

The New Draft of Collective Bargaining Regulation is Up for Legislation in Guangdong Province
IHLO, May 2014

Guangdong's provincial regulation on collective bargaining, which was opened for public consultation in September 2013 has been revised¹. The new draft, known as, Regulation on Collective Contract in Enterprises of Guangdong Province (Draft), was released in March 2014 and it is expected to be tabled in the provincial people's congress for passing within this year.

The public consultation of the previous draft last year received un-precedented responses from the civil society focusing largely on the section on legal responsibilities. Labour groups and activists were worried that the punitive provisions would give employers and the government a legal tool to punish and restrict labour strikes.

ITUC made comments on the draft bill in October 2013 which was communicated to ACFTU. The revised draft is still a mixture of contradictions. On the one hand, concessions are made over the election of the workers' representatives in collective bargaining, the right of the agency workers to bargain at the workplace and a shorter period of dispute processing. On the other hand, state and the local trade union federations' control and penal sanctions on labour strikes have not relaxed but strengthened.

(1) Interference of the local federation of trade unions in the election of bargaining representatives

The 2013 draft allows the local federation of trade unions to intervene in the election of bargaining representatives when there is no trade union or a functioning trade union at the enterprise, and in emergency situations². The local federation is authorized to supervise the enterprise unions and step in the re-election of the bargaining representative if they have failed the legal duties. ITUC found these provisions as infringement of the autonomy of the enterprise union, especially in electing and replacing its representatives.

The above provisions have been removed in the 2014 draft which simply states that the bargaining representatives should be elected by workers democratically if there is no trade union at the enterprise (Article 12, 2014 draft).

(2) Intervention of the state in collective bargaining

ITUC pointed out state intervention in the previous draft which requires the inspection and approval of the labour ministry before a collective bargaining agreement carries legal effect³. These provisions have been removed in the new draft.

(3) Agency workers in collective bargaining

The representation of the agency workers to bargain at the user company is not clear in the 2013 draft and subsequently the bargaining may cover their working conditions

¹ Regulation on Collective Consultation and Collective Contract for Enterprises in Guangdong Province (Draft) was released for consultation in September 2013.

² Article 16 of the 2013 draft.

³ Article 38 and 39 of the 2013 draft.

but not over the use of agency workers. Article 55 of the new draft now states clearly the equal right of the agency workers to bargain at the user company provided that they have joined the trade union there; whereas agency workers who have joined the trade union of the agency company should bargain with the employer of the agency company.

(4) Others

Labour strikes is indirectly 'allowed' in both the previous and the new draft in only one instance, that is when the employer has not given a reply to the request for collective bargaining or refuses to enforce the conciliation agreement. The employer is then prohibited from dismissing workers for taking part in a strike staged subsequently (Article 49 of 2014 draft).

Other than the above, no major revisions on the sanctions on strikes and industrial actions are found in the new draft. Instead, state interventions, prohibitions and punishments for strikers are strengthened.

(5) Strike is prohibited in a widened range of essential services

In the 2013 draft industrial actions are banned and the local government is allowed to call a cooling-off period in a wide range of essential services including water, power, gas, public transportation, broadcast, telecommunication, public health services and other public enterprises/ institutions and their affiliated enterprises. The labour ministry, the administrative authorities and the local federations are allowed to intervene and reach an agreement to end the dispute.

These provisions remain in the new draft and the education sector is now included in the list of essential services which ITUC found too broad and the test factors for strike prohibition too general than the ILO definition.

(6) State intervention and punishments on labour strikes

6.1) Collective actions taken by workers are banned once the employer has agreed to enter into collective bargaining

ITUC noticed that the draft regulation of 2013 simply bans a wide range of activities of workers during collective consultation regarding them as creating conflicts⁴, rather than basing the prohibition on the principle of peaceful demonstration. In the new draft, such activities of workers are further regarded as creating disruption to the procedure of collective bargaining and employers' punishments are allowed (Article 24, 52 of 2014 draft). Now as long as the employer has agreed or is preparing a reply to the request of collective bargaining within the valid time period, no industrial action will be allowed. Note also that the valid reply period to reply to the collective bargaining request has extended from 20 days in the previous draft⁵ to 30 days in the newly revised one (Article 18 of 2014 draft). Given that more and more bargaining requests made by workers are made in the context of wild cat strikes, the provision may become a tool of procrastination for the employers to virtually end the labour unrest.

6.2) Strengthened intervention of the state and the local federations in disputes and

⁴ Article 31 of 2013 draft.

⁵ Article 25 of 2013 draft.

wild cat strikes

The provisions which allow the local federations to intervene to end a wild cat strike and get workers back to work in the previous draft are maintained and further strengthened⁶. Article 34 and 35 of the new bill allow more parties to get involved including the relevant government departments, the regional confederations of trade unions and trade associations to intervene and restore order in case of a dispute (Article 34, 2014 draft). The danger of enlarged state intervention is further infringement of the right and autonomy of the enterprise trade union and workers in determining their actions and bargaining.

6.3) Punishment and criminal sanctions for strikes

The new draft maintains the administrative punishments and criminal sanctions for strikes and industrial actions (Article 52 of 2014 draft). Workers will be accused of disrupting the procedure of collective bargaining if they take industrial actions after the employer has agreed to enter into the collective bargaining process, or if the employer is preparing a reply to such a request. Employers are free to dismiss them. They are also subject to administrative and criminal punishments for disruption of public order, a newly included liability which lacks a clear test or definition.

Major provisions of Regulation on Collective Contract in Enterprises of Guangdong Province (Draft), March 2014

Article 12. The chief representative for the employees of an enterprise that has established a trade union shall be the Chairman of the trade union; or the Vice-Chairman of the trade union if the Chairman's position is vacant. The rest of the representatives shall be decided by the trade union or elected by the workers' (representatives) congress. The representatives for the employees of an enterprise that is yet to establish a trade union shall be elected by the employees democratically; and the chief representative shall be elected by all the collective consultation representatives

Article 22: Collective consultation should be undertaken by peaceful and reasonable means. The enterprise and employees should maintain production at the workplace and the following acts are prohibited: (1) blocks or procrastinates the bargaining process; (2) threatens or bribes the other bargaining party; (3) disrupt and damage the procedure of collective consultation by violence, coercion and other illegal means; (4) restrict the personal freedom, or insult, threaten and use violence against the related parties in collective consultation.

Article 24: "When initiating a collective consultation, the employees shall not: 1) Reject the collective consultation with the enterprises by work stoppage or sabotage, or request to change or terminate the valid collective contract by work stoppage or sabotage if the enterprise has agreed to enter into collective consultation, or during the valid period for the enterprise to reply to the request for collective consultation; 2) Fabricate facts, intentionally spread falsified information, instigate a stoppage or sabotage, threaten, coerce other employees to leave the workplace; 3) Block, obstruct or close the entrance into and exit out of the enterprises, cut the communication of persons, raw materials and cargo; 4) Organize or participate in the work stoppage

⁶ Article 34, 56 of 2013 draft.

during the implementation of the conciliation agreement of the collective consultation dispute by the enterprises;

Article 25. Both the employees and the enterprises have the right to request the collective consultation. When the Party of employees or the Party of enterprises makes the request for collective consultation, the other Party shall reply in writing within 30 days and respond to every matter in the request and consult with the other Party. A written request for collective consultation shall include the time, place and contents of consultation and explain the reasons for the proposals.

Article 34: Employees and the enterprise should resolve disputes arising from collective consultation based on facts, the law and the orderly and peaceful principle. The relevant government departments, the regional confederations of trade unions and the enterprise's representatives should provide guidance to both parties in following the law, making demands according to the law and resolving the dispute by mediation.

Article 35: If the employees and the enterprise run into a dispute and cannot pursue collective consultation or reach an agreement, the regional confederations of trade unions and the employers' organizations should intervene and collaborate with the supervisory government bodies to guide and regulate the employees in continuing the collective consultation, maintaining production, preventing provocation and ensuring labour harmony.

Article 52: The enterprise may terminate the employment contract with the employee according to the "Labour Contract Law" for any violation of Article 22 (3), (4) and Article 24 of this Regulation. Employees that also violate the public security administrative regulations or disrupt public order shall be dealt with according to the "Law on the Punishment in Public Security Administration". Criminal offenses shall be dealt with criminal procedures.