

Appendices to Undue Influence: Corporations Gain Ground in Battle over China's New Labor Law

Appendix A: Voices from China¹

Last spring when the new draft labor law was proposed, the Chinese government offered an unusually open opportunity for comment on the law.

Comments did not just come from corporations; over 190,000 comments poured in from ordinary people from all walks of life. Many—about 100 pages worth—appeared on a site hosted by the People's Daily in Beijing. The newspaper asked people to comment "...as individual bloggers, rather than as representatives of the people."

The comments open a window on the lives and problems of ordinary workers in China. Some of them are unique to workers in China such as problems associated with Chinese labor contract law. But workers around the world will recognize many others. For example, workers in many countries know that there are labor laws that are supposed to protect their rights, but find that there is little or no way to access means of enforcing them.

To understand some of the comments it's important to know that Chinese labor law is based on individual or collective contracts between workers and employers. (The bloggers sometimes use the phrases "work units" and "employing units.") Each worker is supposed to be covered by an individual or collective contract, but often they aren't. And when they are covered, the contracts are often ignored. The new law proposes to extend contracts to everyone and provide guidelines for the duration and coverage of the contracts. The law also sets out other basic workplace standards on a range of issues.

Here are some comments.

Re: Draft Law In low-paying industries, those who are injured, particularly those who are injured slowly over a long period of time, cannot obtain medical treatment because the medical fees (subsidy) are too high for their incomes to cover both living fees and limited medical supplies. If we face a removal of the labor contract, those who are currently receiving medical treatment will need compensation, or at least some form of care. This group of people is not a majority, but they rely on care in order to survive. I hope we can take them into special consideration.

¹ We want to thank Julia Chuang and her colleagues for their work uncovering this trove of information and for making some of it available to non-Chinese speaking people.

Re: Draft Law Over-time wages should not only be restricted to not be less than the lowest local wage level. For a monthly salary of 2100 yuan, the average daily salary should be 100 yuan (for a month of 20.92 working days). For Saturday over-time work, the day's wages should be 300% normal working day wages, that is, $100 + 200 = 300$ yuan.

Re: Draft Law If the lowest local wage level is 800 yuan monthly, and over-time wages are 150 yuan daily or lower, this situation is illegal. We must correct it.

Re: Draft Law Down-sizing work units must take into consideration work seniority of experienced workers, because these workers have had the greatest contribution to the work unit. Work units cannot brush these workers aside in times of financial crisis. When experienced and older workers are let go, they have difficulty in finding new work. This is unfavorable for the harmony and stability of society.

Re: Draft Law China's laws and administrative regulations draw a blank in protecting under-age child laborers. They do not have any restricting rules against the working hours, over-time hours, etc. of child laborers. Now, because of the unprofitability of other kinds of work (agricultural), the use of school-aged child laborers during their school vacations is becoming increasingly prevalent. Because they are students, and because they are not adults, the rule "different pay for different work, no limits on over-time work" is extremely predominant. This poses hidden dangers to the physical and mental well being of these child laborers. Even schools cannot adopt any measures to protect the interests of their students. I recommend that the labor contract law put forward definite rules protecting the well-being of child laborers.

Re: Draft Law Workers who suffer from both moderate and more severe Hepatitis B suffer work discrimination at the hands of their employers. This trend severely damages the immediate and lawful interests and work opportunities of workers who are carriers of Hepatitis B.

The eighth law of "Labor Contract Law" states that employing units have the right to know the physical conditions of their workers. Since this law does not have any limits, it will be exceedingly easy for the employing unit to abuse its right to know workers' physical conditions. This will make it difficult for Hepatitis B virus carriers to receive any effective legal protections in the job market.

For this reason, we recommend that the "Labor Contract Law" must limit the right of employing units to know their workers' physical conditions. We also recommend that the "Labor Contract Law" enforce specific programs and standards for workers in the physical examinations.

If we cannot find a good solution to this program, it will become a large program for society.

Re: Draft Law Just because we workers that have devoted an entire lifetime to working for an enterprise have gotten old doesn't mean we should just be kicked aside. There should be a legal system to protect our rights.

Re: Draft Law There should be clear stipulations for when payday occurs, as well as on sick days, and days off for accidents, bereavement, marriage, etc. These rights should be protected, it shouldn't be like it is now where workers basically don't get any days off.

Re: Draft Law The labor law should have serious restrictions on layoffs, especially for older employees

Re: Draft Law Here they dock two days of pay for every one day we take off. It's really unfair, but there's nothing to be done.

Re: Draft Law I'm from Binzhou in Shandong province, and I've been working for company X for eleven years. My hukou [household registration] is in the countryside. For the past few years the company has signed one year contracts with us, but the content is very hard for the workers to understand. We frequently have to work overtime. Regardless of the labor law, the company doesn't ensure the rights of the employees, and they've never given us social insurance. I hope the new labor law will clear up some of these unresolved problems, and really protect the legal rights and interests of workers.

Re: Draft Law I used to be an employee in an enterprise that was not very productive. The company moved us to a different enterprise that is more productive, but our benefits never changed, and there were no benefits at the old enterprise. We can only watch as the other employees take their year end bonus and other presents that they get at holidays. The work we do is no easier than others. I hope that the new labor law can deal with this problem.

Re: Draft Law The law should be passed as soon as possible.

Re: Draft Law Finally there is a law specifically for supporting the common people!

Re: Draft Law Protecting the rights of the vast majority of employees is an important aspect of human rights.²

² "More Voices from China," GLS blog 10/31/06. Available at: http://laborstrategies.blogs.com/global_labor_strategies/2006/11/more_voices_fro.html

Labor Law Enforcement

While the problem of actually getting labor laws enforced is faced by workers in many places, including the U.S., these entries zero in on the specific problems that Chinese workers face when they seek labor law enforcement. Many of the posts also reflect the hope that improvements in the law can be the basis for improvements in enforcement.

Re: Draft Law I hope that this law isn't an empty piece of paper, and that implementation will be strengthened so that those who violate contracts will be strictly punished. It should not just serve to "scratch the itch."

Re: Draft Law I think that in this new labor contract law, we should add a clause to restrict those managers in employing work units who do not implement legal court decisions, and also do not heed the stipulations of labor contracts. At present, I have faced these sorts of problems: the manager promises me that they have won the lawsuit, but the work unit has not implemented legal court decisions, and has not heeded the stipulations of my work contract. All attempts to force them to implement these laws are useless, and workers simply have absolutely no leverage with their employing work units.

Re: Draft Law How can we punish enterprises that do not sign contracts with their workers? A contract can guarantee the legal rights and interests of labor and capital. But the biggest shortcoming of this law is that there is no way to punish the bosses if they do not sign a contract! As everyone knows, the reason that so many sweatshops dare to not pay back wages and dare to pay less than the minimum wage in ripping of the workers is because they haven't signed a contract!

Re: Draft Law I'm originally from Shanxi province, but have worked in Dongguan for seven years. I haven't seen even a couple factories that obey the labor law; all of them are "black." They make us work 12 hours a day, and we don't get extra money for overtime.... There's a gap between what's in the contract and what actually happens, so the labor law should give the labor bureau methods for strictly punishing those that violate the law.

Re: Draft Law The key is to increase the strength of punishment against employers!!! Increase the cost of violating the law!!!

Re: Draft Law Protecting the legal rights and interests of workers is the most basic responsibility of the government. I hope that this new law is not just well structured, but that it is also well implemented.

Re: Draft Law I think that Mr. Ma's view is correct [from an earlier post]. I'm a low level employee at the Ministry of Labor, and we frequently encounter this sort of situation in our day to day work. The Ministry of Labor currently

has no coercive administrative measures, so sometimes when there is illegal behavior we are unable to handle the situation and protect the legal rights and interests of workers. I can only remind workers that I think the government should increase the Ministry of Labor's powers of enforcement, and give us some necessary administrative methods in order to better serve workers and protect their legal rights and interests! I've seen that recently the Shenzhen City Department of Labor has detained and sentenced some people from enterprises that have serious problems with not paying back wages. I personally think that this type of approach is necessary. We are a society subject to the rule of law, and if you break the law you must pay the price. However, in order to do this many different government departments need to coordinate. It can be done in Shenzhen, but I'm afraid it will be hard to do here in the interior of the country. I hope that the government gives the Ministry of Labor stronger powers of enforcement in order to better protect the rights and interests of workers!³

³ GLS blog, 11/4/06. Available at:
http://laborstrategies.blogs.com/global_labor_strategies/2006/10/voices_from_chi.html

Appendix B: Corporate responses to Chinese Labor Law Controversy

A revealing window into the attitudes of global corporations has been opened by the Business and Human Rights Resource Centre, an organization chaired by former UN Human Rights Commissioner Mary Robinson and affiliated with Amnesty International. It asked major European and U.S. corporations operating in China to respond to the GLS report *Behind the Great Wall*.

Unfortunately, a number of the companies queried declined to respond. These included:

- AT&T
- Carrefour
- DuPont
- Maersk
- Microsoft
- Total
- UPS
- Wal-Mart
- Walt Disney
- Sara Lee stated that it is no longer a member of the US-China Business Council.
- ABB said it would provide a response but has not done so so far.

Among those who responded to the BHRRC, all heaped praise on their own commitment to human rights and high labor standards. A number also made specific comments regarding their attitude toward the draft Chinese labor law. We analyze those comments below.

Ericsson: Ericsson went far not only to tout its human rights record, but specifically to dissociate itself from the actions of the EU Chamber of Commerce.

Ericsson supports the Chinese government's legislative efforts to improve the labor law and regulations for working standards . . . Ericsson is in no way actively lobbying against the proposed legislation by the Chinese government. Nor has Ericsson threatened to pull out of China if the new labor laws were to be passed. . . . Just because we are a member of the European Chamber of Commerce does not necessarily mean we endorse every lobbying initiative.

Ericsson also left open the door for open or tacit collective bargaining.

At Ericsson, as far as any relevant laws allow, all employees are free to peacefully and lawfully join associations of their own choosing, and should have the right to bargain collectively. In countries where employees do not have the right to be members of trade unions of their own choice or trade unions may be banned, we have established alternative means for employees to discuss work conditions with local management.

General Electric: GE did not comment directly on the criticisms of made of it and other U.S.-based corporations for trying to gut the new Chinese labor law. But its statement did note that it had been invited by the Chinese government to comment on the law and shed some light on the changes it had tried to promote.

GE says it made comments to make the law better achieve objectives “essential to sound employer-employee relationships in the global economy in which China must compete.” GE’s comments to the Chinese government covered the full range of topics that AmCham and other corporate critics of the bill addressed, including “protection of dispatched workers, the use of fixed-term contracts and the consequences of their termination, severance pay upon termination of worker contracts, the enforceability and use of non-competes, and the use and extent of probationary periods.” Their comments “reflect our perspective, as a global employer, that greater flexibility in the employer-employee relationship is preferable to locking in fixed costs that far exceed the useful working life of a particular relationship.”

GE explicitly addressed two of the key elements of the draft law. With respect to “non-competes,” it asserted that “employers must be allowed to take reasonable steps to protect their proprietary rights.”

With regard to company rules, it indicated that it had opposed the draft law’s proposal to require companies to secure the approval of worker representatives for certain decisions. GE argued that instead, decisions should be made by Employers “upon consultation of the opinions of the trade unions, workers’ congress, or workers’ representative assembly.” This “consultation obligation” was more appropriate than “securing worker representative approval” for “balancing the rights of workers and their representatives and the rights of employers to manage and protect their entrepreneurial rights.”

Google: Google said it has taken no position on labor law reform and that it belongs to “numerous large-scale trade and industry associations, and don’t necessarily agree with every position they take on every issue.”

Intel: Intel’s Director of Corporate Responsibility took the unusual step of mentioning GLS’s report *Behind the Great Wall*, saying “I welcome the report

as well as the goals they are striving for.” He stated, “We are not lobbying against worker rights in China.” He did state, however, that the company disagrees with certain aspects of the law, particularly the item that gives a union “final say on all matters relating to the terms and conditions of employment.” The law “goes far beyond the rights of unions in virtually any country anywhere in the world.”

Nike: Along with its letter to AmCham (see above) Nike submitted detailed comments on the revised draft law. Stating that “we support a regulatory environment that strengthens legal protections for workers,” it made a number of recommendations very different from those previously presented by AmCham and other business groups. For example, “We support the requirement of long-term labor contracts in the supply chain to reduce the abuse of short-term contracts.” It recommended “providing workers with a legal mechanism to seek back pay” including “penalties that are substantial enough to deter enterprises from illegally withholding wages.” And it suggested “a reference to at least minimum wage levels to further mitigate the chances of worker exploitation.”

Particularly interesting was Nike’s delicate approach to the question of collective bargaining. Nike “works with its contract factories to develop worker-management committees focused on specific issues, such as grievance processes, environment, health and safety. . . . This draft recognizes employee-elected committees as legitimate representatives of the workforce. We believe this will help protect workers’ legal rights and would encourage the Chinese government to support enforcement with training and resources at a provincial level . . . Nike supports requiring employee consultation regarding new and significant workplace regulations. . . . We support the involvement of employee representation, whether it be through employee committees or other organizations. . . Nike supports collective bargaining agreements as a tool to promote decent working conditions that are reasonable for business.”

Nokia: Nokia’s statement had no comment on the law.

Procter & Gamble: Procter & Gamble noted that it had been given the opportunity to comment on the draft law, but gave no indication of what its comments may have been.

PSA Peugeot Citroen: PSA Peugeot Citroen distanced itself from the EU Chamber of Commerce in China’s original position on the law. It noted that although it is a member of the Chamber of Commerce in China, it “did not take part in setting up a European positioning strategy.” Conversely, it stated that it was involved in the French “positioning strategy” which was

“unequivocally in favor of the Chinese bill but seeks technical precisions” and that the company is in favor as well. The “technical precisions” were not explained. The company also noted that in 2006 it had signed a “global framework agreement on corporate social responsibility based on ILO standards.”

Shell: Shell’s statement did not even mention the law or Shell’s position regarding it.

Tesco: “Tesco has not made any direct or indirect representations” concerning the new labor legislation in China.

Appendix C: October 31, 2006 Congressional Letter to President George Bush

Congress of the United States
Washington, DC 20515

October 31, 2006

The Honorable George W. Bush
President of the United States
The White House
1600 Pennsylvania Ave, N.W.
Washington, D.C. 20500

Dear Mr. President:

We were appalled by the October 13th front page article in the *New York Times* detailing efforts by some U.S.-based transnational corporations to undermine respect for fundamental, internationally-recognized worker rights by seeking to weaken provisions in the proposed new Chinese labor law.

China's "Draft Labor Contract Law" would provide minimal protections that are commonplace in many other countries throughout the world, such as enforceable labor contracts, severance pay regulations, and negotiations over workplace policies and procedures. Yet, the American Chamber of Commerce based in China – which represents such brand-name corporations as Goodyear, Dell, Ford, General Electric, Nike, and Microsoft – is waging an intense lobbying campaign to pressure the Chinese Government to weaken or abandon the draft law altogether.

This shameful American corporate lobbying campaign is inconsistent with our country's commitment to promote respect for fundamental worker rights everywhere in law and practice. It also discredits the long-professed claims of many U.S. corporate leaders that U.S. companies and investors in China de facto are leading by example to respect the basic human rights of all Chinese workers and improve their working conditions and living standards.

While the "Draft Labour Contract Law" does not cure all of China's labor abuses and much work remains to be done to achieve full compliance with core labor standards of the International Labor Organization, many of the proposed provisions constitute concrete improvements to workers' rights. Sadly, it is those very improvements that many U.S. corporations operating in China are actively opposing. What could be a step forward for both Chinese and American workers is now under attack by our own corporations.

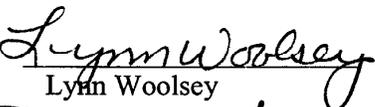
We call upon you to immediately take the following corrective measures:

- Instruct the U.S. Ambassador to China and the U.S. Trade Representative to deliver letters of support for the workers' rights and protections provisions of the "Draft Labor Contract Law" forthwith to officials of the Government of the People's Republic of China, on behalf of the U.S. Government and the American people;

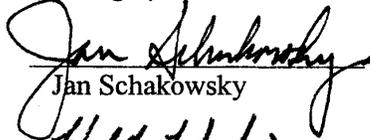
- Publicly repudiate the efforts of any U.S.-based corporations and their representative organizations doing business in China to weaken the workers' rights and protections provisions of the "Draft Labor Contract Law" of the People's Republic of China, if not sabotage them altogether; and
- Urge U.S.-based corporations and their representatives doing business in China to reverse their opposition to the workers' rights provisions and protections in the proposed new labor law and to make clear their commitment to the universal rights of all Chinese workers and to improve their working conditions and living standards.

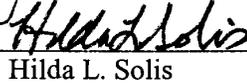
It is in the mutual interest of the Chinese and American people and working people everywhere to promote universal respect and adherence to internationally-recognized worker rights.

Sincerely,

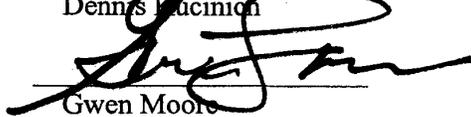

Lynn Woolsey


George Miller


Jan Schakowsky

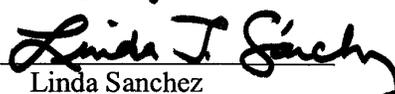

Hilda L. Solis

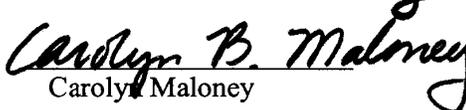

Dennisucinich


Gwen Moore


Diane Watson

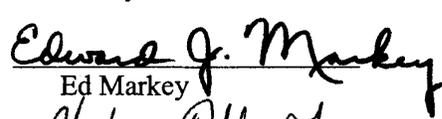

Betty McCollum

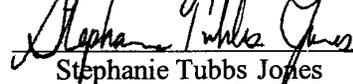

Linda Sanchez

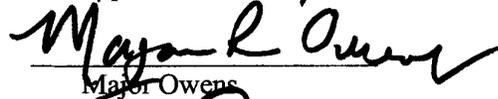

Carolyn B. Maloney

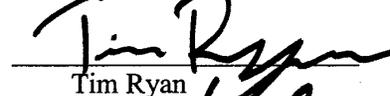

Barbara Lee


Barney Frank


Ed Markey


Stephanie Tubbs Jones


Major Owens

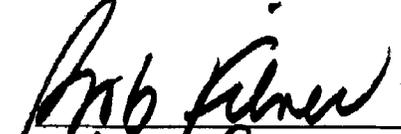

Tim Ryan


James P. McGovern

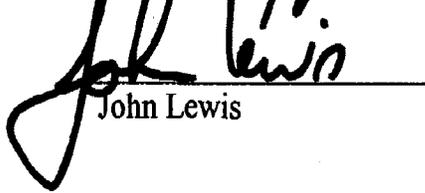

Raul Grijalva

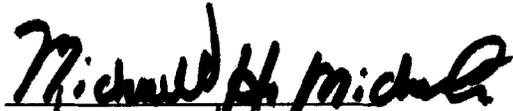

Maxine Waters

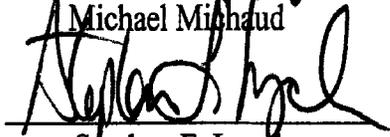

Sheila Jackson-Lee


Bob Filner

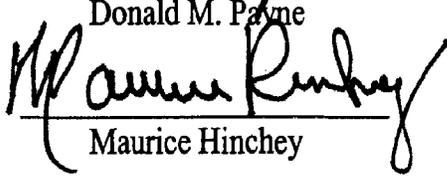

Peter DeFazio


John Lewis


Michael Michaud


Stephen F. Lynch


Donald M. Payne


Maurice Hinchey

Appendix D: United States-China Business Council Critique of GLS and GLS's Reply

A Response to the US-China Business Council⁴

In an article based on *Behind the Great Wall* for the on-line journal *Foreign Policy in Focus*, GLS staff identified the US-China Business Council (USCBC) as one of the lobbying groups that submitted comments to the Chinese government opposing the new law. The USCBC took issue with our article. Here is what it wrote.

To the Editor: Re: "Labor Rights in China" (December 21, 2006)

This commentary mistakenly asserts that US companies have launched a "corporate campaign" to "block" China's proposed Labor Contract Law. Far from opposing the new measure, the US-China Business Council, which represents 250 US companies that do business in China, submitted comments on the draft Labor Contract Law to the Chinese government at its request that aim to make the new law more effective and balanced.

The US-China Business Council and its members share the goal of creating a Chinese work environment that is safe, fair, and stable. The overwhelming number of labor abuses occur in locally owned companies that do not share the more advanced labor relations standards that American corporations bring with them when they come to China. That last point cannot be stressed enough. American companies by and large are models for improving employment and environmental health and safety standards in China.

The Chinese government's request for comments on the draft law was a significant step forward for increased regulatory transparency in China. The airing of different views should be encouraged as a normal—and integral—part of the drafting process.

Sincerely,

Catherine Gelb
Director, Communications and Publications
The US-China Business Council
1818 N Street, NW Suite 200
Washington, DC 20036

Tel: 202-429-0340
E-mail: cgelb@uschina.org

⁴ Based on GLS blog 1/17/07. Available at: http://laborstrategies.blogs.com/global_labor_strategies/2007/01/a_response_to_t.html

GLS replied in *Foreign Policy in Focus*:

Of course, we welcome this comment by the US-China Business Council. Debate over the proper role of US based businesses abroad is essential. Indeed, we wrote the article and the report upon which it is based to stimulate a debate and reappraisal of the political and business activities of US based firms around the world.

But we stand completely by what we wrote. In fact, our reporting on the position of USCBC on the new law was based entirely on comments submitted by the organization to the Chinese government. Those comments mirrored comments made by other corporate lobbying organizations like the American Chamber of Commerce and the EU Chamber of Commerce. As the law has worked its way through the Chinese legislative process, lobbying organizations have made additional comments and they continue to apply pressure to change the proposed law before it is adopted.

First, a little background. When the draft law was made public in the spring of 2006 the Chinese government invited comments from interested parties. They received nearly 200,000 comments. Most were from ordinary people in China. But some were from organizations like the American Chamber of Commerce, the EU Chamber of Commerce, and the US-China Business Council.

The law itself was prompted by a massive wave of strikes and civil disturbances. Its aim seems to be to respond to the threat of social instability by setting some basic labor standards and regulations in China's chaotic labor markets. The result is a modest, but real, step in the direction of providing China's workers some of the same rights and standards common in most industrial societies.

The USCBC argues that "[t]he overwhelming number of labor abuses occur in locally owned companies that do not share the more advanced labor relations standards that American corporations bring with them when they come to China." In point of fact, the USCBC opposes the adoption of a host of commonly accepted "advanced labor relations standards"—standards which would apply to both foreign based firms and the (often) Chinese owned businesses that comprise the supplier chains of many US corporations.

The draft labor law runs about 23 pages in English and contains 65 articles. The comments of the USCBC identified a half dozen or so key areas which they took exception to. But these areas represent the heart of the law.

Here are some of the provisions that they objected to. For a complete text of the comments submitted by the USCBC, [click here](#).

Non-compete agreements and the freedom to change jobs

Non-compete agreements are a regressive feature of US and other western systems that have crept into the Chinese economy. They are especially common in high skilled jobs. They prevent workers from changing jobs easily if they have access to proprietary knowledge as determined by an employer. For a developing economy like China, knowledge transfer is essential. The USCBC objected to the draft law's regulations on non-compete agreements including its cap on damages that a firm could collect from a worker who leaves one job for another job and restrictions on non-compete agreements when a worker leaves a job and moves to an entirely different part of the country

Limited probationary periods

Currently corporations can set probationary periods unilaterally, often for an entire year, keeping people in a highly precarious employment status. This is a major problem for workers since it leaves them with little or no protections. The new law sets standard probationary periods of from one to six months depending on the type of job. The USCBC argues against limiting the probationary period from one to six months because it “[will make] it more difficult for employees and employers to properly evaluate the work relationship”. Instead, it should therefore be left to the sole discretion of employers to set probationary periods for all employees—including the most unskilled—for up to six months.

Payment for training

Under current practice employees sign a separate contract that allows companies to recover any training costs if a worker terminates his/her employment. Under current law almost anything that management considers “training”—including many of the kinds of on-the-job training that are standard for any new job—can be subject to re-payment, leaving a departing worker either in debt or, if unable to repay the training expenses, bonded to his/her current employer. The new law limits costs employers can recover by, for instance, defining “training” as instruction that takes place “off-the-job,” on a full-time basis, and lasting for at least 6 months. The USCBC opposes the new law because “the employer would not be entitled to claim compensation from the departing employee for [on-the-job and other types] of training experiences.”

Severance payments

There is theoretically no at-will employment in China; all workers are supposed to have labor contracts—although in practice many do not. Most contracts are for a “fixed term,” after which an employer can dismiss a worker without penalty and a worker can leave without penalty. This system encourages highly unstable employment relationships. The proposed draft law encourages stable employment by requiring employers to provide

severance pay to workers whose contracts end, but not to those whose contracts are renewed. The USCBC opposes this provision.

Limits on temporary work

Chinese companies employ a large number of temporary workers hired through temp agencies. Temporary work encourages management to avoid the protections and commitment that come with standard employment. Under the new law, temp agency workers would become permanent employees after one year of employment at a client firm, thus reducing the number of insecure, contingent jobs. According to the USCBC, “This stipulation impedes the right of the employer to find the best person for the job and will reduce the flexibility of human resource allocation.”

Negotiations on lay-offs

In practice corporations frequently lay-off workers at their own discretion. Under the new proposals, corporations would have to negotiate the terms of any lay-off of more than 50 people with the union or representatives of the workers. The USCBC opposes this provision.

Expanded collective bargaining

The new law provides for negotiations over workplace policies and procedures, lay-offs, health and safety, and firings with a union or an “employee representative.” Foreign corporations demand unilateral authority, not negotiation. The USCBC writes, “It is not feasible to state that an employer’s regulations and policies shall be void if they are not adopted through negotiation with the trade union. . . . Requiring the consent of the trade union before such changes can be made is overly burdensome and may prevent important company policies from being implemented in a timely manner. . . Final authority and responsibility for company policies should rest in the hands of the employer.”

If the USCBC and other organizations representing global companies really wanted to “to make the new law more effective and balanced” there are plenty of suggestions they could have made. For instance, the law says nothing about expanding the rights of workers to organize and bargain with employers through representatives of their own choosing—rights guaranteed under US and international labor law. Instead, they chose only to oppose key provisions of the new law.

