

The All-China Federation of Trade Unions: A Conflict of Interest?

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JAMES ROGERS, DEC 10 2010

The terms employee, employer and government are somewhat colloquial terms used to describe a broad range of situations. Therefore, as an introduction to this paper it is necessary to define what the above words represent upon reference in this essay. This is required to give clarity to the reader. The use of the term 'employee' is to describe the unskilled migrant workforce. It is in this demographic where the majority of labour disputes involving the All-China Federation of Trade Unions (ACFTU) lie. Secondly, the term 'employer' shall be used in reference to the State Owned Enterprise (SOE), Privately Owned Enterprise (POE) and Foreign Invested Enterprise (FIE) factories that are involved in labour disputes with the said employees. However, in certain cases where clarification is necessary the ownership of the company concerned shall be specified. Finally, the term 'government' when used in this paper will be in reference to the Communist Party of China (C.P.C), who has a key role within the running of the ACFTU and its policies. To add further clarification, the; *"The ACFTU is China's sole official Trade Union, it has traditionally been an adjunct of the Chinese Communist Party and government as a bridge between workers and management..."* [1]. The purpose of this essay is to assess the ACFTU in regard to who, in reality, it represents the best interest of. This essay shall be split into three key sections; the government, employer and employee. In each of these sections, arguments shall be raised and examples given in regard to the ACFTU's representation of the group. These three sections shall be followed by a conclusion in which the answer to the question posed shall be deduced. The first entity that will be assessed is the government. The government is arguably the ACFTU's first allegiance. The main reason being, it was created by the C.P.C in 1921 to act as the sole organ in regard to organising workers and implementing C.P.C policy. This was clarified in 'Trade Union Law' (1950); *"All trade unions, as their establishment, have to report to the ACFTU or its subordinated industrial trade unions and local unions"*. [2] It is here the ACFTU's monopoly and ties to the government were cemented. Through this legal and institutionalised association with the government, the ACFTU loses its ability to be non-partisan in terms of worker representation. This is due to the fact that a greater level of authority bears force upon them; *"...the trade unions should firmly and steadfastly implement the Party's lines, principles and policies, be in agreement with the Central Committee of the Party on political, ideological and action matters."* [3] As can be seen here, any decision made by the ACFTU that is seen as unbeneficial to the C.P.C can be interfered with. Another reason for the ACFTU'S close ties to the government comes in the form of financial support. As specified in article 42 of the amended 'Trade Union Law of the Peoples Republic of China' (1992); *"The sources of trade union funds are as follows...subsidies provided by the people's governments..."* [4] As shown in this article, one source of funding for the ACFTU comes in the form of government subsidies. It is understood that in certain cases this funding is used to the employee's benefit, through wage payment to those contesting wages with their employer; unfortunately, this has not always been the case. This ACFTU allegiance to the C.P.C has continued to surface, over that of the employer or employee, throughout recent history. An example of this comes during the Anti-Japanese War (1937-1945). During this period *"the ACFTU in CPC occupied territories mobilized workers in munitions production and in some areas, again organized workers, sending some members to the armies"*. [5] From this quote it is clear to see the ACFTU acting in the interest of the government through the recruitment of members to the armed forces. In regard to the interest of the employee and the employer, this is a detrimental policy as it leaves the employer with decreased members of staff, (usually able bodied men) and the employee with their lives being put at risk in military service; thus showing that the employer and employee are not the first priority for the ACFTU. Overall, it is clear to see from this section that there is a clear conflict of interest within the ACFTU. On one side, the trade union must safeguard the interest of the workers as this

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is the defined job of the ACFTU. On the other hand, the organisation must comply with implementing C.P.C policy and thus look out for the interest of the government. Officially there is no conflict of interest here as according to the government the interests of the worker and the state are one. Of course, this is a disputed view and in turn this paper sides with the opinion of White (1996); *"White was much more concerned with the dominance of the CCP in China, and outlined a context in which the trade unions play the role of policy-makers."* [6] From the evidence given above it is clear that the idea of the ACFTU being an instrumental cog in the C.P.C machine is a justifiable one; therefore it is correct to conclude that a large proportion of the ACFTU's allegiance lies with the government. However, other scholars have argued a different case. Chan (1995)[7] argues that the ACFTU in China has increasingly become similar to that of trade unions in Japan over the past decade through the way it has grown to be enterprise based. By this it is meant that for the ACFTU to ensure its survival, it is becoming a competitive and appealing service to the employer, especially the FIE's and POE's who have grown in size and power over this time. The main reason for this shift towards an employer alliance has been due to a sharp fall in trade union membership. In 1995 ACFTU membership was at 103million, yet by 1999 this had fallen by 16million to 87million due to the collapse and privatisation of many SOE's, instrumented by the C.P.C.[8] This lead to a decrease in membership payment income for the ACFTU and thus, alternative funding needing to be found; *"It is the only union legally recognized but its membership is shrinking as privately-owned companies become a larger share of the economy"* [9]. As shown in this quote due to the said decline, the ACFTU launched a new initiative in which the growing FIEs and POEs were the focus; *"The ACFTU decided to make organising trade unions in POE's as a priority among priorities"* [10]. The reasoning behind such a move is clear to see. Through close affiliation with the employer the ACFTU can cement its access to membership and thus guarantee membership fees. This is due to the fact the employer often implements membership by facsimile. This membership by facsimile involves the near duplication of employee membership forms to bolster membership numbers, in certain cases the employee's are unaware of their union membership, but are taxed universally from their wages by the employer who in turn gives the money to the union. Examples of facsimile have also been seen with the duplication of unions themselves; *"A common practice was multiple counting of the same union. For example difference branches of the same union in an enterprise."* [11] However, in exchange for this increased levels of funding and membership which help sustain the ACFTU, sacrifices have had to be made. These sacrifices come in the form of the ACFTU giving up certain levels of autonomy and letting the employer get involved. Li & Taylor (2003) consolidates this view; *"...the employers usually control the grass-roots unions"* [12]. Here it is clear to see that through increased integration with the employer comes increased interference. Moreover, through funding being facilitated by the employer, the ACFTU has no choice but to comply and thus represent the interests of the employer to an extent. One such example of this is through the legal system in China which deals with worker disputes. This system is tri-partisan and involves the employee, employer and the government. In this system the ACFTU is meant to *"...properly resolve the problems regarding workers and staff members"* [13] through three levels of legal proceedings; mediation, arbitration and court proceeding, if so necessary. However, as Li (2007)[14] makes clear, levels of this process have often been skipped by the ACFTU over the past five years. Li highlights a report from the Ministry of Labour in China which shows the overturning of 50% of wage dispute cases due to the fact the ACFTU resorted to illegal out of court settlements to bring a swift end for the employers' advantage. The ACFTU were caught frequently resolving wage disputes cases during mediation, through settling on below minimum wage payments to employees. By doing this the ACFTU brought the situation to a resolution quickly, got the employees back to work and saved the employer money; thus dramatically benefitting the employer at the employees financial cost. As can be seen from this example *"Management manipulation of the workplace trade union has remained a key barrier to the implementation of...more effective channel to improve workers (rights)"* [15]. Overall it is clear to see that the ACFTU has an allegiance to the employer as it priorities them in legal proceedings which undermines the authority of the government through breaking the law. Moreover, the employer is sided with over the welfare of the employee. However, this occurrence of neglect for the employee is not always the case. The examples given in this paper have to this point highlighted a majority of views which showcase the ACFTU as being somewhat non-representative of the employee's rights and best interests, instead preferring to look out for the interest of the employer and government. Although in certain cases the ACFTU's allegiance to the employee can be called into question, it has not completely abandoned their rights. One such example of this has already been touched upon from the opposite angle; it is the relatively common case of unpaid wages between employer and employee. In October this year (2010) the company 'Smart Union', a toy manufacture in the Dongguan province, closed down overnight, leaving 7,000 out of work and in financial turmoil. However, in the Dongguan province, the ACFTU in affiliation with the provincial authority, had previously established a fund comprised of trade union money which was

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reserved for wage disputes. Therefore, upon the workers protesting outside the government office the next day they were of course dispersed, as is C.P.C law, but they were assured their wages would be paid to them through the said funds. The ACFTU and local authority would then obtain the money back from the employer; *The government finally agreed to pay around 24 Million Yuan as payment for around two months of unpaid wages for the workers* "[16]. Through this direct payment of unpaid wages to the employee it can be seen that in certain situations the welfare of the employee is prioritised over that of the employer, and thus shows a level of allegiance to the employee as is the organisations legal duty. *"The ACFTU's constitutional obligation, reinforced in Trade Union Law (2001) is to represent workers' interests..."*^[17] However, this fulfilment of legal obligation is not seen as the norm in China. Many local authorities and trade unions are unable or unwilling to supply the finance to fund such payments leaving the former employee's unpaid, and impoverished. Here it is displayed what can be achieved if the ACFTU does represent the rights of the employees, even if this is not the case in the majority of disputes as shown in previous examples. It is clear to see from the examples shown above that the ACFTU has a varied level of allegiance to all three entities discussed; the employee, employer and government. As a primary allegiance the ACFTU is firmly sided with the government. This is to ensure its survival, as only through being allied with the party and keeping the party line can the ACFTU have any power and influence in China. Moreover *the ACFTU is in essence part of the government system all the way down the hierarchy from centre to district* "[18]. As shown here, the ACFTU for the most part is there as a party organ to implement C.P.C policy and to act as a relative 'fire fighter' in labour disputes[19]. However, we must not forget that this is not unusual behaviour for a trade union. In the United Kingdom the formerly ruling 'Labour Party' has its roots deeply embedded in foundations of trade unions. It was in the 1900 that the Trade Union Congress (TUC) brought together and amalgamated a number of socialist groups to form the Labour Representation Committee, later to be known as the Labour Party. This close bond continued into the *Second World War*. During this time of national conflict, the TUC continued to help support the government in a very similar way that the ACFTU did during the Sino-Japanese war, through its support of the state over the employees' rights. In the case of the TUC, it helped with the War Effort by supporting the implementation of *Defence Regulation 1AA*[20]. This regulation made the incitement of strikes unlawful during times of war due to the detrimental effect it would have on the nation's industrial production; thus putting the state over the employee. Ultimately, what has been shown through the comparison of the two trade union/ political party relations, is that it is in essence, the nature of any trade union to deal with the government on many different levels, for an array of reasons; thus it is neither uncommon nor abnormal for a trade union such as the ACFTU to be closely affiliated to the political party in power. Secondly, as has been previously displayed, the power of the employer, especially POE's and FIE's, has grown dramatically post economic reform. Therefore, to maintain its place in employee-employer relations, the ACFTU has had to enter into contact with the employer to ensure it can represent the growing workforce in China. Unfortunately, to do this the ACFTU has had to become a somewhat enterprising entity itself, having to offer the employer an incentive to allow them to enter the workplace. In many cases this incentive has been to suppress the workforce by keeping strikes to a minimum and efficiently to a maximum; *"...the authority of the Party is replaced by the authority of the market"*[21]. It is this authority to the market that shows that the ACFTU has a degree of allegiance to the employer. Through this allegiance the ACFTU can safeguard its future and still get involved in trade relations; however, it weakens its relationship with the employee. As said by Chang (1993); *"The official trade unions will lose their capacity to survive if they cannot be the representatives of labourers in the market"* [22] As displayed here, the ACFTU must, to ensure its survival, solely appeal to and represent the employee. Only through this representation can the ACFTU truly fulfil its constitutional obligation to support the worker. It has even been said by Jiang (2007); *"If the trade unions do not take the workers' interests into account, they will lose their ground among workers"*^[23]. Unfortunately, at this point in time, as proven in this paper, there are only glimmers of this employee representation shining through and therefore ACFTU allegiance is not primarily with the employee. It is fair to say as an overall conclusion that the ACFTU's first and second allegiances come in the form of the government and the employer respectively as it is in these organisations where the power and funding is to be found. However this is likely to change and employees in the future will find ways in which to find greater representation, either through alternative foreign trade unions, or through employee formed trade unions, as has already been seen in Shanghai[24]

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