

**Unequal Negotiations: View the Institutional Dilemma Faced by
China's Labor Union from Carrefour Collective Bargaining**

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Unequal Negotiations: View the Institutional Dilemma Faced by China's Labor Union from Carrefour Collective Bargaining

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Abstract: Through in-depth study of the case that collective bargaining on boycott Shanghai Carrefour for 12 years, finally signed a collective contract and established a collective consultation mechanism under the direct involvement of the Shanghai Federation of Labor Unions, this article aims to explore the institutional dilemma faced by China's labor unions. Collective bargaining, in theory of law, has the basic premise that with labor union's mediation, laborers obtain relatively equal footing with management, so as to safeguard the rights of workers by means of negotiation. However, view from the existing system in China, trade unions is ambitious but lack of system protection, which actually cannot win position to compete with the management, and it is difficult to play a role. The author found facts from case studies that, the China's trade union is unequal to the management in rights, democratic management right and Judicial relief. The existence of above unequal lead to the result that China's trade unions is difficult to carry out a true collective bargaining, collective bargaining becomes a mere formality.

Keywords: Collective bargaining; China's Labor Union; institutional dilemma

In recent years, with the occurrence of a series of major labor events in Tonghua Steel Group, Nanhai Honda and so on, the conclusion of collective contract has become the work that Chinese trade unions and government vigorously promote. The 12th Five-Year outline formulated by MOHRSS put forward that the signing rate of enterprise collective contracts should reach 80% by 2015.¹ Meanwhile, in order to achieve the goal of doubling the wages of the staff, collective wage negotiations will become the primary means. As a matter of fact, MOHRSS in conjunction with ACFTU and CEC had released the Rainbow Project of Further Promoting the Collective Contract System Implementation as early as in 2009, and proposed that the coverage rate of the collective contract system should be increased to more than 80% in three years beginning from 2010. In order to achieve this target, some areas also provided that the signing rate of collective contracts is incorporated into the

¹ Development of human resources and social security "Twelve-Five" program notification.

performance evaluation indicators of governments at all levels.² In 2011, the Working Program of Further Promoting Collective Wage Negotiations from 2011 to 2013 was published by ACFTU, and the proposed goal was that more than 80% of the enterprises which have established the trade union organization will set up collective wage negotiations system by the end of 2013, thereamong, all of the world's top 500 enterprises in China will establish the collective wage negotiations system.

From a series of documents of ACFTU and MOHRSS, it is not difficult to perceive that they attach importance to the collective bargaining and the conclusion of collective contracts. Seen from the data, there is a substantial increase of the signing rate of collective contracts indeed. "As of the end of 2011, collective contracts on wage have covered 1.742 million enterprises, a year-on year rises of 56.1%, which is 2.36 times the annual growth rate of 2010."³

However, unlike the official attitude, scholars generally question such data. Many scholars believe that even though the number of collective contracts signed in our country increased rapidly, it becomes a mere formality instead of playing a substantial role. "The phenomenon of attaching great importance to signing while setting light by consultation is very common in signing the collective contracts. Most of the collective contract texts are formatted texts printed uniformly and the consultative process becomes a redundant procedure."⁴ "Many collective contracts are signed mainly to cope with the indicator task of superiors rather than proceed from their own needs of the masses of workers. The contract text formatting is extremely universal that copying terms of laws and regulations without enterprise characteristics. The masses of workers are basically unaware of and not familiar with the collective contract of their own enterprises."⁵ Foreign scholars also hold similar viewpoints basically. Some scholars have found through research that 60% of the content of collective contracts in China is copied from the provisions of the Labor Law, 20% to 30% refers to the law as a reference, while only 10% of the provisions are related to improving the employees' interests.⁶ The current situation of collective contracts in our country is high signing rate but low effectiveness. Some researchers even directly name most of the collective contracts are fake contracts.

² Many regions have similar local regulations, such as Henan Province "opinions on comprehensively promoting the work of enterprise collective wage negotiations."

³ He Yong, Pan Yue, Wu Yan. Focus on collective wage negotiations: Wage negotiations, labor can be a win-win[N]. People's Daily. 26.3.2012.

⁴ Jiang Ying. Reflections on the formalization of collective contracts[J]. Theory and practice of trade unions. 2004.(6).

⁵ Zheng Qiao. Labor relations changes in China 30 years of collective bargaining and collective contracts system[J]. Modern communication. 2009(02).

⁶ Tim Pringle, Barriers and Barricades: "Union Rights and Free Trade in the context of China", ACTU/NZCTU/Monash University China Symposium, Melbourne, Feb14-15 2005, P251-252.

With regard to the present status of the collective contract in China, the trade union itself doesn't without realization. Minister Zhangjianguo of Collective Contracts Department, ACFTU once said that it is not easy to promote the construction of collective consultation mechanism, and it is more difficult to enable it to play a role truly.⁷ It can be drawn from the author's research that collective contracts also exist which are concluded by means of collective consultation and are true reflection of the staff and workers' wishes. Of course the quantity is relatively small, and Shanghai Carrefour is one example. That is also the reason why this article choose it to be the object of study, and expect to reveal the problems existed in the conclusion of collective contracts in our country through the study of this typical research. Furthermore, the problems will be analyzed mainly from the perspective of system defects.

1. Process of the Conclusion of Collective Contracts in Shanghai Carrefour Supermarket

Carrefour is a retail chain group which spreads all over the world. It is not needed to introduce more about this enterprise, for you can see their shops in most parts of the world. Currently, there are more than twenty Carrefour Supermarkets whose total number of employees is approximately 7,000 in Shanghai. Since Carrefour Shanghai Alliance Supermarket Co., Ltd was established in 1995, the trade union organization has been set up within the enterprise.

The trade union organization continued for a long-term to issue an offer to the enterprise to carry out the collective consultation, but it didn't obtain the consent of the enterprise. Under this circumstance, the enterprise union proposed a request to Shanghai Federation of Trade Unions for help, so that the negotiators of Shanghai Federation of Trade Unions joined in the party of the enterprise union, but even that didn't play any effect. Although the enterprise agreed to conduct collective consultation, it only talked about procedural issues and refused to negotiate material stipulation. Even such event appeared in the consultative conference in 2008 that after the trade union raising the compensation income growth of the front-line workers not less than 8%, the French representative of the enterprise immediately stood up and left the meeting, and thereupon gone for ever.

While the collective consultation walked with difficulty, wages of Carrefour

⁷ Lv Ji Feng. Unavoidable contradictions in labor relations, a long way to go to the Harmony--Dialogue to ACFTU collective contracts Minister Zhang Jianguo[J]. Journal of China Institute of industrial relations. Vol. 25th 1st issue. 2011(02).

Shanghai employees were stagnant for a long period, even falling instead of rising. In 1998, the lowest pre-tax wage of Shanghai Carrefour employees was 1150 yuan, which was not only higher than the social average wage 1005 yuan in Shanghai and especially more than three times the lowest wage standard 325 yuan during that time. But in the next ten years, the wages of Carrefour's employees never increased again. The wages intact means the wages reduced implicitly and the income of employees was less and less every year.

However, the absolute value of the wages was also on the decrease. In 2006, the minimum pre-tax income of Carrefour's employees dropped to 1100 yuan, and the dominant wage was 50 yuan less than that in 1998. In consideration of the social security benefits which employees bear, the real wage is only 858.62 yuan, 217.15 yuan less than that in 1998. There were 70% of the front-line employees such as tally clerks, cashiers, public security, etc. all took the lowest wage in the enterprise. To September 2007, Carrefour still remained the minimum wage 1100 yuan, while the minimum wage standard in Shanghai has been increased to 840 yuan. Provided that taking off the social security payments which employees should bear, the real wage was only 833.89 yuan, 6.11 yuan less than the regional wage standards. That had reached the degree of violation of the state law. Moreover, the average monthly wage of workers in the whole city of Shanghai has reached 2892 yuan in 2007, which was nearly three times the minimum wage standard in Carrefour.

From the industry-leading level of wages to the bottom of industry wage level, the negative effects of Carrefour's low-wage strategy for business management is extremely obvious. The author realized in the interview that Carrefour's employee turnover rate is in the leading position of the industry, the staff turnover rate in 2007 reached 108% unexpectedly. A large number of employees leave office after working for several months or even several days. In the meantime, Carrefour's loss of cargo rates is far ahead in industry, and even the loss of bulky items such as LCD TV occurs in individual stores.

Another condition with which employees dissatisfied is that the wages of corporate executives keep advance side by side with the market while the wages of a large number of the front-line staff come to a standstill for a long period. There is a considerable proportion of French employees in Carrefour's executives, the total number of which is more than 1000 in China, and the wages of these French executives are at least 20 times more than that of the front-line staff. Such sort of polarization of the remuneration policy in the enterprise further strengthens the dissatisfaction of employees.

Facing with the strong desire of employees to improve remuneration and the

tough attitude of the corporate party, Shanghai Federation of Trade Unions reported the event which Carrefour doesn't raise wages for 12 years and refuses the collective consultation in the form of special reports by a wide margin in its subordinate Labor Daily in January 2011. This report had been reprinted by a large number of official mainstream media such as People's Net, etc, triggering strong social repercussions, and then the public opinion leaning to one side predominately criticized Carrefour. Forced by the strong pressure of public opinion, the enterprise side had to return to the negotiating table. The trade union proposed that wages of the company's full-time employees increase by 9%, while the enterprise party only agreed to an increase of 5%. After a total of 10 negotiations in two months, both parties involved eventually concluded the collective contract. They agreed upon an average increase by 8% of full-time employees' wages compared to 2010, among which the company's minimum monthly wage standard is 105% of the lowest monthly wage standard formulated by Shanghai Municipal Government. Meanwhile, employees working for 12 months completely should be paid the 13th month wage, and they made an agreement on the content of annual leave with pay, physical examination, etc. Both sides also approved developing collective consultation of special wage project in 2012. For the front-line employees accounted for 70% of the total number of the staff, the effect of this collective negotiation was remarkable so that their monthly wage actually increased by 224 yuan.

2. The Institutional Dilemma of Collective Negotiation

The final result of collective negotiations event of Shanghai Carrefour was certainly very gratifying, and the trade unions safeguarded the interests of staff through collective contracts, which were real collective negotiations and also played a real effect. However, the author feels very regretful through the in-depth research and interviews of this case. There are many companies similar to Carrefour in China, and can the trade unions let the enterprise agree to have a well negotiation with them by making the corresponding public pressure? Even the parties sit down for the negotiation and have signed a collective contract, then how about the effect of the collective contract? And how many of these negotiations are just the forms rather than achieve the actual implementation? For the author' feeling during the study, Shanghai Carrefour event is only an individual case, there were too many accidental and individual factors for the achievement of such results, such as the strong personal mission sense of the Carrefour labor union president, and also the full support of Shanghai Municipal Trade Union regardless of any costs. All these have a direct impact factors on that successful negotiation, which was not able to be in duplicate, therefore, such kind of success has little replication at all. What the author has seen in the study process of this case is the institutional dilemma of collective negotiation

systems in China, if this cannot be improved, then the collective contracts in China is only nothing more than just nonsense data.

In theoretical terms, the difference of the collective contract compared with the individual labor contract lies in its equal negotiation, while it's difficult to have negotiating space for individual labor due to the unequal status of labors as opposed to employers. Seen from the majority, if the labors want to obtain a relatively status equals to employers, it's necessary to pass the establishment of Labor Organization of trade unions. However, the establishment of trade unions can not be immediately in equality between the labors and their employers, seen from history and legislation of countries around the world, it still requires a series of system securities. This is precisely the defect of collective negotiation systems in China, and the relative perfect corporation legislation has further exacerbated the imbalance of the labor status on the collective level.

This paper attempts to analyze the defects and deficiencies of China's institutional collective negotiations from the following three aspects by institutional comparison of both employers and employees, together with the combination of the individual Carrefour case.⁸

2.1 Unequal fundamental right

Unequal Right of Coalition

The Right of Coalition is the premise and basic right of the implementation of collective labor right, and it is the priority and foundation of the collective labor right.⁹ The well-known scholar Shi Shangkuan considered that the Right of Coalition was generally the right used by the employers or employees to maintain or expand their interests in labor relations thus to organized the group system of social law.¹⁰

In China's legislation, there are provisions for Right of Coalition, the Article III of *Trade Union Law* stipulates:" The manual and mental workers serve in enterprises, institutions, authorities within the territory of China, whose wage incomes are the main sources of their living, have the rights to join and organize trade unions in accordance with the law regardless of their nationality, race, sex, occupation, religion and education degree. Seen from this article, it seems that the labors in China can not only "join" in the trade unions, but also "organize" them. However, it is actually not the truth, the Article II of *Trade Union Law* has the clear provisions, "All China

⁸ Above content synthesis from author interview, and Wang Ye Bei. Wages 12 years "marking time" six thousand employees helpless heart-breaking[N]. Labor Daily. 19.01.2011.

⁹ Chang kai. Theory of Workers' Rights-- Research on the Legal Regulation of Labor Relations in Contemporary China[M]. China Labor and Social Security Publishing House. June 2004 edition, P 226.

¹⁰ Shi Shangkuan. Theory of the Labor Law[M]. Zhengda Publishing House. Republished version 1978. P 153.

Federation of Trade Unions and their trade union organizations are on behalf of the employees' interests, and protecting the legitimate rights and interests of the employees according to the law." Namely, only All China Federation of Trade Unions is the sole representative of the national labors. And such uniqueness is even more direct in Article X, "to establish a unified All China Federation of Trade Unions in nationwide." The uniqueness has been further strengthened in local legislation, "in the provisions of Measures of Shenzhen Municipality for Implementation of *Trade Union Law of the People's Republic of China*", "any organization established without being in accordance with the corresponding provisions, shall neither have any activities on behalf of the trade unions nor performance of the powers as an alternative of trade unions. Any organizations that are in violation of the provisions should be banned legally by registration administrative department of Social Organizations.

The uniqueness of Trade Union status results in a fundamental difference between the trade union organizations in China and abroad, which also leads to specific patterns of behavior of China's trade unions. If compared with the Convention of the related Right of Coalition of ILO, it is easy to find that China is essentially has no "Right of Association", and more accurately to say is no "Right to join Association". No. 87 of ILO wrote, "Workers and employers should establish and join in their own selection of organizations with no distinction and no previous authorization, the only condition is that the parties should comply with the regulations of the relevant organizations."¹¹

On the stark contrast of the "unification" and "specialization" for the workers to join trade unions, the employers have already enjoyed "the rights to establish and join in their own organizations with no distinction or authorization". As being on behalf of the employers' organizations in China of ILO - China Enterprise Confederation and China Entrepreneurs Association (Departments of the same organization), if anyone wants to become a member of them, it's enough by simply submitting a membership application in writing; a copy of business license; fill out the membership registration form of business groups as well as the company profile.¹² At the same time, employer organizations are in "diversification". Such as the provisions of *Zhejiang Collective Contracts Regulations*, "The areas of industrial gatherings below county level or relatively concentrated small business, trade unions or regional trade unions are the representatives for one party of the workers, trade associations, chambers of commerce or Entrepreneur Association, Federation of industry and Commerce and other business representative organizations are on behalf of the employer party, either party can propose to the other party the requirements of the industry or regional collective negotiations." It can be clearly seen from the article that employers are free to choose, join and even set up their organizations, while only All China Federation of

¹¹ ILO: Convention on the Rights of freedom of association freedom and conservation organizations (No 87), 1948.

¹² CEC-CEDA: Group membership management approach. Article 3.

Trade Unions and their trade unions can be the representatives of labors, the unequal position of workers and their employers on Right of Coalition is all too clear.

Inequality of collective negotiation right

Collective negotiation is an important means to coordinate industrial relations, Taiwan scholars believe that: collective negotiation is the core of collective labor relations.¹³ This is not difficult to understand as in the three labor rights, the Right of Coalition is the premise of negotiation right and organizational foundation; collective dispute right is implementing security and pressure means of negotiation right, it can be said that the three labor rights is the basis of the central collective negotiation right. Conversely, if the Right of Coalition is not sufficient along with lack of collective dispute right, then it is also difficult for the collective negotiation right to play its role accordingly.

The pre-condition of collective negotiation is “The parties have an equal status in the negotiation of working and employment conditions.”¹⁴ However, seen from the reality China's workers and their employers are not in an equal position. Take Carrefour as an example, trade unions have long-term kept on issuing the invitation to the enterprises for collective negotiations, but the enterprises have no glance at it, and even the corporate representatives get up directly to leave. For the tough measures of the enterprises, the trade unions can do nothing for the existing system. The enterprise's refusal to negotiate has no legal consequence, and there are no mandatory provisions in law for enterprise's collective negotiations¹⁵, and it offers no authority to the trade unions to take action after being refused for negotiation by the corporate. Although, Shanghai Municipal Trade Union forced the Carrefour corporate representatives to get back on the negotiating table by the way of making public pressure on Carrefour creatively, assuming that the corporate continues to adhere to tough position, then the trade unions will be in failure accordingly.

Under such system, even if the enterprise is in “benevolence” and sits at the table to negotiate with the trade unions, it can have full authority to use its legitimately strong position and force the trade unions to accept signing a so called collective contract in form but without any sense. Different from enterprises openly refuse the negotiation invitation from the trade unions, when facing the financial crisis, all local governments advocate the trade unions to negotiate with the enterprises for their

¹³ Huang Yue Qin. *New Theory of the Labor Law*[M]. Publisher China University of Political Science and Law. April 2003. P 294.

¹⁴ Chang kai. *Theory of Workers' Rights-- Research on the Legal Regulation of Labor Relations in Contemporary China*[M]. China Labor and Social Security Publishing House. June 2004 edition, P 248.

¹⁵ LAW OF THE PEOPLE'S REPUBLIC OF CHINA ON EMPLOYMENT CONTRACTS: Article 51 After bargaining on an equal basis, enterprise employees, as one party, and their Employer may conclude a collective contract on such matters as labor compensation, working hours, rest, leave, work safety and hygiene, insurance, benefits, etc. The draft of the collective contract shall be presented to the employee representative congress or all the employees for discussion and approval.

payment cuts, and it is difficult for the trade unions to refuse under such a system.¹⁶

Inequality of collective dispute right

If it is said that the trade unions in China still have the basic collective negotiation right, then there is serious unequal status between labor party and enterprise party in the aspect of collective dispute right. The realization of the collective dispute right is inextricably linked with the collective negotiation right, and it is the most important means of pressure for the workers to secure successful collective negotiation¹⁷. For the labors, the main form of collective dispute right is the Right to Strike, and for the employers it mainly embodies the Right of Lockout, which is the two ultimate means of Labor Game.

However, there's still wide controversy among scholars whether the Right to Strike of the labors exists under the current system. Professor Chang Kai considered that, "the main means of collective action is strikes, slowdowns, petitions, demonstrations and so on. There's no prohibit provisions of the collective action in China's law, so the workers' collective action is not a violation of laws in China."¹⁸ Although, it can be said from this perspective that the strike behavior is not illegal in China, there's also a substantial proportion of scholars believe that due to the definite abolition of the Right to Strike in China's *Constitution* in 1982. Therefore, there're no provisions of labors' Right to Strike in Constitution and Laws of China, which make such fundamental rights of the workers under the condition of no legal support.¹⁹

Correspondingly, when the scholars are discussing whether the labors have collective dispute right, the employers' collective dispute right has legal basis. According to the provisions of the *Corporate Act*, the company can't be dissolved unless passing the shareholders' meeting or General Shareholders' Committee resolutions.²⁰ However, in most countries, the lockouts behavior of the enterprises is entirely not arbitrary. U.S. law provides that the enterprise shall not lockout under certain circumstances, such as after the occurrence of collective negotiation dispute, and the parties voluntarily submit to arbitration, the enterprise shall not lockout prior to the ruling. Another example is the Article 2.8 of *Labor Management Relations Act*, which provides that

¹⁶ Guidance on the response to the current economic situation is stable labor relations: Difficulties in production and operation of enterprises, including migrant workers with the broad masses of workers, including collective consultation and adopt flexible employment, flexible working hours, flexible wages, the organization of training and other measures to jointly deal with the current economic difficulties, stable jobs, and labor relations.

¹⁷ Chang Kai & Qiu Jie. Transformation of China's labor relations and labor for the rule of law-- Starting from the third anniversary of the implementation of the labor contract law[J]. Exploration and Contending. 2011(10).

¹⁸ Changkai. Who caused the workers' collective action. Banyuetan (internal). 2009(09).

¹⁹ He Ran. On the contradiction of the loss of strikes right and the principle of law in China and their solutions. Journal of Lanzho. 2007(06).

²⁰ Company Law of the People's Republic of China : Article 181 A company may be dissolved under one of the following circumstances:(2) the shareholders' meeting or the shareholders' assembly decides to dissolve the company

the President has the right to request District Court order the suspension of the lockouts behavior. The U.S. Supreme Court has established the principle of "conditional lockouts" through the case of "Truck Drivers Local 1949" in 1957, namely the employers can only declare lockouts under two conditions. One is when the employers face perishable products which may result in irreparable loss, and there will be major unfortunate disaster to the employers if they did make lockouts, then the employers may lockouts as early as possible. The second is that when the trade unions attempt to take destroyed strike one by one for each member of the Employer Association with strike event, which is namely the so-called strike of "defeated-style", the employers of the Association then have the right to take lockouts.²¹ Australia also has the similar legislation, and Fair Work Australia (FWA) also enjoys the right to prohibit employers' lockouts.

The Local Legislation in China attempts to solve the problem of the collective dispute right of the trade unions through alternative means, such as the provisions of *Yunnan Regulations of Enterprise Trade Unions*, corporate refuses to collective negotiations of wage with unjustified excuse will be fined maximum of RMB 20,000 ; *Fujian Regulations of Enterprise Collective Negotiations and Collective Contracts* provides that those enterprises who obstruct the collective negotiations will be fined maximum of 30,000 RMB. The author understands well for the original intention of these legislators, but the author expresses doubts for extent of useful effect such provisions will play, whether it means that they can openly refuse to have collective negotiations by paying merely RMB 20,000 or RMB 30,000 of a fine? If it is true, then will there any more enterprises that are willing to take collective negotiations?

2.2 Inequality of democratic management right

In the collective negotiation of Carrefour, the other major obstacle trade unions encountered was that the company refused to offer business information, and in fact, most of trade unions have experienced such problem, which reflects the democratic management right of trade unions is difficult to realize within the enterprise. China has the provisions for the democratic management right of the staff, for example, nearly 20 areas in China have developed relevant provisions of Workers' Conference, and there are also the provisions related to employees' directors and supervisors in *Corporate Act*. However, on the one hand, the mandatory of these provisions is inadequate, and on the other hand, the related system is not perfect. According to the provisions of *Counter Unfair Competition Law*, the enterprises can create the information asymmetry of collective negotiations legitimately and on the grounds that the business information is commercial confidentiality.

²¹ Su Miao Han, Yao Hong Min, Zheng Lei. Legal confirmation of the right to strike and specification[J]. Legal Science. 2001(05).

When Guangdong Province of China was in drafting of *Enterprise Democratic Management in Guangdong Province (Draft)*, it attempted to solve this important problem, “the employees enjoy the rights of knowledge, expression, participation, negotiation, supervision for the matters of the corporation involved in the interests of them. The employees should exercise their right to participate in the democratic management of enterprises legally and support enterprises to operate and manage in compliance with the law. The enterprises shall provide the necessary conditions and ensure funding for democratic management activities.” “The enterprises shall offer the necessary conditions of the collective wage negotiations, as well as the information data related to the collective wage negotiations. The negotiation representatives shall keep the already known corporate business secrets.” However, the draft of Guangdong Province was received strong opposition from the enterprises, Hong Kong General Chamber of Commerce has put forward the above provisions on the submissions handed into the National People's Congress of Guangdong Province, “it is easy to involve commercial secrets”, “the caused damage for the enterprise is extremely serious, such provisions sacrifice the entire order of commercial market”.²²

However, in foreign legislation, many countries have directly provided such right of the employees. For example, Article 106 of *Federal Republic of Germany Enterprise Organic Act* stipulates that employers should timely and in comprehensive manner to report the economic affairs of the enterprise to Economy Commission and submit the necessary materials, including situations of economy and finance, production and sales, investment, mergers and acquisitions and so on of the enterprises. Article 43 “employers or their representatives at least annually to make a report at the Corporate General Assembly on personnel, welfare and the economic situation and development of the enterprise.” In 1989, *Community Charter of Workers Basic Rights*, EU required each country “Put the employees’ rights to obtain information, accept consulting and participate in decision-making into all regulations of the corporate in the same form, regardless of the corporate forms.”²³

2.3 Inequality of Judicial relief

Legal proverb: No relief no right. According to collective negotiation, states generally provided on relief of the subject system, mainly in the provisions of the unfair labor Act. <Labor Union Act of Japan>Article 7. The employer shall not commit the acts set forth in the following items: (1) to discharge or otherwise treat in a disadvantageous manner a worker;(2) to refuse to bargain collectively with the representative of the workers employed by the employer without proper reasons;(3) to

²² " Opinion and suggestion of Regulations of democratic management in enterprises in Guangdong Province, Guangdong Province wages collective negotiation rule, Shenzhen Special Economic Zone collective bargaining Ordinance (Hong Kong General Chamber)".

²³ JiangDaXin. Commence with the judgment of the Company Law--Method, judicial precedent and system. Legal publishing house. 2001. P 638-639.

control or interfere with the formation or management of a trade union; (4) to discharge or otherwise treat in a disadvantageous manner a worker. Meanwhile, Article 1²⁴ and Article 8²⁵ provides for the exemption of criminal and civil. Japan's unfair labor act refers to the United States, Taiwan has similar provision. <Taft-Hartley Act >, the unfair labor practices of union, both employers and employees are bound by the provisions of unfair labor practices.

The relief of unfair labor practices mainly about trade Union protection, but there is no such a system in our country. Local legislation have similar provisions, but hard to be effective, such as Shanghai Collective Contracts Regulations, Article 32 Where workers and staff members or the enterprise as one party refuses or delays the request for the collective consultation without any justifiable reasons, or the agreement cannot be reached through the collective consultation, or the collective agreement cannot be signed, either of the collective consultation parties may apply with the labor and social security administrative departments for mediation and handling of disputes. Where neither of both collective consultation parties makes the application for mediation and handling of disputes, the labor and social security administrative departments can actively mediate and handle the disputes when necessary. From the term, it is not difficult to understand why Carrefour can ignore regarding trade union's collective negotiation request. Remedies of the law have no coercive power, but according to Japanese law workers can file the lawsuit to the court directly.

On the protection of negotiation representatives, there are no restrictions on the enterprise. After the collective dispute, immediately fired the lead to workers of enterprises, is a very common condition. Shanghai Court of Labor Arbitration, where the writers as a part-time arbitrator, several workers on behalf of all employees negotiate wages requirements with enterprise; the employer fires them as the reason or absenteeism. During the trial, it proposed huge challenge to arbitrator. On the one hand, we agree with the legitimacy of the behavior of workers; on the other hand, we restricted by law. The case show that the legislation of individual labor relation is more perfect while collective relation legislation is greatly delayed. According to Labor Contract Law, employer has right to terminate a worker if he absent with no proper reasons. Without legal relief, the workers are hard to realize the right of collective negotiation, even cannot keep their jobs.

Not only that, many workers who organized and participated in the strike were termination of labor contract, even be held criminally responsible. In the strike wave

²⁴ <Labor Union Act of Japan>Article 1: (2) The provisions of Article 35 of the Penal Code (Act No. 45 of 1907) shall apply to collective bargaining and other acts of labor unions which are justifiable and have been performed for the attainment of the purpose of the preceding paragraph, provided, however, that in no case shall exercises of violence be construed as justifiable acts of labor unions.

²⁵<Labor Union Act of Japan>Article 8: An employer may not make a claim for damages against a labor union or a union member for damages received through a strike or other acts of dispute which are justifiable acts.

of 2010, the situation began to change but has not ended. When series of strikes in Guangdong through a negotiated settlement, the leader of a strike in central plains has been filed the criminal prosecution.²⁶

References of foreign legislation, we could know that our trade union cannot do the unfair labor practices like their foreign peer. While the employers can do it legally. Under such system, how to consultation on an equal footing?

3. Conclusion

After more than 30 years of reform and opening up, our economic system has transferred from planned economy to market economy. Under the goal of taking economic construction as the central task, we have established a sound corporate law. In contrast, collective labor relations legislation which is an essential element in the system of market economy has not been set up. Market-oriented reform of the China Trade Union is far from finished.

However, in the flood of the market economy and in the face of growing domestic labor conflicts, the voice from government and labor and all the society for trade unions to play its role has become increasingly high. So the China Trade Unions whose one foot in the planned economy, the other foot in the market economy have struggled. Through the study of Carrefour my view is, the problems of China Trade Unions are not only their omission, but also because they cannot do. This is the plight of a system, like a wild animal in a cage.

²⁶ Chang Kai & Qiu Jie. Transformation of China's labor relations and labor for the rule of law-- Starting from the third anniversary of the implementation of the labor contract law[J]. Exploration and Contending. 2011(10).