE CRIMINAL PROCESS IN THE PEOPLE'S REPUBLIC OF CHINA 1949-1963: AN INTRODUCTION* 193-95 (1968). The range of sanctions under both sets of regulations is essentially the same, with expulsion being the most serious punishment.

in the area of hiring than in the case of other employment practices examined in this study.

D. The Dismissal Regulations

The Dismissal Regulations reiterate the authority of an enterprise to dismiss a worker for cause.²⁵⁶ These regulations generally add little to an enterprise's powers which exist under the 1982 Regulations on Rewards and Punishments for Enterprise Staff and Workers.²⁵⁷ However, one notable addition in the regulations is the grant of authority to enterprises to take disciplinary measures against service and retail trade workers who frequently argue with customers or who

256. For a discussion of the distinction between dismissal for cause and dismissal without cause, see *supra* note 166.

In issuing this additional set of regulations authorizing dismissal for certain kinds of malfeasance, the State Council may be quietly admitting that other means of disciplining workers are ineffective. In light of the increased losses faced by state enterprises in 1986, which cut across geographic boundaries and industry sectors, it appears that motivating workers to better performance through individualized reward systems has not been very successful. If it is not possible to reward outstanding individual performance "adequately," then at least it may be advantageous to dismiss those workers whose performance is below the group average. This approach, of course, sidesteps the real goal to raise the productivity of average workers. See *Bid to Cut Down Loss-making Enterprises Fails*, S. China Morning Post, Sept. 16, 1986, at B2.

257. Regulations on Rewards and Punishments for Enterprise Staff and Workers, *supra* note 213. These regulations describe the following categories of offenses:

1. violations of labor discipline, such as tardiness, absenteeism, work slowdowns, and failure to complete assigned work;
2. failure to accept work assignments, work transfers, or instructions without good reason, and engagement in disturbances or fighting which disrupts production, work, or public order;
3. dereliction of duty or failure to follow operating or safety rules, resulting in personal injury or property damage;
4. irresponsibility on the job, resulting in waste of materials, equipment damage, and other losses;
5. abuse of position, violations of regulations and official policies, and violations of fiscal discipline, such as tax evasion, improper retention of profits, and indiscriminate payment of bonuses;
6. criminal offenses such as corruption, theft, speculation, bribery, and extortion.

Offenses are punishable by warning, ordinary demerit, major demerit (which usually results in the loss of bonus), demotion in wage grade, removal from one's post, probation or suspension without pay, expulsion or expungement. In addition, a worker may be obligated to pay a one-time fine, or if his actions have caused economic loss, the damages may be deducted from his wages. Furthermore, a worker is subject to expungement if he is absent from work without leave for more than fifteen days consecutively or for more than thirty days cumulatively in one year. The Dismissal Regulations, *supra* note 159, art. 2, provide that some actions which are grounds for dismissal may not bar the worker from receiving unemployment compensation.

In terms of due process safeguards, the worker to be disciplined has the right to argue on his own behalf, must be notified of his punishment in writing, and has a right of appeal to higher authorities within ten days of publication of the outcome. Expulsion must be approved by the workers' representative congress or enterprise trade union and must be reported to the enterprise's superior organ and the labor bureau. Expulsion must be carried out within five months of the offense; other punishments must be carried out within three months.

otherwise act in a manner detrimental to the consuming public.²⁵⁸

Before dismissing a worker, an enterprise must report the matter to its supervisory organization and the local labor bureau, as well as solicit the opinion of the enterprise's trade union.²⁵⁹ As under the Contract Employment Regulations, an aggrieved worker may take his case to the labor arbitration committee.²⁶⁰ The committee's decision may then be contested in a *de novo* proceeding before the local people's court.

Since the contract employment system applies only to new recruits, the burden of proving grounds for dismissal in the case of the vast majority of workers who were previously hired still rests on the enterprise. In the case of contract workers, an enterprise can avoid the complications of the dismissal process by simply refusing to renew the contract of a worker who has committed disciplinary violations. Nonrenewal does not require justification;²⁶¹ therefore, the passage of time will afford the enterprise an opportunity to release an unsatisfactory contract worker without demonstrating cause.

Because of the state enterprise worker's dependence upon his work unit for a wide variety of goods and services,²⁶² the consequences of a worker's dismissal in China entail much more than the mere loss of a job. Even though suitable grounds exist in many individual cases, factory management generally avoids such a draconian measure.²⁶³ This hesitation arises partly out of management's conviction that it is unconscionable to leave anyone without employment. In addition, factory management fears harassment and assault by

258. Hiring Regulations, *supra* note 158, art. 2(iii). The grounds for dismissal which generally overlap with those stated in the 1982 Regulations on Rewards and Punishments for Enterprise Staff and Workers are: 1) serious infractions of work discipline, which disrupt production, 2) violations of operating rules causing damage to equipment or tools or waste of materials or energy, and resulting in economic loss, 3) refusal to accept normal work transfer, 4) acts such as corruption, theft, gambling, and misuse of position, which do not constitute criminal misconduct, and 5) disturbances or fighting which causes a serious breach of the peace. Both the 1982 Regulations and the Hiring Regulations include a catch-all provision for similar but unspecified misconduct.

259. Dismissal Regulations, *supra* note 159, art. 3.

260. Contract Employment Regulations, *supra* note 157, art. 31. Compare the 1982 Regulations on Rewards and Punishments for Enterprise Staff and Workers, *supra* note 213, which allowed a worker to protest his dismissal only to the enterprise's supervisory organization. The membership of the labor arbitration committee is more diverse. See *infra* note 300 and accompanying text.

261. Contract Employment Regulations, *supra* note 157, art. 9.

262. On the role of the work unit as a means of social control, see WALDER, COMMUNIST NEO-TRADITIONALISM, *supra* note 3, at 140-43; WHYTE & PARISH, *supra* note 3, at 239-43.

263. WALDER, COMMUNIST NEO-TRADITIONALISM, *supra* note 3, at 142-43.

desperate workers.²⁶⁴ In the past, a factory manager could not be confident that he would receive personal protection from the public security bureau, or even from the factory's own security department. Although the 1986 Dismissal Regulations underscore the power of the public security authorities to discipline a worker for retaliatory behavior,²⁶⁵ factory managers may be exposed to considerable physical risk by dismissing workers.²⁶⁶

Not surprisingly, enterprises do invoke their powers to dismiss workers in cases involving criminal misconduct or chronic absenteeism.²⁶⁷ In these situations, the grounds for dismissal are relatively clearcut and easily substantiated. Moreover, a worker who runs afoul of the criminal law becomes a ward of the criminal justice system.²⁶⁸ Likewise, a worker who voluntarily absents himself from work cannot accuse the enterprise of depriving him of his livelihood and most likely has an alternative source of income.²⁶⁹

The frequency of formal applications of disciplinary measures, although still small, nonetheless appears to be increasing.²⁷⁰ However, the use of dismissal as a means of weeding out unproductive

264. A worker who has been dismissed for valid reasons and proceeds to harass his superiors is subject to punishment by the public security authorities. Under the Regulations for Administration of Penalties by Public Security Authorities (*Zhonghua Renmin Gongheguo Zhian Guanli Chufa Tiaoli*), issued by the Standing Committee of the National People's Congress in September 1986, disruptions of public order, breaches of the peace and minor offenses to persons or property may be punished by warnings, fines or detention. Such offenses include assault, trespass, and defamation. *Zhonghua Renmin Gongheguo Quanguo Renmin Daibiao Dahui Changwu Weiyuanhui Gongbao* (Gazette of the Standing Committee of the National People's Congress), Sept. 25, 1986, at 3-12. Since unresolved worker grievances frequently develop into criminal offenses, some Chinese scholars have advocated the promulgation of a labor code and the implementation of regular channels of dispute resolution external to the work unit. Wang Nairong & Li Jingsen, *Zhiding "Zhonghua Renmin Gongheguo Laodongfa" de Biyaoxing he Kenengxing*, 1 FAXUE YANJIU 15-17 (1984).

265. Dismissal Regulations, *supra* note 159, art. 6.

266. For a case in which a worker murdered his superior over a disciplinary matter, see *Chejian Zhuren Bei Sha de Jiaoxun*, *Zhongguo Fazhi Bao*, Jan. 7, 1987, at 2. See also, *Shanghai Yixie Qiye Fanying Citui Weiji Zhigong Nan*, *Zhongguo Laodong Renshi Bao*, Dec. 10, 1986, at 1; interview notes (Oct. 27, 1986 and Jan. 8, 1987).

267. See, e.g., *Jiangsu Reforms 'Out of Step with China'*, *S. China Morning Post*, May 23, 1987, at B1; *Shaoshu Changqi Kuanggongzhe Bei Qiye Chuming*, *Zhongguo Laodong Renshi Bao*, Jan. 8, 1986, at 1; *Gansu Mines Consolidate Labor Discipline*, *FBIS*, Feb. 11, 1982, at T1.

268. Nonetheless, the bond between worker and enterprise is so strong that it is possible for a worker to return to his former work unit once he has served his sentence. *WHYTE & PARISH, supra* note 3, at 242.

269. Interview notes (Apr. 9 and Dec. 3, 1986); *Shaoshu Changqi Kuanggongzhe Bei Qiye Chuming, supra* note 267, at 1.

270. A survey conducted in Shanghai of 5000 enterprises employing 2.73 million workers indicated that in 1985 about 123,000 workers had been disciplined with mild sanctions such as warnings and fines, and about 2600 people had been expelled or expunged. These statistics represented increases of 250 percent and 33.4 percent respectively over 1984. *Ying Jianli Chuli Laodong Jiufen de Zhongcai Jigou*, *Gongren Ribao*, Sept. 4, 1986, at 1.

workers is as yet unsupported by either law or custom.²⁷¹

E. The Unemployment Insurance Regulations

While hardship allowances have long been available to assist those citizens whose incomes fall below subsistence levels, unemployment compensation *per se* apparently has not been paid since the early 1950s.²⁷² Under the new Unemployment Insurance Regulations, permanent and contract workers who have been dismissed, workers whose employers have been declared bankrupt, workers who have been made redundant by an enterprise facing bankruptcy, and contract workers whose contracts are not renewed may all make claims for unemployment compensation.²⁷³ Even workers who are dismissed for cause are nonetheless eligible to receive unemployment compensation under these regulations.²⁷⁴

The unemployment insurance reserve is funded primarily by a tax of one percent of the enterprise payroll, deposited in an interest-bearing account.²⁷⁵ Each province or equivalent administrative unit has its own reserve and local finance authorities make up any shortfall. The reserve makes disbursements for unemployment compensation, medical insurance, retirement pensions, funeral expenses, dependents' benefits, and hardship allowances for the former employees of bankrupt enterprises and those facing bankruptcy. It pays unemployment compensation and medical insurance for dismissed workers and unemployed contract workers, and covers training programs and self-help activities for the unemployed.²⁷⁶

Unemployment compensation, regardless of the reason for which the employee becomes unemployed, is calculated as a percentage of the worker's average basic wage²⁷⁷ during the last two years of

271. An overzealous manager who took this approach was himself dismissed. *Changzhang Liu Jianzhong Qiangpo Nügong Tiqian Tuixiu Bei Mianzhi*, Gongren Ribao, Dec. 14, 1985, at 1. See also, WALDER, COMMUNIST NEO-TRADITIONALISM, *supra* note 3, at 142-43.

272. WHYTE & PARISH, *supra* note 3, at 74-75; ZHONGGUO LAODONG LIFA, *supra* note 57, at 84-86.

273. Unemployment Insurance Regulations, *supra* note 160, art. 2.

274. *Id.*

275. *Id.*, art. 3. In 1985, the total wage bill for workers and staff in state enterprises was 1.064 billion yuan. STATISTICAL YEARBOOK OF CHINA 1986, *supra* note 25, at 559. One percent would equal 10.64 million yuan, or about US \$2.9 million at current exchange rates. By comparison, in 1985 US \$19.3 billion was collected for state unemployment insurance funds in the U.S. U.S. Department of Commerce, Bureau of the Census, STATISTICAL ABSTRACT OF THE UNITED STATES 1987, at 362.

276. Other benefits for contract workers, such as pensions, are covered by a separate insurance fund. See *supra* notes 227-31 and accompanying text.

277. Because bonuses, wage supplements, and fringe benefits are such important elements of the worker's total compensation package, unemployment benefits may insure only

employment. Those with five or more years of service may receive benefits for a maximum of twenty-four months, at the rate of sixty to seventy-five percent for the first twelve months, and at the rate of fifty percent thereafter.²⁷⁸ Those with less than five years of service are eligible for twelve months of benefits at the rate of sixty to seventy-five percent.²⁷⁹ Severance payments to a contract worker, also known as a "livelihood allowance," are counted against the amount of unemployment compensation to which the worker is entitled.²⁸⁰

This formula for calculating unemployment benefits, which is essentially the same for all workers, seems unfair to contract workers who have become unemployed through no fault of their own. In any case, a worker becomes ineligible for unemployment compensation once he accepts a new job, including self-employment, unjustifiably refuses on two occasions to accept employment opportunities provided by the labor authorities, is sent for labor re-education or is convicted of a crime.²⁸¹

The labor service company,²⁸² which is under the jurisdiction of the local labor bureau, is responsible both for managing the unemployment insurance system and for directing the unemployed into new jobs.²⁸³ Typically, it not only provides training and information on available jobs but also engages in economic activities which create jobs, such as running factories of its own. Previously, the primary area of responsibility of government labor service companies was the training and employment of middle school graduates.²⁸⁴ Now these companies are also involved in finding employment for redundant workers or unemployed contract workers.²⁸⁵

bare survival. See *Hard Times for Laid Off Workers*, S. China Morning Post, Oct. 14, 1986, at B2. In 1985, time wages accounted for only 59.5 percent of the wage bill for workers and staff in state enterprises; bonuses and wage supplements accounted for nearly 30 percent. A sampling of urban households (not limited to state enterprise workers) indicated that the average annual income per person was 821.40 yuan and average annual living expenses were 732.24 yuan. STATISTICAL YEARBOOK OF CHINA 1986, *supra* note 25, at 573, 576-77. Therefore, a person living on unemployment benefits, which do not even fully replace the amount of basic wages previously earned, would suffer a drop in the standard of living.

278. Unemployment Insurance Regulations, *supra* note 160, art. 7.

279. *Id.*

280. *Id.*

281. *Id.* art. 9.

282. *Id.* arts. 12, 13. For a general discussion of labor service companies, see *supra* note 120 and accompanying text.

283. Unemployment Insurance Regulations, *supra* note 160, art. 12.

284. Interview notes (Aug. 27, 1985 and Apr. 11, 1986); Taylor, *supra* note 28, at 256-7. See also *supra* notes 121, 122 and accompanying text.

285. Government labor service companies have shown a marked disinclination to become involved in the training and placement of unemployed contract workers and redundant permanent workers, even as the number of unemployed middle school graduates, their

F. *The Labor Dispute Regulations*

Since the 1950's, when industry was socialized, until recently, state enterprises did not maintain a formal grievance mechanism which placed the binding resolution of disputes in the hands of a neutral third party, such as a labor arbitrator or labor tribunal.²⁸⁶ Factory administration gave considerable autonomy over the dispensation of rewards and punishments to the workshop director and the party branch secretary of the workshop.²⁸⁷ In part, because of the near total absence of labor mobility, it was in the interest of both workers and their shop directors to resolve differences without "external" intervention.

Those individuals with work-related or other complaints have been able to seek assistance from various ombudsmen's offices (*xinfangchu*, literally, "letter and visit offices") which are commonly attached to government departments and levels of the Party hierarchy.²⁸⁸ Work-related complaints are usually directed to the ombudsmen of the labor bureau, the All China Federation of Trade Unions ("ACFTU"), or the Ministry of Labor and Personnel. According to press reports, it is possible for both government and party ombudsmen (and within the government, ombudsmen from different departments) to handle a particular case.²⁸⁹ However, an ombudsman may use its powers only to investigate and persuade; it

main target group, has declined. Interview notes (Apr. 11 and Nov. 11, 1986). There are several possible explanations for this disinclination. One is a bureaucratic reluctance to take on additional responsibilities, especially at a time when these labor service companies have been given new duties with respect to pension and unemployment insurance administration. Another is the inadequacy of resources for training programs, including the difficulty of attracting training staff. Another factor is the dual nature of the labor service company, which is both a public service institution and a profit-making entity which restricts hiring by its own enterprises to entry-level positions. In Shanghai, for instance, workers already employed in labor service company enterprises are not allowed to apply for jobs advertised with the labor service company by other units; only unemployed middle school graduates may apply for such jobs. Therefore, since vacant positions in labor service company enterprises are merely entry-level, there is no incentive for labor service companies to train and place unemployed contract and permanent workers who are already experienced.

286. WALDER, COMMUNIST NEO-TRADITIONALISM, *supra* note 3, at 101.

287. For a discussion of the system of authority in the factory, see *id.* at 85-113.

288. The ombudsman's office in China is the continuation of a tradition dating back to early imperial times, when specially appointed officials were placed in charge of receiving complaints and requests for assistance from the populace. See generally XINFANG GONGZUO JIBEN ZHISHI (Essential Information on the Ombudsman's Office) (1985). These offices are perhaps best known for their efforts to rectify deprivations of civil and property rights which occurred during the Cultural Revolution and earlier political campaigns.

289. See, e.g., Sannian Zhi Jiu Shang Wei Zuochu Gongzheng Jielun, Gongren Ribao, Apr. 1, 1986, at 3 (a disabled worker filed complaints with factory's supervisory organization, labor bureau, local branch of ACFTU, party discipline commission, and ombudsman of the municipal government).

has no authority to issue binding orders to an enterprise or its supervisory organization or to apply for judicial intervention. This lack of binding authority is true even for complaints which are filed with the ombudsman of the labor bureau and which require the bureau's interpretation of its own regulations.²⁹⁰

As part of the scheme of local implementation of the contract employment system during the early and mid-1980s, labor arbitration committees attached to local labor departments were specially established in various places.²⁹¹ Their activities seem to have been quite limited, particularly in comparison with those of the ombudsman's office.²⁹² The 1986 Contract Employment Regulations include only one general provision on the subject of dispute resolution, which provides that a dispute must proceed through the steps of mutual consultation, arbitration, and as a last resort, litigation.²⁹³

290. Interview notes (Nov. 15, 1986).

291. Before October 1986, arbitration committees had already been functioning in Dalian, Wuhan, Anshan, and Shenzhen. Interview notes (Jan. 8, 1987).

292. The number of cases handled by the various committees over the years has apparently not been publicized. In 1986-87, following issuance of the regulations on contract employment and dismissal, one thousand cases were handled nation-wide. *Wo Guo Laodong Zhidu Gaige Zheng Xiang Zongshen Fazhan*, Zhongguo, Fazhi Bao, Nov. 26, 1987, at 1.

Arbitration committees at the district or county level in Beijing accepted a total of thirty-four cases between May and September 1987. *Arbitration for Labor Disputes in Beijing*, FBIS, Oct., 20, 1987, at 17. See also, *Beijing 18 ge Quxian Jianli Laodong Zhengyi Zhongcai Jigou*, Gongren Ribao, Oct. 17, 1987, at 1. For purposes of comparison, on an annual basis, the ombudsman of the Beijing Labor Bureau receives about nine thousand complaints. Interview notes (Dec. 12, 1985).

293. Contract Employment Regulations, *supra* note 157, art. 31. See also Dismissal Regulations, *supra* note 159, art. 5.

The three-step process of dispute resolution set forth in the new regulations—mediation, arbitration, and litigation in the courts—is similar to a system of labor dispute resolution established shortly after the Party came to power. The operative regulations were Shi Laodong Zhengyi Zhongcai Weiyuanhui Zuzhi Ji Gongzuo Guize, Laodongbu (Labor Ministry, Regulations on the Organization and Operation of Municipal Labor Arbitration Committees), LAODONGFA JIAOXUE CANKAO ZILIAO, ZHONGGUO RENMIN DAXUE FALÜXI (Teaching and Study Reference Materials on Labor Law, Law Department, China People's University) 754-55 (1986); Laodongbu Guanyu Laodong Zhengyi Jiejue Chengxu de Guiding (Labor Ministry Regulations on Procedures for Resolving Labor Disputes), LAODONGFA JIAOXUE CANKAO ZILIAO, *id.* at 755-57.

Although not limited in application to factories and businesses still in private hands, this three-step process was evidently used to enlist the cooperation of private business to help stabilize the shattered economy during the early 1950's. See Zheng, *Jianguo Chuqi de Laodong Zhengyi Chuli Gongzuo* (Labor Dispute Resolution in the Early Years of the People's Republic of China), in LAODONG ZHENGYI CHULI GONGZUO SHOUCE (Labor Dispute Resolution Handbook) 365-66 (1987).

The process covered all disputes arising in connection with working conditions, hiring and dismissal, rewards and discipline, labor insurance, labor protection, and the interpretation and enforcement of both collective and individual employment contracts. If the parties were unable to arrive at an amicable solution, the matter was turned over to the union and the company's supervisory organization (or industrial association in the case of private firms) for

It was not until the Labor Dispute Regulations were issued in 1987 that details on such important questions as jurisdiction, appointment of arbitrators, and arbitration procedures were provided.²⁹⁴ The Labor Dispute Regulations apply obligatorily to all cases arising out of employment contracts and all dismissals for cause.²⁹⁵ Whether the regulations are to be applied to other types of labor disputes involving permanent workers is a matter within the discretion of provincial authorities.²⁹⁶

The Labor Dispute Regulations do not require a grievant to exhaust internal remedies to resolve either contract disputes or dismissal decisions.²⁹⁷ Only in contract disputes does a grievant have the option of bringing his complaint before an enterprise mediation committee.²⁹⁸ Members of this committee are appointed by the represent-

consultation. Inability to resolve the dispute at this level led to mediation by the labor bureau. The next step would be arbitration. As under the current system, a party could appeal the decision of the arbitration committee to the courts; if no appeal were taken, the arbitration decision was considered binding and could be enforced by court order. It is estimated that more than 250,000 labor disputes were resolved through this grievance process between 1949 and 1956, after which it was entirely abandoned. *Id.* See also HOWE, *supra* note 63, at 89-101. According to Howe's analysis, mediation and unemployment were the labor bureau's main work in 1949-50. As the regime expanded its control over industry, cooperation with the private sector diminished in importance and the bureau turned its attention to comprehensive manpower planning and administration.

294. Labor Dispute Regulations, *supra* note 161, arts. 2, 10, 16, 24.

295. *Id.* art. 2.

296. *Id.* art. 30. The scheme of the Labor Dispute Regulations can be compared to the dispute resolution scheme established in 1983 for economic contract disputes. For example, both require the arbitrators to seek a mediated solution initially and both permit even an arbitrated dispute to be litigated *de novo*. However, arbitration in economic contract cases does not effect a stay of other proceedings. In fact, if one party brings suit, the arbitration cannot continue. By contrast, labor arbitration requires an exhaustion of remedies prior to litigation. See *Zhonghua Renmin Gongheguo Jingji Hetong Zhongcai Tiaoli* (Arbitration Rules for Economic Contracts), in JINGJI HETONG SHIYONG SHOUCE (A Practical Handbook on Economic Contracts) 390-97 (Y. Cheng ed. 1985). For a discussion of dispute resolution in economic contract cases, see generally Macneil, *Contract in China: Law, Practice, and Dispute Resolution*, 38 STAN. L. REV. 303 (1986); P. Potter, *POLICY, LAW AND PRIVATE ECONOMIC RIGHTS IN CHINA: THE DOCTRINE AND PRACTICE OF LAW ON ECONOMIC CONTRACTS* (Ph.D. thesis, U. of Washington, 1985).

297. Labor Dispute Regulations, *supra* note 161, arts. 5, 25.

The approach of the Labor Dispute Regulations, which require a grievant to seek relief initially through extrajudicial means, is also characteristic of Soviet procedure in labor cases. In general, a Soviet worker must first apply to the enterprise labor dispute board which is comprised of equal numbers of representatives of the trade union and management. If the board decides against the worker, he has a right to appeal to the enterprise trade union committee. Both a board decision and a committee decision carry the force of law and each may be enforced against the enterprise by court order. However, cases which have undergone the preliminary stages of dispute resolution may be heard by the people's court sitting as a court of first instance. See Gutsenko & Zharkov, *Judicial Protection of Labour Rights in the USSR*, 121 INT'L LAB. REV. 731, 734-35 (1982).

298. Labor Dispute Regulations, *supra* note 161, art. 5.

atives' congress, enterprise management, and the enterprise trade union.²⁹⁹ If mediation fails, a grievant may bring the matter before the city (or county) arbitration committee, which is made up of members from the labor bureau, the trade union organization, and the organization with supervisory jurisdiction over the employing enterprise. Provincial governments may establish arbitration panels at that level, presumably to handle cases which cross jurisdictional lines.³⁰⁰

The arbitration committee may decline to exercise jurisdiction, but is required to explain its reasons for doing so.³⁰¹ The regulations do not elucidate the circumstances under which the arbitration committee may decline jurisdiction, but its decision to do so is not appealable. As under the rules of civil procedure applicable to court proceedings,³⁰² if it accepts a case, the arbitration committee must initially try to resolve the dispute through mediation. Any settlement achieved thereby is legally binding and may be enforced by court order. The same is true for the imposed solution of the arbitrators' decision. Nonetheless, either party, if dissatisfied with the outcome of arbitration, may bring a court action *de novo*.³⁰³

The new system of labor arbitration confronts several obstacles to meaningful implementation. First, it represents a break with the customs of the last thirty years, which confined virtually all personnel problems not merely to the factory but to individual workshops within the factory. Due to the limited resources devoted to public administration of labor disputes, the effects of the prior tradition may remain, especially since members of the labor arbitration committee serve in a part-time capacity. As a result, although the law does not require contract workers to exhaust internal remedies,³⁰⁴ which would be a sensible means of discouraging frivolous complaints, contract workers may be expected to do so in practice in order to reduce the number of cases submitted to the arbitration committee. Given the highly authoritarian system of power relations in the factory, the stifling of worker grievances is likely to result.

Another factor operating against the worker is that membership of both the enterprise mediation committee and the local arbitration committee is drawn from groups representative of management inter-

299. *Id.* art. 7.

300. Shanghai, one of three cities with provincial-level status, established such a committee even before the Labor Dispute Regulations were issued. Interview notes (Nov. 15, 1986).

301. Labor Dispute Regulations, *supra* note 161, art. 17.

302. Zhonghua Renmin Gongheguo Minshi Susong Fa (Shixing) (Law of Civil Procedure for Trial Implementation), (adopted Mar. 28, 1982, effective Oct. 1, 1982) arts. 97-102, *trans.* in BBC Survey of World Broadcasts, FE/6980/C, Mar. 17, 1982, at 16-17.

303. Labor Dispute Regulations, *supra* note 161, art. 25.

304. See *supra* note 297 and accompanying text.

ests or which have traditionally been subservient to management. However, at the same time, managers are somewhat reluctant to dismiss workers for fear that arbitration committees will simply overturn the dismissal decision and restore workers to their jobs.³⁰⁵ It will be interesting to see whether arbitration committees will develop either a pro-worker or a pro-management bias depending upon the nature of the dispute being arbitrated. For example, an arbitration committee might side with workers in dismissal cases but with management in cases where the stakes are lower.

In cases involving labor disputes, the amount of money in controversy is likely to be quite small.³⁰⁶ For this reason, courts might find indirect means of discouraging such lawsuits. Since most workers are judgment-proof, there is little to be gained by the employer in initiating arbitration.³⁰⁷

A final obstacle to the successful resolution of labor disputes through arbitration is that a system which is limited to the relatively small number of cases arising out of employment contracts and dismissals for cause³⁰⁸ fails to address adequately permanent workers' grievances, which if left unresolved, may cause such workers to be dismissed or may result in other serious consequences.³⁰⁹ However, if provincial governments take up the challenge to expand coverage of the regulations to all labor disputes,³¹⁰ as authorized by the regulations, this problem should diminish in importance.

IV. EXPERIENCE WITH IMPLEMENTATION OF THE CONTRACT EMPLOYMENT SYSTEM

Over the last several years, the number of contract workers employed in state enterprises has grown, both in absolute terms and as a percentage of the state enterprise work force. For example, in the three months between September 1986 (just before the 1986 regula-

305. See *Qiyue Citui Weiwei Zhigong Quan Weihe Zhixing Buxiaqu*, *Zhongguo Fazhi Bao*, Aug. 18, 1987, at 1.

306. The plaintiff in a recent arbitration in Shenzhen was awarded damages of 1400 yuan (equal to approximately US \$380 at current exchange rates), about eight to nine months' average wages in Shenzhen in 1984. *Shenzhen Hetongzhi Nügong Daying Guansi Huo Buchang*, *Ming Bao (HK)*, Jan. 13, 1987, at 14.

307. Based on preliminary reports, about two-thirds of labor disputes which have undergone the new system of dispute resolution involved dismissal, expulsion, or expungement, and were presumably initiated by workers. About 30 percent involved employment contract disputes, but it is not known how many of these were initiated by workers. See *Yifa Jiejue Laodong Zhengyi shi Yitiao Xinlu*, *Zhongguo Fazhi Bao*, Oct. 31, 1987, at 1.

308. See *supra* note 296 and accompanying text.

309. The drawbacks of the ombudsman procedure are discussed at *supra* note 290 and accompanying text.

310. See *supra* note 296 and accompanying text.

tions went into effect) and December 1986, the number of contract workers increased from 3.65 million to 5.17 million, or from 4 to 5.6 percent of the state enterprise work force.³¹¹ During the same period, the number of permanent workers in state enterprises increased slightly from 74.88 to 74.93 million, but the percentage rate declined from 82 to 80 percent of the work force.³¹² Despite this percentage decline in the permanent work force, contract workers remain a small group within the total state enterprise work force.³¹³

Official statistics do not account for a group of approximately 13 million people, or about 13.5 percent of the total work force.³¹⁴ This "shadow" group most likely consists of temporary workers in the traditional sense. Temporary employment has remained largely unaffected by the implementation of the contract employment system and is continuing to grow, albeit more slowly, than contract employment.³¹⁵ Rather than displace the permanent employment system or eradicate the segmentation of the labor force, the contract employment system may merely be adding to China's labor force hierarchy a layer between the permanent work force and the temporary work force. Many of those individuals recently hired as contract workers would most likely have been hired as permanent workers in earlier years. There is some evidence that the contract employment system is

311. ZHONGGUO TONGJI YUEBAO, Nov. 1986, at 7; *id.*, Mar. 1987, at 7.

312. See *supra* note 311. Permanent workers make up a smaller percentage, for example, in the construction industry they made up 76.1 percent of the state enterprise workforce in construction at the end of 1985. How the remaining percentage is divided between contract and temporary workers is not known. STATISTICAL YEARBOOK OF CHINA 1986, *supra* note 25, at 420.

313. As of March 1988, there were 7.46 million contract workers and 75.47 million permanent workers, or 7.8 percent and 78.7 percent respectively of the state enterprise work force. ZHONGGUO TONGJI YUEBAO, May 1988, at 7.

314. See *supra* notes 311-313. The tables provide figures for the total state enterprise work force, the total number of permanent workers, and the total number of contract workers. Since the sum of the number of permanent workers and the number of contract workers does not equal the total work force, the difference can most likely be attributed to the temporary work force.

315. In 1985, "outside of the plan" hiring by state enterprises added 800,000 (non-contract) workers, amounting to one-fourth of all new hires. Contract workers increased by 1.41 million during the same period. *Zhigong Renshu Xianzhu Zengjia Gongzi Zong'e Zengzhang Fangman*, Zhongguo Laodong Renshi Bao, Mar. 12, 1986, at 1.

The rapid growth of temporary employment in 1985 and its adverse implications for the development of the contract employment system have occasioned a central government prohibition on "outside of the plan" hiring. See Laodong Renshi Bu he Guojia Jiwei Guanyu Yangge Kongzhi Jihua Wai Yonggong de Tongzhi (Notice of the Ministry of Labor and Personnel and the State Planning Commission on Strict Control of Outside of Plan Hiring), reprinted in 19 SHANGHAI LAODONG 23 (1986). This document is only the latest in a series of documents issued over the years to combat the same problem. See Guanyu Xianzhi Jihua Wai Yonggong de Guiding (Provisions for Restriction on Outside-of-Plan Hiring), reprinted in ZHONGGUO LAODONG LIFA, *supra* note 57, at 66-73.

providing upward mobility for temporary workers who are promoted to contract worker³¹⁶ and, to a lesser extent, downward mobility for permanent workers who are demoted to contract worker status.³¹⁷

Little information on contract employment is available by industry or economic sector. Published figures are normally aggregated and unrevealing. For example, while it is known that at the end of 1985 workers constituted 4.5 percent of approximately 3.3 million in the metallurgical industry's work force,³¹⁸ the respective percentages employed in industry sectors such as iron and steel production, mining, and construction, are not indicated by this source. As a second example, although there was a total of 566,000 contract workers engaged in commerce at the end of 1985, or about one out of every six contract workers, how these workers were distributed among the various occupational categories within commerce, such as sales, purchasing, and rural supply and marketing cooperatives, is unknown.³¹⁹ Moreover, published figures do not indicate contract employment by form of ownership; in other words, those individuals employed in state enterprises are not distinguished from those employed by collectives.

According to an official spokesman of the central government, contract workers are earning more than permanent workers engaged in the same kind of work.³²⁰ This phenomenon is a result of official wage scale manipulation: setting contract workers at a higher wage grade for the same job, paying contract workers more than permanent workers at the same wage grade, or shortening the probationary period during which a relatively low wage is paid.³²¹ Whether contract workers are better remunerated because of their status or because of their employers' difficulty in attracting recruits is unclear. Some reports praise the higher productivity of contract workers, usually measured in terms of higher attendance rates.³²² Whether or not

316. See Du Mingkun, *Jiejue Jihua Wai Yonggong de Xin Tujing*, 5 ZHONGGUO LAODONG 8 (1985).

317. See Bian Li, *Kaifeng Riyong Huagongchang Shixing Laodong Hetongzhi*, 4 ZHONGGUO LAODONG 12 (1985); LAODONG HETONGZHI WENDA, *supra* note 122, at 13-14.

318. MINISTRY OF METALLURGICAL INDUSTRY, STATISTICS OF IRON AND STEEL INDUSTRY OF CHINA 1986, at 194 (1986).

319. For a general breakdown of occupational categories within commerce, see TAYLOR, *supra* note 252, at 41 (Table B-8).

320. Interview notes (Jan. 8, 1987).

321. *Id.* For reports that contract workers do not receive better compensation in wages or bonus in order to offset their lack of job security, and sometimes even receive worse treatment than regular workers, see Delfs, *Iron Rice Bowl in Shards: China Reforms Its Nationwide Employment Laws*, FAR E. ECON. REV., Oct. 16, 1986, at 69-70; Dong Liming and Sun Xinhe, *supra* note 188, at 8-10.

322. Since sick leave privileges are determined by seniority, and contract workers who

economic justification exists for paying contract workers more, this practice has created morale problems among the permanent work force.³²³

Before contract employment became legally enforced, enterprises demonstrated a lack of enthusiasm for hiring contract workers, rather than "outside of plan" temporary workers,³²⁴ largely because of the enterprise's ensuing obligation to make social insurance contributions.³²⁵ Since social insurance contributions are generally calculated

recently joined the work force do not qualify for the more generous terms, it is not surprising that contract workers would have lower absentee rates. See HENAN SHENG ANYANG SHI LAODONGJU (Anyang Municipal Labor Bureau, Henan Province), *Jishi Jinxing Peitao Gaige, Tuidong Laodong Hetongzhi de Luoshi* (Conducting Comprehensive Reforms Timely to Promote Implementation of Contract Employment System), in LAODONG HETONGZHI WENJIAN YU JINGYAN HUIBIAN, *supra* note 71, at 221; SHASHI GONGYONG JIAOTONG GONGSI (Shashi Municipal Public Transportation Company), *Laodong Hetong zhi Gei Qiye Dailaile Xin Shengqi* (Contract Employment System Brings About New Vitality to Enterprises), in SHASHI LAODONG HETONGZHI JIESHAO, *supra* note 104, at 44.

323. For example, when contract workers were promoted to grade three after eighteen months on the job, workers at the same grade after seventeen years on the job protested. SHASHI LAODONG HETONGZHI JIESHAO, *supra* note 104, at 43-44.

324. Enterprises in Beijing have reportedly opposed the contract employment system for a variety of reasons including: 1) the requirement of social insurance contributions, 2) increased administrative complication, 3) the intensification of hiring difficulties in industries already experiencing recruitment problems, 4) the increased mobility of technical and skilled workers, and 5) the irrelevance to the most pressing manpower problem faced by enterprises, the problem of finding alternative employment for redundant permanent workers. Interview notes (Dec. 12, 1985).

The willingness of Beijing labor authorities to accommodate enterprise resistance has been evident in a number of ways. In addition to allowing the social insurance system to lapse, *see infra* note 325 and accompanying text, the labor bureau authorized the conversion of large numbers of contract workers to permanent status in 1985. See Beijingshi Laodongju Guanyu Beijingshi 1985 Nian Zhaogong Gongzuo he Youguan Laodong Zhidu Gaige de Tongzhi (1985 Notice of Beijing Municipal Labor Bureau on Hiring and Reform of the Employment System). Also, Beijing received an apparently unique dispensation, being excused from full implementation of the national Contract Employment Regulations until 1988. See LAODONG GONGZUO XINXI, *supra* note 73, at 12. In Shenzhen, labor authorities allowed enterprises to circumvent the regulations by hiring large numbers of temporary workers, for whom contributions were not required. Although Shenzhen has been considered successful in its implementation of the contract employment system, labor authorities concede that temporary, rather than contract, workers are the major component of the work force. See *Jiejue Qiye Laodong Yonggong Wenti*, Shenzhen Tequ Bao, Aug. 10, 1986, at 2. Under regulations issued in April 1987, temporary workers with at least one year's service became eligible for unemployment compensation. See *Shi Er Wan Zhigong Canjia Daiye Baoxian*, Shenzhen Tequ Bao, June 2, 1987, at 1.

325. See interview notes (Aug. 19, 1985, Nov. 19, 1985, Dec. 12, 1985); SHASHI LAODONG HETONGZHI JIESHAO, *supra* note 104, at 3; Li Guansheng, *Shixing Laodong Hetongzhi Yao Jianli Jianquan Shehui Baoxian Zhidu*, Gongren Ribao, Sept. 27, 1986, at 2. Before the new national regulations came into effect, local labor bureaus were not strict in enforcing the requirement of social insurance contributions on behalf of contract workers. For example, a social insurance plan for contract workers in Beijing was established in January 1983 and was then rescinded six months later in response to enterprise opposition. See Beijingshi Laodongju Guanyu Hetongzhi Gongren Yanglao Chubeijin de Tiqu he Guanli Shixing

as a percentage of the contract worker's basic wage, the enterprise's financial burden increases in direct proportion to the number of contract workers employed. Thus the amount contributed to the social labor insurance fund for contract workers decreases the amount of the enterprise's profits which can be spent on bonuses or invested in social amenities such as company housing.³²⁶ For these reasons, although the contract employment system provides enterprises with greater flexibility in recruitment, dismissal, and nonrenewal, this increased flexibility does not come without cost to the enterprise. In places such as Beijing and Shanghai, where a centralized pension system has recently been established to cover both permanent and contract workers, the pension system no longer serves as a disincentive to hiring contract workers as it did before the centralized system was implemented. Rather, enterprises now have a greater incentive to hire contract workers.

While the contract employment system carries with it a promise of autonomy in the area of personnel decisions,³²⁷ an individual enterprise may not independently decide to hire only permanent workers or only contract workers. The present law mandates hiring of contract workers for regular positions, even though an enterprise may have bona fide reasons for hiring permanent workers.³²⁸ Conversely, an enterprise may be forced to hire permanent workers. For example, a factory in Shanghai which had employed contract workers for several years and was generally satisfied with their performance experienced great difficulty absorbing a group of permanent workers its supervisory organization required it to hire after a nearby factory was closed.³²⁹ The relocated workers on the whole were neither competent nor diligent, but the factory had no choice but to accept them.³³⁰ Whether an enterprise is required to hire permanent or contract

Banfa (Trial Procedures of Beijing Municipal Labor Bureau for Contribution to and Management of Pension Reserves for Contract Workers), *reprinted in* LAODONG HETONGZHI ZHUANJI, *supra* note 104, at 23-25; Beijingshi Laodongju Guanyu 1983 Nian Chengzhen Zhaogong Banfa he Shixing Laodong Hetongzhi de Tongzhi (1983 Notice of Beijing Municipal Labor Bureau on Urban Hiring Procedures and Trial Implementation of Contract Employment System), *id.* at 33-38.

326. These contributions are made out of pre-tax profits, and profits of large and medium-sized state enterprises are taxed at rates ranging up from 55 percent. Therefore, the real cost to these enterprises is only half or less than half of the nominal cost. Zhang & Yu, *supra* note 227.

327. See Walder, *The Informal Dimension of Enterprise Financial Reforms*, in 1 CHINA'S ECONOMY, *supra* note 3, at 630-45.

328. Contract Employment Regulations, *supra* note 157, art. 2.

329. Zhongshenzhi Yue Yang Ren Yue Lan, *Hetongzhi Jin Li You Jin Xin*, Zhongguo Laodong Renshi Bao, Aug. 20, 1986, at 3.

330. *Id.*

workers, in either case, the enterprise is prevented from making a choice in its own self-interest.

Besides the possible lack of autonomy over hiring, another source of enterprise dissatisfaction with the contract employment system is the fact that contract workers are less stable than permanent workers and display a greater tendency to change jobs without undergoing the proper administrative formalities.³³¹ Such behavior often disrupts production schedules, compels management to devote time to hire replacements, and causes company property, such as tools and uniforms, to be misappropriated.³³² While complete statistics on turnover among both permanent and contract workers are not readily available, it is generally accepted that voluntary job-switching among permanent workers in state enterprises rarely occurs. When a worker does change jobs, however, the worker is usually young and

331. See Liu Zizheng, *Beijing Rongtan Chang Shixing Laodong Hetongzhi de Qingkuang*, 2 LAODONG FAXUE TONGXUN 40-42 (1984); Guangdong Sheng Shaoguan Shi Laodong Ju (Shaoguan Municipal Labor Bureau, Guangdong Province), *Wo Shi Laodong Hetongzhi Guanli Gongzuo de Yixie Zuofa*, in LAODONG HETONGZHI WENJIAN YU JINGYAN HUIBIAN, *supra* note 71, at 259, 262; Meitan Bu Laodong Gongzi Si Shengchan Laozi Chu (Production, Labor and Compensation Division of Labor and Compensation Dept. of Ministry of Coal), *Tuixing Nongmin Lunhuan Gong Zhidu Guanxi Zhao Woguo Meikuang Qiye Xingshuai*, in *id.* at 288.

A survey conducted by the Ministry of Labor and Personnel of thirteen provinces and provincial-level administrative units showed an average turnover rate of five percent among contract workers. This percentage includes those who were dismissed, those who quit voluntarily, and those whose contracts expired. Interview notes (Jan. 8, 1987); Li Guansheng, *Shixing Laodong Hetongzhi Neng Baochi Zhigong Duiwu de Xiangdui Wending ma?*, Gongren Ribao, Sept. 20, 1986, at 2. Between 1980 and 1983, partial statistics for Shanghai indicated an attrition rate among contract workers of about 10 percent. Shanghai Shi Laodongju (Shanghai Municipal Labor Bureau), *Zongjie Jingyan, Wanshan Banfa, Ba Tuixing Laodong Hetongzhi de Gongzuo Gao de Genghao*, in LAODONG HETONGZHI WENJIAN YU JINGYAN HUIBIAN, *supra* note 170, at 231. Statistics for 1985 showed a turnover rate of seven percent. *Shanghai Guoying Qi-Shiye Xinzhaoy Zhigong Quanbu Shixing Laodong Hetongzhi*, Zhongguo Laodong Renshi Bao, Aug. 27, 1986, at 1. Of course, turnover rates can vary considerably by industry, even within the same locale. The Shanghai Port Authority reports that approximately one third of the longshore contract workers hired since 1981 are no longer in its employ. *Zhi Jin Bu Chu Laodongli Jiegou Bili Shitiao, Neng Jin Neng Chu Baozhengle Shengchan Yixian Xuyao*, Zhongguo Laodong Renshi Bao, Aug. 20, 1986, at 3. By contrast with Shanghai, the turnover rate among contract workers in Qingdao is reported to be less than one percent. *Older Staff Worried By China's Job Reforms*, S. China Morning Post, Sept. 29, 1986, at B10.

One interview subject who worked in a textile plant estimated a turnover rate (i.e., voluntary quits) of 10 percent among contract workers in a three-year period. However, from the point of view of factory administration, turnover among permanent workers was becoming problematic as well, with turnover ranging as high as seven percent of the permanent work force. Interview notes (Oct. 17, 1986). Industries with turnover problems include cotton spinning, knitting, building materials, and paper making. Du Yiming, *Cong Zhigong Liudong Zhong de Buheli Xianxiang Kan Yonggong Zhidu Gaige de Jiqiexing*, Zhongguo Laodong Renshi Bao, Mar. 26, 1986, at 3 (focus on Xingtai, Hebei).

332. Interview notes (Oct. 17 and 20 1986).

has not yet assumed heavy family and financial responsibilities.³³³ Based on fragmentary evidence, a turnover rate of five percent among contract workers seems "high", when compared to the near total absence of turnover among permanent workers.³³⁴

Factory management is often unwilling to invest in training for contract workers because they are considered to be uncommitted to the workplace.³³⁵ This apprehension becomes a self-fulfilling prophecy because contract workers see no opportunity for advancement. It appears that those hired under the contract employment system have looked upon their jobs as a temporary position to be given up if a permanent job or the prospect of one materializes,³³⁶ either by substituting for a retiring parent³³⁷ or by pursuing higher education.

Factory management fears, in particular, that the contract employment system promotes increased mobility for technical and skilled workers. Because managers do not have the discretionary authority to provide special incentives to particularly valued employees, they have relied on disincentives to changing jobs such as lifetime contracts.³³⁸ The Contract Employment Regulations do not expressly prohibit lifetime contracts; in fact, long-term contracts of five or more years are permitted.³³⁹ Under local regulations in Beijing and Shanghai, lifetime contracts or contracts of indefinite duration have been authorized for several years.³⁴⁰ While the Contract Employment Regulations allow a party to an employment contract of any duration to change jobs so long as he compensates his employer for the dam-

333. See, e.g., WALDER, COMMUNIST NEO-TRADITIONALISM, *supra* note 3, at 69-71.

334. *Id.*

335. See, e.g., Tang Ruoping, *Hetongzhi Gongren Shengxue Zenme Ban?*, 6 GUANGDONG LAODONG 24 (1985). Another impediment to career advancement is the continuing difficulty contract workers experience in gaining admission to the Party, enterprise trade union, and worker-staff representatives congress. Steinhardt, *Contract Workers Pay to Gild Iron Rice Bowl*, S. China Morning Post, June 22, 1987, at 16.

336. A survey of middle school and university students in a district of Beijing indicated that only 26 percent of the respondents considered contract employment to be "real" employment. Even lower figures were recorded for self-employment and temporary employment. By contrast, almost 80 percent of the respondents considered a job (by implication, a permanent position) in a state enterprise or a large-scale collective to be "real" employment. Guo Yonggang, *Chaoyang Qu Zaixiao Qingnian Jiuye Yishi Diaocha yu Fenxi*, 6 QINGNIAN JIUYE YU LAODONG LUNCONG 52 (1985).

337. For a discussion of the elements of the substitution system which still remain, see *supra* text Part III(C).

338. Yang Guansan, *Gaige Wenti Jieda*, Gongren Ribao, July 10, 1987, at 1.

339. Contract Employment Regulations, *supra* note 157, art. 2.

340. See Beijingshi Laodongju Guanyu 1983 Nian Chengzhen Zhaogong Banfa he Shixing Laodong Hetongzhi de Tongzhi *supra* note 325, at 33-38; Shanghaishi Guoying Qiye Shixing Laodong Hetongzhi de Zanzing Guiding (Provisional Regulations of Shanghai Municipality on the Implementation of the Contract Employment System by State Enterprises), in 14 LAODONG GONGZI WENJIAN XUANBIAN, *supra* note 40, at 213-18.

ages caused thereby,³⁴¹ lifetime contracts seem to be designed to emulate the permanent employment system. It is unlikely that courts will find lifetime contracts to be void on the grounds of illegality or duress and thereby strike them down per se due to their failure to embody "equality and voluntariness."³⁴² Such a decision undoubtedly would bring the courts into direct conflict with labor authorities who have approved lifetime contracts.

A worker's increased mobility directly conflicts with his need for permanent housing. From the contract worker's perspective, housing for married workers is likely to be a more pressing issue than matters such as pensions or unemployment compensation. Enterprises typically allocate housing on the basis of seniority within the enterprise. Unless the rules change, a contract worker who changes jobs frequently will not accumulate the necessary seniority to be allocated housing. If housing were available at reasonable prices on the open market or if mortgage financing were available, contract workers would possibly be able to resolve the housing problem on their own, but such a housing market is only now beginning to develop.³⁴³

In addition to housing, another source of concern for the contract worker arises from the provision of the Contract Employment Regulations dealing with wage seniority. A contract worker who changes jobs but continues to perform the same kind of work is entitled to receive appropriate credit for years of experience in the setting of his wage grade. However, proper adjustment in the wage grade depends upon factors historically absent from the Chinese industrial system: enterprise ability to define and accurately measure job requirements and enterprise willingness to reward achievement over seniority.³⁴⁴ State enterprise organization in China has been characterized neither by precise job classifications nor by close links between

341. See *supra* text Part III(B)(4). In one case described to the author, a hotel contract worker quit after having served two years of a three year contract. As part of an arbitrated settlement, she was required to pay the employer one-third of her training expenses of 1500 yuan (1500 yuan approximately US\$400 at current exchange rates). Interview notes (May 27 and June 18, 1986). Chinese enterprises have also been requiring payment of "training expenses" from permanent workers and professional employees who want to change jobs, even though there is no legal basis for making the demand as to these workers. The money is usually paid by the new employer. See Liu Dongsheng, *Zhigong Diaodong Shoufei Buli yu Laodongli Liudong*, *Zhongguo Laodong Renshi Bao*, Feb. 11, 1987, at 2. The preference for a restitution, rather than expectation, measure of damages is not surprising in view of the difficulty of measuring the effect on an entire business of one worker's quitting.

342. Contract Employment Regulations, *supra* note 157, art. 7. See *supra* note 187 and accompanying text.

343. Yang, *supra* note 225.

344. Shanghai Dianlan Chang (Shanghai Electric Cable Factory), *Heli Fenpei Gongzuo he Queding Gongzi Shi Diaodong Hetongzhi Gongren Jijixing de Zhongyao Huanjie*, *Zhongguo Laodong Renshi Bao*, Aug. 20, 1986, at 3.

jobs performed, skill levels, and pay.³⁴⁵ Seniority within the enterprise has been the chief determinant of wage levels.

CONCLUSION

China's officially published evaluations of the contract employment system and other employment reforms tend to stress the intractability of certain problems.³⁴⁶ Commentators note that the continued segmentation of the state enterprise work force into high and low status groups perpetuates an atmosphere of jealousy and conflict, and therefore is likely to affect productivity adversely. In addition, labor shortages in occupations disdained even by unemployed urban residents have been overcome only by relaxing the laws against rural-to-urban migration and by allowing the hiring of peasant workers. Finally, contract employment does not help solve the considerable problem of redundancy among permanent workers who are maintained in employment at great cost to the national budget.

One way to interpret current developments is to say that reform has been directed at a system which has been extremely inflexible and that time is needed to produce positive results. In contrast to the leadership under Mao Zedong, which often forced rapid change on an unwilling or unprepared population and caused disastrous consequences, the present leadership has wisely chosen a more gradual approach, emphasizing law rather than political mobilization. Institutional measures which originally applied only to contract workers, such as government-managed pension administration, are being extended to permanent workers. Although the extent of the central leadership's commitment to eliminate large-scale redundancy is unknown, a system of unemployment benefits has been implemented and could well be expanded to provide a safety net for increasing numbers of unemployed permanent workers.

It is not surprising that progress in developing a constituency for reform has been slow. The contract employment system reduces the labor bureau's power over job allocation while threatening to increase the number of unemployed, imposes additional expenditures and administrative complexity on the enterprise, and jeopardizes workers' actual and potential job security. In addition, the contract employment system affects an accommodation of interests between government administration and the enterprise, and in turn between the

345. See *supra* text Part I(B)(1).

346. Yang Guansan, *Laodong Zhidu Gaige yu Shehui Xinli*, Gongren Ribao, Jan. 2, 1987, at 4. See also, Steinhardt, *supra* note 335; *Article Probes into Labor, Employment Policies*, FBIS, Mar. 9, 1988, at 44-48.

enterprise and its workers. The present leadership, like its predecessors, must ultimately convince those affected by its policies that the sacrifices of the moment will be rewarded by a more efficient and productive economy in the future.

APPENDICES

APPENDIX A

Provisional Regulations on the Implementation
of the Contract Employment System in State Enterprises
(*Guoying Qiye Shixing Laodong Hetongzhi Zanxing Guiding*)
promulgated by the State Council on July 12, 1986
effective October 1, 1986

Section One. General Principles.

1. These regulations have been specially enacted in order to reform the labor system of state enterprises (hereinafter "enterprises"), increase the vitality of enterprises, fully bring the initiative and creativity of laborers into play, protect laborers' lawful rights and interests, and promote socialist modernization.
2. Except as otherwise provided by State regulation, enterprises shall implement the contract employment system for the hiring of any workers for regular production jobs covered by the State labor and wage plans. The form of employment in a given case is to be determined by the enterprise according to the characteristics and requirements of enterprise production and work organization. Enterprises may hire long-term workers for periods of five or more years, short-term workers for periods of one to five years, and rotation workers for fixed terms of varying duration. Regardless of the form of employment, an employment contract should be signed in accordance with these regulations.
The enterprise should also sign employment contracts with temporary or seasonal workers hired for periods of less than one year.
3. Contract workers enjoy equal rights with permanent workers already employed by the enterprise with respect to terms and conditions of employment, educational opportunities, participation in democratic management of the enterprise, and eligibility for political honors and material incentives.

Section Two. Hiring and Employment.

4. In hiring contract workers, the enterprise should thoroughly adhere to the principles of open recruitment, voluntary application, comprehensive examination of moral, intellectual, and physical qualification, and qualification through merit, under the guidance provided by the local labor administration authorities. The enterprise shall complete all necessary hiring formalities with the local labor administration authorities. The enterprise should give due recognition to skills acquired through prior work experience and hire those who have proved their competence in a skills review.
5. A system of issuing labor handbooks for contract workers should be established.
The standard form of the labor handbook shall be determined and distributed by the Ministry of Labor and Personnel.
6. The enterprise should set a probationary period for each contract worker. The probationary period may range from three to six months, depending on the nature of the job.

Section Three. Making of the Contract; Modification; Expiration; Termination.

7. In the signing of the employment contract between the enterprise and the worker to be employed, the parties must abide by State policies, laws, and regulations, and uphold the basic principles of equality and voluntariness and unanimity reached through mutual consultation; they must expressly set forth in written form their respective responsibilities, obligations, and rights. Once the employment contract has been signed by the parties, it is protected by law, and the parties must strictly carry out its terms.
8. An employment contract should include the following provisions:
 - (i) quantity and quality targets, or other standard of performance;
 - (ii) the probationary period and the term of the contract proper;
 - (iii) production and working conditions;
 - (iv) compensation, labor insurance, and fringe benefits;
 - (v) labor discipline;
 - (vi) liability in event of breach;
 - (vii) other matters which the parties deem material.

9. The term of the employment contract shall be determined by consultation between the enterprise and the worker. The contract automatically expires at the end of its term. Except in the case of rotation workers, the contract may be renewed if production or work requires and the parties so agree.
10. If the enterprise is authorized by its supervisory organization to change its production line or adjust its production responsibilities, or there is some other comparable change in circumstances, the parties may modify affected portions of the contract after due consultation and agreement.
11. If because of production or work requirements, or in situations permitted by State regulations, a worker must transfer to a unit in another jurisdiction, he may terminate the contract with his current employer and sign a new contract with the unit where he is needed. To do so, he must obtain consent from the relevant labor administration authorities and make appropriate arrangements to transfer his household registration and pension account.
12. The enterprise may terminate an employment contract in the following circumstances:
 - (i) the worker proves unqualified for employment during his probationary period;
 - (ii) the worker becomes ill or suffers a non-work related injury, and is unable to return to his original job after his sick leave is exhausted;
 - (iii) the worker should be dismissed pursuant to the Provisional Regulations on the Dismissal of Workers and Staff for Work Violations in State Enterprises;
 - (iv) the enterprise has declared bankruptcy, or has received official notice of impending bankruptcy and is undergoing reorganization.
13. If a contract worker has been expunged, expelled, sent for labor reeducation, or convicted of a crime, the employment contract automatically terminates.
14. The enterprise may not terminate the employment contract in the following circumstances:
 - (i) the contract has not yet expired, and none of the conditions in art. 12 has been fulfilled;
 - (ii) the worker has been confirmed by the labor certification commission to be suffering from occupational disease or work-related injury;
 - (iii) the worker is on official sick leave for illness or non-work-related injury;

- (iv) a female worker is pregnant, on maternity leave, or nursing a child;
 - (v) as otherwise provided by State regulations.
15. The worker may terminate the employment contract in the following circumstances:
- (i) relevant government authorities have confirmed that the workplace is excessively unsafe or unsanitary, thereby seriously endangering workers' health;
 - (ii) the enterprise is unable to pay compensation in accordance with the terms of the contract;
 - (iii) the worker undertakes higher education at his own expense, at the level of middle technical school or above, having obtained the enterprise's prior consent;
 - (iv) the enterprise does not carry out the terms of the contract or violates State policies, laws, or regulations, thereby infringing upon the worker's lawful rights and interests.
16. If either party intends to terminate the contract, it may not complete the necessary formalities unless it has given one month's advance notice of termination to the other party.
- In the event of termination by either the worker or the enterprise, the enterprise should report the matter to its supervisory organization and the labor administration authorities for the record.
- If either party is in breach of the contract and has caused economic losses to the other party, the breaching party shall compensate for such losses, according to the severity of consequences and the degree of its responsibility.
17. If the enterprise intends to terminate an employment contract, it should solicit the opinion of the enterprise trade union.

Section Four. Employment—and Unemployment—Related Benefits.

18. A contract worker's wages, insurance and fringe benefits should be the same as those of a permanent worker doing the same kind of work and employed in the same job in that enterprise. To the extent that a contract worker's insurance and other benefits are inferior to those of a permanent worker, he shall receive a special wage supplement. The amount of the special wage supplement shall be in the range of about 15 percent of the contract worker's standard wage.
- A contract worker should receive the same bonus, wage supplements, special food allowances, safety equipment, grain subsidies, and cost-of-living allowances as a permanent worker doing the same work in the enterprise.

19. A contract worker with prior work experience who continues to do the same kind of work in his new position and who passes an examination of his qualifications is to be paid the same wage as he previously received. If he changes to another kind of work, he is to be paid no less than the wage of a grade two worker during a probationary period. After the probationary period, he is to be examined and his wage grade set at the appropriate level.
20. A contract worker suffering from occupational disease or work-related injury, and a female contract worker who is pregnant, on maternity leave, or nursing a child, should receive the same treatment as a permanent worker doing the same work in the enterprise.
21. A contract worker who becomes ill or suffers from non-work related injury shall be allowed sick leave ranging from three months to one year, depending on the length of his service with the enterprise. A contract worker with twenty or more years of service may be allowed additional sick leave. During the period of sick leave, a contract worker's medical benefits and sick leave pay shall be the same as those of a permanent worker in the enterprise. A worker whose contract is terminated because he is unable to return to work when his sick leave is exhausted shall be paid from three to six months' standard wages as supplementary medical benefits.
22. A contract worker should be accorded the same treatment as a permanent worker in the enterprise with respect to funeral expenses for work- or illness-related death, survivors' benefits, and hardship allowances.
23. A contract worker whose contract has expired or whose contract has been terminated pursuant to either art. 12, para. (ii) or art. 15, shall receive a livelihood allowance from the enterprise equal to one month's standard wages for each year of service, but not to exceed a total of 12 months' wages.
A contract worker is not entitled to a livelihood allowance if his contract has been terminated pursuant to art. 12, para. (iii), if it has terminated automatically pursuant to art. 13, or if he has quit his job.
24. A contract worker shall enjoy the same treatment as a permanent worker in the enterprise with respect to public holidays, marriage leave, funeral leave, annual leave to visit close relatives, commuting allowances, heating allowances, and summer refreshment allowances.

25. While unemployed, a contract worker shall receive unemployment compensation and supplementary medical benefits in accordance with State regulations.

Section Five. Retirement Benefits.

26. The State implements a social insurance system to provide retirement benefits for contract workers. Both the enterprise and the worker shall contribute to the retirement fund (the "fund"). Where the fund is insufficient to provide benefits, the State shall supplement it accordingly.

Contributions by the enterprise to the fund are to be paid as a pre-tax expenditure and shall constitute approximately 15 percent of the wage bill of its contract workers. The bank where the enterprise maintains its account shall make deductions monthly and transfer amounts due to a special "retirement fund" account opened by the social insurance agency under the jurisdiction of the local labor administration authorities (the "social insurance agency"). Failure to make payments on time shall be penalized by a late charge fixed by regulation.

Contributions by the contract worker to the fund shall not exceed 3 percent of his standard wage. The enterprise shall make appropriate monthly deductions from his wages and pay them over to the social insurance agency.

The fund shall earn interest at the rate of resident individual savings accounts. Interest accrued shall be added to the principal amount of the fund.

27. Retirement benefits on behalf of contract workers shall include pension payments (including additional subsidies or supplements required by State regulations), medical benefits, funeral allowances, survivors' benefits, and hardship allowances.

After a contract worker retires, he is to receive a pension on a monthly basis until his death. The amount of the pension shall be a function of the number of years for which contributions have been made on his behalf, the amount of the payments, and the worker's average income during a given period. Medical benefits, funeral allowances, survivors' benefits, and hardship allowances will be determined by relevant State regulations.

A worker who has contributed to the fund for a relatively short period may be paid his pension in a lump sum.

28. Administration of retirement benefits for contract workers shall be the responsibility of the social insurance agency. Its primary duties are collection for the fund, payment of benefits, and organizational and administrative work on behalf of retired workers.

Section Six. Organization and Administration.

29. While employed, a contract worker is the administrative responsibility of the employing enterprise. While unemployed, he is the administrative responsibility of the labor service company attached to his local labor administration authority.
30. The labor administration authorities have the responsibility and authority to supervise and investigate the performance of employment contracts.
31. In the event that an employment contract gives rise to a dispute between the parties, they should resolve it through mutual consultation. If mutual consultation is ineffective, they may appeal to the local labor arbitration committee for an arbitrated decision. If they do not accept the arbitrators' decision, they may bring suit in the local people's court.

Section Seven. Supplementary Articles.

32. Government agencies, service institutions, and social associations which hire workers for regular positions should also apply these regulations.
33. Sections Four and Five of these regulations do not apply to peasant contract workers in mining, construction, loading, and transport whose household registration remains unchanged, nor to temporary and seasonal workers with urban household registration. Their terms of compensation, insurance, and fringe benefits are determined by other relevant State regulations.
34. People's governments of the provinces, autonomous regions, and municipalities administered by the central government may issue implementing rules for these regulations, which are to be reported to the Ministry of Labor and Personnel for the record.
35. The Ministry of Labor and Personnel is vested with the authority to interpret these regulations.
36. These regulations shall come into effect on October 1, 1986.

APPENDIX B

Provisional Regulations on the Hiring
of Workers in State Enterprises

(Guoying Qiye Zhaoyong Gongren Zanxing Guiding)
promulgated by the State Council on July 12, 1986
effective October 1, 1986

Section One. General Principles.

1. These regulations are specially enacted to reform the system of hiring workers in state enterprises (hereinafter "enterprises"), assure the maintenance of hiring standards, enhance the quality of the workforce, and meet the requirements of socialist modernization.
2. Acting within the norms set by the State labor and wage plans, the enterprise must thoroughly implement the principle of training workers prior to employment. It must hire from society at large through a system of open recruitment and take those applicants who have scored highest on a comprehensive examination of their moral, intellectual, and physical qualifications.
3. The enterprise must implement the contract employment system in hiring workers.

Section Two. Hiring from Society At Large; Open Recruitment.

4. An enterprise which intends to recruit new workers should publish a hiring notice. All those who qualify to sit for the screening examination may apply, whether urban unemployed or peasants eligible for recruitment under State regulations.
5. The enterprise should publish a list of successful examinees and the names of those who have been hired.
The enterprise may not utilize any form of internal recruitment and is no longer permitted to use the substitution system.

Section Three. Comprehensive Examination of Moral, Intellectual, and Physical Qualifications; Selection of the Most Qualified.

6. All candidates must be at least sixteen years old, in good health, with at least a lower middle school education, and of good character.

7. The enterprise shall examine applicants on their moral, intellectual, and physical qualifications. The content and performance standards of the examination may be determined in accordance with requirements of production or of the jobs to be filled. In hiring apprentice workers, the emphasis should be on educational qualifications. In hiring skilled workers, it should be on specialized knowledge and technical skill. In hiring manual laborers, it should be on physical qualifications.
8. Women should be hired to fill all jobs for which they are suitable.
9. The enterprise should set a probationary period for new hires. If a worker proves to have been unqualified for the job during the probationary period, the enterprise may terminate his contract. He then becomes the responsibility of the district where he had previously been registered to live.

Section Four. Organization and Administration.

10. Enterprise hiring is the administrative responsibility of the labor administration authorities, acting under the guidance of the local people's government. The primary responsibilities of the labor authorities are approval of hiring plans, implementation of hiring policies, establishment of hiring districts, review of hiring notices, and supervision and investigation of hiring practices.
11. The enterprise should complete all necessary hiring formalities with the local labor administration authorities, and further shall sign employment contracts with its new workers in accordance with the Provisional Regulations on Implementation of the Contract Employment System in State Enterprises.
12. The enterprise should hire new workers from the urban population. If it is necessary to hire from the rural population, the enterprise must receive official permission to do so from the provincial-level government, except as otherwise provided by State regulations.
13. All hiring of new workers must strictly adhere to these regulations. If hiring is done in contravention of these regulations, it has no legal effect. Those responsible for serious infractions are liable for administrative discipline.

Section Five. Supplementary Principles.

14. Government agencies, service institutions, and social associations which hire workers should also apply these regulations.

15. People's governments of the provinces, autonomous regions, and municipalities administered by the central government may issue implementing rules for these regulations, which are to be reported to the Ministry of Labor and Personnel for the record.
16. The Ministry of Labor and Personnel is vested with the authority to interpret these regulations.
17. These regulations shall come into effect on October 1, 1986.

APPENDIX C

Provisional Regulations on the Dismissal of Workers
and Staff for Work Violations in State Enterprises

(*Guoying Qiye Citui Weiji Zhigong Zanxing Guiding*)
promulgated by the State Council on July 12, 1986
effective October 1, 1986

1. These regulations are specially enacted to strengthen labor discipline in state enterprises (hereinafter "enterprises"), enhance the quality of the workforce, increase the vitality of enterprises, and promote socialist construction.
2. If a worker or staff member (hereinafter "worker") has committed any of the following acts and has not responded positively to educative or disciplinary measures, he is subject to dismissal by the enterprise:
 - (i) serious infractions of work discipline which affect the maintenance of order in production or work;
 - (ii) violations of operating rules which damage equipment or tools or which waste materials or energy, thereby causing economic loss;
 - (iii) extreme disrespect towards the enterprise's clientele, frequent arguments with customers, or actions which injure the interests of the consuming public;
 - (iv) refusal to accept normal work transfer;
 - (v) corruption, theft, gambling, or misuse of position which does not rise to the level of criminal misconduct;
 - (vi) disturbances or fighting which cause a serious breach of the peace;
 - (vii) other similar instances of serious misconduct.Expungement or expulsion of a worker is still governed by Regulations on Rewards and Punishments for Enterprise Workers and Staff.
3. When an enterprise dismisses a worker, it should solicit the opinion of the enterprise trade union and report its action for the record to its supervisory organization and the local labor or personnel authorities.
4. The enterprise should provide the affected worker with a certificate of dismissal. The affected worker may take the certificate to the labor authorities in his home district to register as unemployed.

Administrative responsibility for dismissed workers and the payment of unemployment compensation and supplementary medical benefits are matters governed by the Provisional Regulations on Unemployment Insurance for Workers and Staff in State Enterprises.

5. A worker who does not accept the decision of dismissal may file an appeal with the local labor dispute arbitration committee within fifteen days of receipt of the certificate of dismissal. If either party does not accept the arbitration committee's decision, that party may bring suit in the local people's court.
6. If a dismissed worker unreasonably bothers or harrasses his former superiors, causing disruption to production, work or public order, he is subject to punishment in accordance with the Regulations on Administration of Penalties by Public Security Authorities.
7. People's governments of the provinces, autonomous regions, and municipalities administered by the central government may issue implementing rules for these regulations, which are to be reported to the Ministry of Labor and Personnel for the record.
8. The Ministry of Labor and Personnel is vested with the authority to interpret these regulations.
9. These regulations shall come into effect on October 1, 1986.

APPENDIX D

Provisional Regulations on Unemployment Insurance
for Workers and Staff in State Enterprises

(Guoying Qiye Zhigong Daiye Baoxian Zanxing Guiding)
promulgated by the State Council on July 12, 1986
effective October 1, 1986

Section One. General Principles.

1. These regulations have been specially enacted to meet the requirements of reform of the employment system, promote rational labor mobility, and secure a minimum standard of living for state enterprise workers and staff (hereinafter "workers") during periods of unemployment.
2. These regulations are applicable to:
 - (i) workers in enterprises which have declared bankruptcy ("bankrupt enterprises");
 - (ii) workers made redundant in enterprises which have received official notice of bankruptcy and are undergoing reorganization ("enterprises undergoing reorganization");
 - (iii) contract workers whose contracts have expired or been terminated by the enterprise;
 - (iv) workers who have been dismissed by the enterprise.

Section Two. Collection and Management of the Unemployment Insurance Fund (the "Fund").

3. The sources of the fund shall be:
 - (i) one percent of the standard wage bill of each enterprise (paid as a pre-tax expenditure);
 - (ii) interest earned on (i) after its deposit in the bank, at the rate determined by the State;
 - (iii) supplementary funds provided by local finance authorities.
4. The fund of each province, autonomous region, or municipality administered by the central government shall be administered on a consolidated basis within that governmental unit. In the event that the fund is inadequate for necessary expenditures, local finance authorities shall make up the deficit.
Preparation of the budget, final accounting, and fiscal management of the fund shall be subject to joint regulation by the Ministry of Labor and Personnel and the Ministry of Finance.

5. Enterprise contributions to the fund shall be deducted from the enterprise's bank account on a monthly basis and transferred to a special account maintained in the bank by the municipal or county office in charge of unemployment relief.

Section Three. Administration of the Fund.

6. Items of expenditure from the fund are:
 - (i) unemployment compensation for workers from bankrupt enterprises and enterprises undergoing reorganization;
 - (ii) medical expenses, funeral allowances, survivors' benefits, and hardship allowances for unemployed workers from bankrupt enterprises and enterprises undergoing reorganization;
 - (iii) retirement pensions for workers who have already retired from bankrupt enterprises or who are eligible to retire from enterprises undergoing reorganization;
 - (iv) unemployment compensation and supplementary medical benefits for workers who have been dismissed or contract workers whose contracts have expired or been terminated;
 - (v) retraining expenses for unemployed workers;
 - (vi) funds for self-help economic activities of the unemployed;
 - (vii) administrative expenses incurred in connection with management of either the unemployed or the fund.
7. Monthly unemployment compensation payments shall be calculated in the following manner, using the worker's average standard wage during his last two years of employment as the base figure:
 - (i) a worker made redundant from a bankrupt enterprise or enterprise undergoing reorganization, and who has at least five years' seniority, may receive a maximum of twenty-four months' unemployment compensation: from 60 to 75 percent of the base figure for the first twelve months and 50 percent for the second twelve months. A worker with less than five years' seniority may receive a maximum of twelve months' unemployment compensation at the rate of 60 to 75 percent of the base figure.
 - (ii) a contract worker whose contract has expired or been terminated may collect benefits according to the formula set forth in para. (i), starting the month following termination of his livelihood allowance.
 - (iii) a worker who has been dismissed may collect benefits according to the formula set forth in para. (i).

8. Retirement pensions for workers from bankrupt enterprises or enterprises undergoing reorganization shall be paid in the following manner:
 - (i) prior to the establishment of a nationwide system of social security, those areas with a comprehensive retirement pension system shall pay benefits in accordance therewith, while those areas which do not yet have such a system shall make authorized payments from the unemployment insurance fund on an interim basis.
 - (ii) workers who are less than five years from the official retirement age and who become eligible for retirement while unemployed may receive retirement benefits in accordance with para. (i), but they lose their eligibility for unemployment compensation.
9. A person loses his eligibility for unemployment compensation in any one of the following circumstances:
 - (i) he has received unemployment compensation for the maximum period permitted under art. 7, para. (i) (or social welfare benefits if he qualifies);
 - (ii) he becomes reemployed (including self-employment);
 - (iii) he refuses two introductions to new employment provided by the relevant authorities without proper justification;
 - (iv) he is sent for labor reeducation or convicted of a crime.
10. Anyone who obtains unemployment compensation through illegal means should be compelled to make restitution.
11. If the fund is adequate to cover amounts payable under art. 6, paras. (i) to (iv), any surplus may be used for retraining programs and vocational education facilities, assisting the unemployed to undertake self-help activities, and opening new avenues of employment.

Section Four. Management Authority.

12. Management authority for the unemployed and the fund is given to the labor service company attached to each local labor bureau, whose responsibilities are:
 - (i) administrative matters relating to unemployed workers such as registration, recordkeeping, and organization;
 - (ii) management of and disbursements from the fund;
 - (iii) counseling of and arranging employment opportunities for unemployed workers;
 - (iv) organizing retraining programs and providing support and guidance for the self-help activities of the unemployed.

13. Each local labor service company should establish a special department or assign specialized personnel to take charge of managing the unemployed and the fund for its area. The specialized personnel required shall be service personnel rather than government administrators, so as to avoid a proliferation in the ranks of provincial-level government. The expenses of managing the unemployed and the fund may be paid out of the fund.

Section Five. Supplementary Principles.

14. People's governments of the provinces, autonomous regions, and municipalities administered by the central government may issue implementing rules for these regulations, which are to be reported to the Ministry of Labor and Personnel for the record.
15. The Ministry of Labor and Personnel is vested with the authority to interpret these regulations.
16. These regulations shall come into effect on October 1, 1986.

APPENDIX E

Provisional Regulations for the Resolution of
Labor Disputes in State Enterprises

(Guoying Qiye Laodong Zhengyi Chuli Zanxing Guiding)
promulgated by the State Council on July 31, 1987
effective August 15, 1987

Section One. General Principles.

1. These regulations have been enacted in order to further proper resolution of labor disputes, protect the lawful rights and interests of state enterprise administration (hereinafter "enterprise administration") and workers and staff (hereinafter "workers"), safeguard the normal production process and public order, and promote socialist construction.
2. These regulations should be applied to the following types of disputes between enterprise administration and workers:
 - (i) those arising out of the performance of employment contracts;
 - (ii) those arising out of the expulsion, expungement, or dismissal of workers.
3. The parties to a dispute are equal before the law.
4. Where there are ten or more workers who have a common grievance, the case shall be handled as a class action.
The class should appoint one to three representatives to participate in the mediation or arbitration proceedings.
5. In the case of a dispute arising from the performance of an employment contract, the grievant may request mediation from the enterprise labor mediation committee (sometimes also referred to as the mediation panel, hereinafter the "mediation committee") or he may directly request arbitration from the local labor arbitration committee (hereinafter the "arbitration committee").
In the case of a dispute arising from expulsion, expungement, or dismissal, the grievant should request arbitration directly from the arbitration committee.

Section Two. Mediation and Arbitration Bodies.

6. Each enterprise should establish a mediation committee.

Enterprises with branch factories, companies or stores should establish a first-tier mediation committee at the main plant and a second-tier committee in each branch. Labor disputes which cannot be resolved at the second tier may be taken to the first-tier committee for resolution or directly to the arbitration committee.

7. The mediation committee shall have the following members serving in a part-time capacity:

- (i) one or more representatives from the workforce;
- (ii) one or more representatives from enterprise administration;
- (iii) one or more representatives from the enterprise trade union committee.

The workers' representative congress shall elect its representative to the committee; enterprise administration and the trade union committee shall appoint their respective representatives.

The number of members of the mediation committee shall be decided by the workers' representative congress in consultation with the enterprise manager.

8. The chairman of the mediation committee shall be elected by the committee members.

The mediation committee shall function under the guidance of the workers' representative congress. Its administrative office shall be set up with the enterprise trade union committee.

9. The decisions of an arbitration committee shall be final and non-appealable.

Each county, municipality, or district under municipal administration should establish an arbitration committee to resolve labor disputes within its jurisdiction.

The government of each province, autonomous region, or municipality administered by the central government shall determine the necessity of establishing an arbitration committee at that level and the jurisdictional scope of its authority.

10. The arbitration committee shall have the following members serving in a part-time capacity:

- (i) one or more representatives from the corresponding level of government labor administration;
- (ii) one or more representatives from the corresponding level of the All-China Federation of Trade Unions;
- (iii) one or more representatives from the organ with administrative responsibility for the enterprise which is party to the dispute, or its designees.

Representatives from each of above-mentioned categories shall be equal in number.

The arbitration committee must have an odd number of members. If all members of the arbitration committee unanimously agree after appropriate consultation, a representative of a work unit with an interest in the proceedings may be invited to participate as a non-voting member.

11. The chairman of the arbitration committee shall be the highest-ranking administrator from the corresponding level of government labor administration.

The committee's administrative office shall be the office of labor disputes under the department of labor administration.

As the need arises, the committee may designate an appropriate number of support personnel.

12. For any of the reasons set forth below, a member of the arbitration committee or its support staff must recuse himself or is subject to recusation upon oral or written application by a party:
 - (i) he is a party or a close relative of a party to the dispute;
 - (ii) he has an interest in the outcome of the dispute;
 - (iii) he has a relationship with a party to the dispute which may influence the fair administration of justice.
13. The arbitration committee should act promptly upon an application for recusation and notify the applicant of its decision orally or in writing.

Section Three. Procedures for Handling Labor Disputes.

14. In carrying out its duties, the mediation committee must abide by the principle of voluntary settlement of disputes and may not act coercively towards any party.

An agreement between the parties resulting from mediation should be recorded in the committee's files. The parties should strictly carry out its terms.

If either party is unwilling to submit to mediation or the mediation is unsuccessful, a party may request arbitration from the local arbitration committee.

15. When the mediation committee accepts jurisdiction of a dispute, it should resolve it within thirty days of either an oral or written request for mediation. If the dispute has not been resolved within this time, the mediation proceeding should be deemed unsuccessful.
16. A request for arbitration should be made by a party in writing. When a dispute arises under art. 2, para. (i) of these regulations, a party should request arbitration within sixty days of the occurrence of the dispute or within thirty days of the date upon which mediation was unsuccessful.

When a dispute arises under art. 2, para. (ii) of these regulations, a party should request arbitration by the arbitration committee within fifteen days of the date upon which the enterprise publishes the result of disciplinary proceedings.

17. The arbitration committee should make a decision whether or not to take jurisdiction of the case within seven days of receipt of the written request for arbitration. If the committee decides to accept jurisdiction, it should send a copy of the request to the other party within five days. If it does not take jurisdiction, it should explain the reasons for its decision.
18. When the arbitration committee accepts jurisdiction, it should first conduct mediation after a full investigation of the facts, and urge the parties to reach an accommodation and settle their dispute.
19. If the mediation produces a settlement, the arbitration committee should prepare a settlement agreement for signature by the parties and a member of the arbitration committee; the committee should also affix its official seal to the agreement. When the executed agreement is transmitted to the parties, it has legal effect.
20. If mediation fails to produce a settlement, the arbitration committee should promptly conduct an arbitration hearing.
21. Four days prior to the hearing, the arbitration committee should notify the parties in writing of the time and place of hearing. If a party has twice been notified and refuses to appear without good reason, the committee may conduct an *ex parte* hearing.
22. After deliberation among members of the committee, they shall render a decision based on the majority vote. Differences of opinion expressed in the deliberations must be strictly reported in the record.
23. The decision of the committee should be set forth in a writing signed by its members and carrying the official seal of the committee. Copies of the decision shall be transmitted to the parties.
24. The arbitration committee should conclude a case within sixty days of accepting jurisdiction.
25. If either or both parties do not accept the result of arbitration, it is possible to bring an action in the people's court within fifteen days of receipt of the arbitrators' decision. If a party neither brings suit within the fixed time period nor carries out the decision, the other party may apply to the court for an order to compel performance.

26. Except as provided by regulation in jurisdictions with provincial-level arbitration committees, where a dispute arises between an enterprise's administration and a worker, who reside in different districts, the arbitration committee in the district where the worker's wages are paid shall have jurisdiction.
27. The arbitration committee should receive a fee for its services. The fee scale shall be determined in separate regulations issued by the Ministry of Labor and Personnel and relevant departments of the State Council.

Section Four. Penalties.

28. Any party who obstructs mediation or arbitration proceedings, disrupts work or production, refuses to cooperate with government officials or prevents them from carrying out their duties, shall be handled in accordance with the Regulations on Administration of Penalties by Public Security Authorities. For conduct which is in violation of the criminal law, criminal responsibility shall be imposed by the judiciary.
29. Personnel in charge of handling labor disputes are subject to administrative discipline by their units for serious violations of these regulations. For conduct which is in violation of the criminal law, criminal responsibility shall be imposed by the judiciary.

Section Five. Supplementary Principles.

30. Whether these regulations may be applied to the resolution of labor disputes outside the purview of art. 2 is to be decided by governments of the various provinces, autonomous regions, and municipalities administered by the central government.
31. People's governments of the provinces, autonomous regions, and municipalities administered by the central government may issue implementing rules for these regulations, which are to be reported to the Ministry of Labor and Personnel for the record.
32. Government agencies, service institutions, and social associations may also apply these regulations to resolve disputes arising out of employment contracts.
33. The Ministry of Labor and Personnel is vested with the authority to interpret these regulations.
34. These regulations shall come into effect on August 15, 1987.