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國際學碩士學位論文

**Harmonious Society and the Change of Labor  
Sector in Hu's Era**

후진타오 시기 조화사회와 노동 분야 변화

**2012年 8月**

서울대학교 國際大學院

國際學科 國際地域學專攻

尹太熙

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Sector in Hu's Era**

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# Harmonious Society and the Change of Labor

## Sector in Hu's Era

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Abstract

## **Harmonious Society and the Change of Labor Sector in Hu's Era**

Yoon, Tae-Hee

The idea of "harmonious society" first appeared in the sixth Plenary Session of the 16th CPC Central Committee, in September 19, 2004, as "to persist in consistent construction of socialism and improving the ability of harmonious society with largest, utmost effort by mobilizing every positive element". After the proposal of "harmonious society", Hu administration showed substantive effort to deal with issues in the labor sector.

Hu administration cleared up discrepant regulations, and established necessary regulations. The administration also enacted or amended the laws applied to the labor sector. All these activities indicate the administration's consistent effort to resolve labor issues. The laws adopted after the proposal of harmonious society, such as the <Labor Contract Law>, <Law of the Labor Dispute Mediation and Arbitrations> and <Employment Promotion Law> brought about the reinforcement of worker's rights and interests, heightened the legal status of the trade unions and increased responsibility and "administration in accordance

with law" of the administrative departments.

However, the <Labor Contract Law> caused increasing labor cost to the enterprise and ironically, negative influence on worker's employment. Migrant workers still avoided joining social security. The corporatist feature of the trade union showed limitation in representing workers. Local people's governments suffered from undermining in inspecting labor relationship.

The <Labor Dispute Mediation and Arbitration Law> also revealed problems. The workers abused the arbitration and litigation system, due to the reduced application cost for the service. The enterprises disobeyed the arbitral award frequently. The labor dispute arbitration commissions were short-staffed and did not have enough time to investigate the cases thoroughly.

The <Employment Promotion Law> exposed the vulnerability of the employment issue to international economy.

Despite these problems, Hu administration's effort received significant achievement overall. Hu administration's attempt to resolve labor issues were highly welcomed and supported by the citizens and workers because the effort were based on Hu administration's comprehensive understanding of social issues such as unemployment, social security issue and the incompleteness of legal system in the labor sector, and also because the administration showed its dedication in dealing with

the issues by establishing and pursuing specific goals.

However, it might be because of the inadequate consideration of previous leaders. Deng Xiaoping and Jiang Zemin promoted 'First rich theory' and focused more on economic development than protection of workers. As a result, the workers might be satisfied with relatively better treatment of Hu administration, in spite of several problems in labor related laws and regulations.

The problems surfacing after enforcement of the <Labor Contract Law>, <Labor Dispute Mediation and Arbitration Law>, <Employment Promotion Law> demonstrate Hu administration's difficulties in achieving harmonious society. Although the labor might be satisfied with the current improvement of the treatment, however, the various problems in enforcing the <Labor Contract Law>, <Law of the Labor Dispute Mediation and Arbitrations> and <Employment Promotion Law> can be a potential obstacle to social stability and stable economic development. The task is left to the next generation leaders, who will succeed Hu administration, to deal with the unresolved labor issues.

**Key Words:** Hu Jintao, harmonious society, <Labor Contract Law>, <Labor Dispute Mediation and Arbitration Law>, <Employment Promotion Law>

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# **I . Introduction**

## **1. Research Background and Significance of the Study**

The fourth-generation administration of Chinese Communist Party revealed their concern on social problems and their will to resolve the issues from an early stage. For instance, the official document, "the CCP Central Committee's decision of a certain number of problems on improving the socialist market economic system(中共中央关于完善社会主义市场经济体制若干问题的决定)", adopted on October 14, 2003, at the third Plenary Session of the 16th CPC Central Committee, exposed Hu administration's idea on social issues.

The decision consisted of 12 parts and 42 articles. Among them, Articles 28~30 of Part Nine were related to social problems such as employment, income distribution and social security issues. The Chinese Communist Party pointed out that these problems should be improved in order to maintain its balance with the economic development.

After the announcement of the 'decision', Hu administration consistently expressed its concern and passion for livelihoods of the public and their current issues. Hu Jintao proposed 'scientific development(科学发展)' and 'harmonious society(和谐社会)' based on

humanism(以人为本) as the party's ruling principles. The administration took the degree of execution of social policies as the critical indicator to judge the political performance(政績) of local people's governments. The administration pursued both social stability and economic growth at the same time by putting equal stress on social policy as economic development. Accordingly, the public praised the fourth generation leaders as 'People-first regime'.<sup>1)</sup>

Also, Hu administration endeavored to maintain its folksy and friendly image since its early stage. For example, Hu Jintao paid a visit to Neimenggu Autonomous Region(内蒙古自治区) and nomadic people in January 2003 where it is 40 C° below zero in temperature. Wen Jiabao also visited coal miners in Liaoning Province(辽宁省) and celebrated lunar New Year's Day(春節) in the tunnel.<sup>2)</sup> However, some criticized the Hu administration's approach as 'image policy' used to gain more support from the public and to reinforce his political position.

Therefore, it seems proper to raise a question about the truth of Hu administration in resolving social issues and its substantive effort. Since 2012 is the last year for Hu administration, it may be possible to

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- 1) 장영석. “후진타오 2기 체제의 사회정책, ‘민생개선’방안을 중심으로”, 『중국의 권력승계와 정책노선』(파주: 나남, 2008) p. 158
  - 2) 조영남. 『후진타오 시대의 중국정치』(파주: 나남, 2006) p. 122

evaluate Hu administration's approach in dealing with social problems and the results of their policies. This research will critically examine the outcome of the Hu administration's endeavor in dealing with social problems in the labor sector such as social security issues, unemployment problem and protection of worker's right, especially after the proposal of harmonious society in 2004.

## **2. Research Question**

If the introduction of harmonious society was to stabilize the worsening social inequality in Hu's era, a critical examination of how harmonious society is applied in the labor sector is necessary. It is also important to investigate how the laws and regulations created or revised in Hu's era influenced the resolution of the problems in the labor sector. Based on these reasons, this paper raises the following questions.

How did the Hu administration recognize the problems in the labor sector? How did the regime endeavor to deal with the problems in terms of rule by law(法治) including laws and regulations? What were the impact of the laws that were enforced after the proposal of harmonious society such as the <Labor Contract Law>, the

<Employment Promotion Law> and the <Labor Dispute Mediation and Arbitration Law> on dealing with the problems in the labor sector? What were the outcomes, including achievements and limitations, of the establishment of such laws and regulations?

This thesis will evaluate the questions from the following perspectives. First, it will investigate the degree of improvement in social security, unemployment and protection of worker's right and interest. Second, it will examine the degree of change in the labor sector in accordance with the proposal of harmonious society. This will be done by looking at the administration's strategy for settling labor issues and its support towards other organizations to cope with the issues. Finally, it will inquire into the limitations and achievements of the administrative efforts and the reasons behind such outcomes. Through this process, this paper aims to examine the Hu administration's direction and goals of reform, and therefore, evaluate the true intention behind the ideal of 'harmonious society.'

Based on the evaluations, this thesis will analyze whether the Hu administration's harmonious society can be understood as a sincere and substantive attempt to deal with social issues in labor sector or a vague slogan whose purpose was only to improve image of the regime for more political support.

### 3. Literature Review

Since 1990s, research on China have focused mainly on the political, economic changes after 'Reform and Opening(改革开放)' in Deng Xiaoping and Jiang Zemin era. To be specific, in the labor sector, a major part of the literature concentrated on the changes in labor relationship as a result of demise of *danwei* system and the changes in structure of industries once dominated by State-Owned Enterprises(or S.O.Es) after the reform and introduction of market economy in Communist State.

Kim Young-jin (1998) analyzed the problems of labor relationship in the traditional planned economy of Mao's era. Then, he demonstrated Deng Xiaoping's perception on the problems of traditional labor relationships and the changes in labor relationships after the introduction of market economy, such as labor contract system, changes in employment and dismissal, reform of wage, and social security system. Kim also points out the limitations of the Trade Union arising from being under the influence of the Chinese Communist Party.<sup>3)</sup>

Similarly, Baek Seung-wook (2001) also examines Chinese neo-liberalistic policies after the reform and opening from a political

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3) 김영진. 『중국의 시장화와 노동정치』. (서울: 오름, 1998)

and social perspective. Baek's research analyzes how the administration, which pursued neo-liberalism, formulated new system through new labor management policies. He describes how the state's policy changes brought about the dissolution of perfect employment and the restructuring of social security, more specifically that the changes caused increase in labor supply and fluidity. He pointed out dissolution of the *danwei* system and decreasing status of the workers after reform, therefore China confronted new problems in the labor sector.<sup>4)</sup>

Luigi Tomba (2002) describes the goal of labor reform as promotion of productivity and the management of pervasive social discontentment. He analyzes in depth the transformation of labor relationship after reform, including restructure of wage and income distribution, marketization and contractualization of labor relationship.<sup>5)</sup>

There are also existing literature while have investigated the role of the state in the process of labor reform. Lee Jong-hee (2000) points out the reasons for insufficient reform of S.O.Es compared to the success in the rural society during Deng Xiaoping era and the reasons behind the rapid pace of labor reform in Jiang's era. Lee depicts the process

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4) 백승욱. 『중국의 노동자와 노동정책』 (서울: 문학과 지성사, 2001)

5) Luigi Tomba. *Paradoxes of Labour Reform- Chinese Labour Theory and Practice from Socialism to Market* (Honolulu: University of Hawai'i Press, 2002)

how the S.O.Es reform became crucial tasks for the state.<sup>6)</sup>

In general, the most noticeable feature of Chinese labor sector studies in the late 1990s and early 2000s is the scholars' efforts to demonstrate the changes in labor relationship as a result of the reform including the introduction of market economy and the state's retreat from enterprise. These studies focus on decoding the problems in the labor sector after introducing aspects of market economy such as labor contract system, rising of labor fluidity, increase of laid-off workers and the unemployed in the periodical context.

The focus of research on Chinese labor sector was slightly changed in the mid 2000s. This was mainly because of the emergence of new kinds of enterprises including private enterprises, limited liability cooperations and foreign-funded enterprises. The emergence of these enterprises inevitably brought about new problems in the labor sector. According to the statistics from the <Yearbook of Labor Statistics>, in 1978, before the implement of reform policy, 78.4% of the entire urban labor force was placed in State-owned enterprises and 21.6% in collective enterprises. At that time, the workers experienced slightly different treatment in terms of wage and social security. However, the

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6) 이종희. "중국 국유기업의 노동개혁(1978-99)과 국가의 역할", <중소연구>, 통권 제 85호(2000) pp. 89-116

workers were all guaranteed lifetime employment, stability in industrial structure and maintenance unity in wages.<sup>7)</sup> But the simple employment structure before the reform underwent significant changes over the past 30 years.

<Table 1. Transformation of the Enterprises after the Reform>

Year	Urban employment (10,000 persons)	State-owned units (10,000 persons)	Collective units (10,000 persons)	Limited liability cooperations (10,000 persons)	Private enterprises and individuals (10,000 persons)	Foreign-funded units (10,000 persons)
1978	9,514	7,451	2,048	-	15	-
1980	10,525	8,019	2,425	-	81	-
1985	12,808	8,990	3,324	-	450	6
1990	17,041	10,346	3,549	-	671	66
1995	19,040	11,261	3,147	-	2,045	513
2000	23,151	8,102	1,499	687	3,404	642
2001	23,940	7,640	1,291	841	3,658	671
2002	24,780	7,163	1,122	1,083	4,268	758
2003	25,639	6,876	1,000	1,261	4,922	863
2004	26,476	6,710	897	1,436	5,515	1,033

7) 김영진(1998) p. 20

2005	27,331	6,488	810	1,750	6,236	1,245
2006	28,310	6,430	764	1,920	6,966	1,407
2007	29,350	6,424	718	2,075	7,891	1,583
2008	30,210	6,447	662	2,194	8,733	1,622
2009	31,120	6,420	618	2,433	9,789	1,699

<Source: China Statistical Yearbook 2010<sup>8)</sup>>

As <Table 1> indicates, the emergence of new types of enterprises such as limited liability cooperations and foreign-funded enterprises brought about the complexity in labor relationship in the 2000s. Accordingly, it became difficult to give a singular explanation for the characteristics of Chinese labor relationship.<sup>9)</sup> The increasing complexity forced the researchers of Chinese labor relationship not to extend the range and width of the research to include entire enterprises; but to narrow it down to an empirical, testable field.

As a result, the studies in the mid-2000s mainly focus on specific cases of Chinese labor relationship. For instance, Jang

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8) 国家统计局, 《4-2 按城乡分就业人员数(年底数)》, 『2010年中国统计年鉴』 (北京: 中国统计出版社, 2011)

9) 장영석. 『지구화시대 중국의 노동관계』 (서울: 폴리테이아, 2007) p. 15

Young-seok(2007) depicts the restructure of ownership in S.O.Es through the case of an anonymous factory in Changsha(長沙). He also describes the labor resistance problem through another case of an anonymous factory in Zhengzhou(鄭州).<sup>10)</sup>

Several studies view the labor problems as a part of the resistant movement. The major research question is whether the labor problem could be a motive to bring about social changes in China. The studies note the social problems after the reform, and their correlations with the labor protest. They also pay attention to the administration's reaction against the protest.

Ching Kwan Lee (2010) regards the labor protest as a significant threat to the Chinese society. According to Lee, the continuous weakening of worker's rights and interest in the workplace and the spread of right consciousness among workers resulted in deepening the contradiction between worker's substantive rights and their work environment over the last 30 years. The discontent felt toward this contradiction was inevitably expressed through labor protests which challenged the state's tolerance. The state showed their willingness to make a compromise when the worker's protest was merely for the economic issues, however, on the other hand, the state suppressed the

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10) 장영석 (2007).

protests firmly when they were asking for political rights such as autonomous trade unions for themselves and also when the protests became coalition a of several *danwei* workers. The author also points out the state effort to resolve the labor issues through legitimate mechanism.<sup>11)</sup>

Other studies endeavor to figure out labor problems by pointing out the distinct natures among migrant workers or *nongmingong*. Due to the prolonged reform, a difference among migrant workers gradually emerged. This difference brought about the changes in right consciousness and distrust towards governments among migrant workers, leading to more labor protests.

Daming Zhou and Xiaoyun Sun (2010) point out that the reasons for the change of characteristics among migrant workers. As the difference in age and the changes in self-perception leading to different choices when making a decision. In the early stage of reform and opening, the migrant workers worked for their family and for their own survival. Hence, they worked diligently, showing dedication for their family and missing their hometown. The workers shared a sense of kinship with their fellow countryman. On the other hand, the new generation of migrant workers

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11) Ching Kwan Lee. "Pathways of Labor Activism," in Elizabeth J. Perry and Mark Selden (eds.), *Chinese Society: Change, Conflict and Resistance* (Third Edition) (London: Routledge, 2010) pp.57-79

(新生代农民工) tended to work for their own dream and future.<sup>12)</sup>

Pun Ngai and Lu Hulin (2010) categorize the migrant workers born during the reform period, who participated in the labor market in the late 1990s and early 2000s as 'second-generation' migrant workers. The first-generation migrant workers remained calm against the unfair treatment and adapted themselves to society. On the other hand, the second-generation workers got angry against restrictions imposed by society, struggled to improve social inequality and to protect their rights and interests. According to Pun and Lu, the biggest problem of the second generation migrant workers came from the registration system(户口制度). The migrant workers were restricted from residing in urban areas permanently due to their agricultural registration but felt difficulty in residing in rural area as they did not know much about farming and agricultural business. Accordingly, they could not settle down in the countryside smoothly. The second generation migrant workers failed to have a place where they could rely on mentally or physically, and as a result, they wandered from the city to the country. Due to this vicious circle and psychological instability, the second-generation migrant workers lived with more anger and anxiety than the first-generation migrant

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12) Daming Zhou and Xiaoyun Sun. "Croup Differences Among Nongmingong: A Follow-up Ethnographic Case Study," *International Journal of Business Anthnography Vol.1(1):2010*: pp. 79-94

workers. As a result, they engaged in collective walkout and initiation of litigation against the local government in order to protect their rights and interests. However, the second migrant workers felt despair and helplessness against the callous attitude of the administration.<sup>13)</sup>

Several studies focused on the enforcement of <Labor Contract Law>, <Labor Dispute Mediation and Arbitration Law> in 2007. Baek Seung-wook (2007) examines how the confrontation between labor and enterprise influenced the legislation process.<sup>14)</sup> Yoo Seong-jae and Lee An-bing (2009) discuss the changes in labor sector that <Labor Contract Law> will bring about.<sup>15)</sup> Lee Pyeong-bok (2006) deals with the significance of the enforcement of <Labor Contract Law> to Korean enterprises in China.<sup>16)</sup>

Scholars such as Kim Yong-gil (2008), Ha Hyeon-soo (2010), Cha Kyeong-ja (2011) shed light on the influence of <Labor Dispute Mediation and Arbitration Law>. Kim Yong-gil analyzes the contents of

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13) Pun Ngai and Lu Hulin. "Unfinished Proletarianization: Self, Anger and Class Action among the Second Generation of Peasant-Workers in Present-Day China," *Modern China*,36(5) (2010): pp. 493-519

14) 백승욱. "후진타오 시대 중국 노동관계의 변화 -노동계약법 도입의 과정을 중심으로-", <현대중국연구> 제9집 1호 (2007)

15) 유성재, 이안빙. "중국 노동계약법의 주요내용과 시사점", <노동法論叢>, vol.16(2009)

16) 이평복. "중국 노동계약법 초안의 주요 쟁점-우리 기업에 미치는 영향 및 대응방향-", 《KOTRA 대련 무역관》 (2006)

newly established <Labor Dispute Mediation and Arbitration Law> in detail<sup>17)</sup>, Ha Hyeon-soo deals with labor dispute resolution mechanisms including labor dispute mediation and labor dispute arbitration after <Labor Dispute Mediation and Arbitration Law>.<sup>18)</sup> Cha Kyeong-ja describes the "10 labor dispute issues in 2009" and the way <Labor Dispute Mediation and Arbitration Law> functioned in each case.<sup>19)</sup>

In 2000, the labor relationship became more complicated due to the emergence of new kinds of enterprises. The complexity forced the researchers not to extend their research range into entire enterprises but to narrow down it into only empirical, testable field. As a result, many studies focused on the specific cases to understand Chinese labor sector. Meantime, the western scholars concentrated on the labor protests and the response of administration from the state-society relations perspective. And some studies endeavored to decode labor problems in the differentiation of nature among migrant workers and several studies struggled to figure out the reasons for more frequent labor protest since 2000s. Also, many articles discussed the influence of <Labor Contract

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17) 김용길. "중국 노동쟁의 중재에 관한 고찰", <중재연구>, 제19권 제2호 (2009) pp. 127-152

18) 하현수. "중국의 노동쟁의 현황 및 처리제도에 관한 연구", <중재연구>, 제20권 제3호(2010)

19) 차경자 (2011). "중국의 노동쟁의 현황과 법적문제: 2009년10대 노동쟁의 사건을 중심으로", <동북아논총>, 제 59호

Law>, <Labor Dispute Mediation and Arbitration Law> that enacted in 2007 in labor relationship.

However, the trend in Chinese labor studies in the 2000s, to narrow down the research range, were limited in their understanding of the dynamics of the entire labor sector and also put too much emphasis on state-society relations. The trend made it more difficult to understand the diversification of enterprises and workers in comprehensive context. The narrowed focus resulted in a lack of analysis on how the administration exerted its policy in labor sector and how the workers responded to the policy from a macro perspective. In other words, the previous studies failed to analyze both the top-down effects that came from administrative policy-making and implementation, and the bottom-up response that resulted from the worker's evaluation of the policies. In particular, existing literature lacked analysis on Hu administration's proposal of 'harmonious society', more specifically, its impact on the Chinese labor relationship and how the workers viewed the administration's efforts.

#### **4. Research Methodology and Materials**

In figuring out the correlations between Hu administration's

'harmonious society' and the resolution of labor issues, this research mainly utilizes four categories of primary sources. First, it examines the administration's stance based on official documents announced by several institutions such as the State Council and the National People's Congress.

Second, the research reviews the laws and regulations related to the labor sector. It depicts the general flow in the establishment of laws and regulations in Hu's era, rather than the specific meaning of each document. It focuses on the general context of the Hu regime's approach in dealing with the labor issues during his ten years of administration. The research examines <People's Republic of China Labor and Social Security Law(中华人民共和国劳动与社会保障法典)>, edited by Legislative Affairs Office of the State Council (国务院法制办公室) and published by China Legal Publishing House(中国法制出版社) in 2011, among other various versions of books regarding labor and social security law(劳动与社会保障法典) in order to understand changes in labor-related laws and regulations.

Third, it refers to various kinds of *pishu*(皮书) published annually by Chinese Academy of Social Sciences, an affiliated organization of the State Council. The documents reported by Chinese Academy of Social Sciences reflect social issues and gave evaluations on these issues.

These reports functioned as a pressure for Hu administration to consider more on social stability.

Finally, the research investigates the social changes through the statistics. Materials such as <Yearbook of Labor Statistics> and <China Statistical Yearbook> provide useful data such as laid-off workers, urban registered unemployment and the increase in labor disputes. These materials offer reliable barometers for the socio-economic conditions in Hu Jintao era. In addition, this research refer the other materials such as the surveys conducted by Chinese scholars. Their various surveys provide clues to understanding the substantive influence of <Labor Contract Law>, <Labor Dispute Mediation and Arbitration Law> on Chinese workers and enterprises as well as their perception and response to the laws.

## **II. Background of Harmonious Society**

### **1. Appearance of Harmonious Society**

The concept of 'harmonious society' first appeared in the sixth Plenary Session of the 16th CPC Central Committee, in September 19, 2004, in the phrase "to persist in consistent construction of socialism and improving the ability of harmonious society with largest, utmost effort by mobilizing every positive element." There were two reasons for the proposal of harmonious society. First, it was for Hu Jintao's attempt to strengthen his own political position. The fourth generation leader was able to accumulate more stable political support by proposing different approaches on social issues than the former leadership. The second reason of its proposal would be interpreted as the substantive necessity to deal with social problems. The pro-economic development policy implemented by Deng Xiaoping and Jiang Zemin, brought about several side-effects in Chinese society. These side-effects gradually accumulated and resulted in severe social problems in Hu Jintao era.

First, the appearance of harmonious society came from the necessity to consolidate Hu's political position. In spite of his official title as the

Secretary of Chinese Communist Party and the President of People's Republic of China, in his early days he was unable to properly exert his political leverage due to the existence of Jiang Zemin and his supporters. Therefore, it was necessary for Hu Jintao to draw more support in order to establish a solid political position as a leader within and outside the party. Within the party, the idea "harmonious society" could be used as an appropriate method to achieve recognition of his leadership since it represented his own ruling principle which was quite different from the previous leader's Three Representative. In this sense, Hu Jintao's idea of harmonious society could be interpreted as a careful attempt to strengthen his political position just as Deng Xiaoping did with Dengxiaoping Theory and Jiang Zemin with Three Representative. Outside the party, among the people, Hu Jintao also needed to get rid of the previous leaders' influence. Through the promotion of the slogan harmonious society, Hu Jintao could create a pro-people image and strengthen his political position, while escaping from the elite image of the previous leaders and their pro-economic development policies. Hence, Hu Jintao's proposal of harmonious society could be regarded as a way to reinforce his political position both within and outside party.

<Table 2. Unemployment Problem before Hu's era >

Year	Urban Registered Unemployment (10,000 persons)	Registered Unemployment Rate (%)	Increase over Preceding Years (%)
1998	571.0	3.1	-1.0
1999	575.0	3.1	0.7
2000	595.0	3.1	3.5
2001	681.0	3.6	14.4
2002	770.0	4.0	13.1

<Source: China Labour Statistical Yearbook 2010<sup>20)</sup>>

Second, the proposal of harmonious society came from the necessity to deal with substantive social issues. As the <Table 2> indicates, in the early stage of his administration in 2003, Hu confronted an increase of more than 10% in unemployment rate since 2001, and an increase of 2 millions of the unemployed workers over five years. The Gini coefficient, the recognised measure of inequality, rose from 0.224 in 1983 to 0.449 in 2003.<sup>21)</sup> The gap between income levels of different

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20) 国家统计局,《2-1, 年末城镇登记失业人数及登记失业率》,『2010年中国劳动统计年鉴』(北京:中国统计出版社, 2011)

classes had been getting wider and wider since the reform and opening. As the side-effect of economic reform brought about serious problems in Chinese society, the Chinese Academy of Social Sciences pointed out the harmful effect of the pro-economic development policy as "coexistence of rapid economic development and worsening labor relationship" in its reports.<sup>22)</sup> The Blue Book of China's Society(社会蓝皮书) 2003 reported the seriousness of the ever-increasing income gap, social security problems and the rapid increase of the laid-off workers in the chapter "Report on Social Strata(阶层篇)." The Chinese Academy of Social Sciences repeated its concern for social inequality in the Blue Book of China's Society 2004 as "the aggravation of labor relationship".<sup>23)</sup> The reports worked as extra pressure for Hu administration to resolve the deepening social issues. In other words, the proposal of harmonious society was not only for gathering more support, but also for dealing with substantive social issues that accumulated over twenty years.

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21) Xiaogang Wu. "Income Inequality and Distributive Justice: A Comparative Analysis of Mainland China and Hong Kong," *China Quarterly* 200 (December 2009): p. 1034

22) 乔健. 《2002年中国劳动关系的现状及面临的问题》, 『2003年中国社会形式分析与预测』(北京:社会科学院出版社 2003): pp. 253~255

23) 乔健. 《2003年:新一轮结构调整下的劳动关系》, 『2004年中国社会形式分析与预测』(北京:社会科学院出版社 2004): pp. 285~287

It is important to understand the background behind issues in the labor sector to figure out the nature of labor-related issues. The next chapter examines the process of reform, the adverse side of economic achievement and the cause of the issues in labor sector. A review of the background of labor issues will provide clues in understanding Hu administration's tasks in the labor sector in their early stage.

## **2. Background of Labor Issues in Hu's Era - The Adverse Side of Reform and Opening**

The main reason of the transition of Communist regime in 1970-1980s was the political or economic conjuncture of the regime and the consciousness of crisis of the leadership for its survival.<sup>24)</sup> The Chinese Communist Party chose the reform and opening as a way to escape from the political and social turmoil of the Cultural Revolution. According to Minxin Pei, the Chinese Communist Party adopted evolutionary authoritarian route and transformed its regime gradually into an authoritarian one. The institutional, economic, and ideological foundations of orthodox communism in China had been made hollow

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24) Minxin Pei. *From Reform to Revolution: The Demise of Communism in China and the Soviet Union* (Cambridge and London: Harvard University Press, 1996) pp. 13~15

by the increasing technocratization of the state, the rapid transform of a planned economy into an increasingly marketized one and the dramatic retreat of communist ideology from a revolutionary utopian doctrine to a set of conservative-defense dogmas that serve principally to legitimize the continual rule of the autocratic regime.<sup>25)</sup>

In this process, China experienced a gradual economic reform without a blue-print.<sup>26)</sup> The overall distinctive pattern of reform emerged from the interaction between government policy and unforeseen consequences of economic change.

The reform started from the introduction of the dual-track system(双軌制), that is, the coexistence of a traditional plan and a market channel. The dual-track system exposed the state-run-factories to the market, and they began the process of adaptation to the market system. The dual-track system allowed state firms to transact and cooperate with non-state, marketized firms, allowing valuable flexibility. As a result, the focus of enterprise shifted gradually from plan fulfillment to profitability and increased the influence of market economy. The reform also brought about a reduction in the state's monopoly in the market and a rapid entry of new firms. The entry of new firms, together with

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25) Minxin Pei (1996) pp.1~3

26) Barry Naughton. *Growing out of the plan : Chinese economic reform, 1978-1993* (NY : Cambridge University Press, 1995) pp. 8~13

adaptation of market prices on the margin, led to enhanced competition.<sup>27)</sup> The enhanced competition caused incremental reform of the state-owned enterprises' management system. It indicated the change in Chinese workplace, *danwei*.

*Danwei* refers to the work unit that had personnel power, communal facilities, independent accounts and budget, urban or nonagricultural purview, in the public sector.<sup>28)</sup> *Danwei* possessed political functions including mobilizing population for political participation and monitoring the political loyalty. It also functioned as to serve the socio-economic needs of its members by providing permanent employment and welfare provisions. In general, *danwei* helped to lighten the state's burden to provide social welfare and entitlement provisions.<sup>29)</sup> *Danwei* in Mao's state was a self-sufficient economic community that provided social goods and services to its members, however, from an economic perspective, it was an inefficient system with surplus labor.

The change of labor relationship in reform era started from the change of employment structure. The administration introduced the labor contract system to increase more flexibility in employment.<sup>30)</sup> The

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27) Barry Naughton(1993). pp.8~13

28) Xiao Lu and Elizabeth Perry. *Danwei: The Changing Chinese Workplace in Historical and Comparative Perspective* (Armonk: M.E. Sharpe, 1997) p.

29) Xiao Lu and Elizabeth Perry (1997). pp. 3~15

authority announced the <Provisional Regulations for State-owned Enterprise to Execute Labor Contract>(国营企业实行劳动合同制暂行规程) in July 12, 1986 with the purpose to evolve the recruiting system from permanent employment to contract employment. The transition became more vivid after the enforcement of the <Labor Law> in 1994. <Table 3> illustrates the outcome of the transition.

<Table 3. Year-end Figure of the Contract Workers>

Year	Year-end Figure (10,000 persons)				Proportion of Staff and Workers (%)			
	Total	State -owned units	Urban collective -owned units	Units of other type of ownership	Total	State -owned units	Urban collective -owned units	Units of other type of ownership
1984	209	174	32	3	1.8	2.0	1.0	8.1
1985	409	332	72	5	3.7	3.7	2.2	11.4
1986	624	524	92	8	4.9	5.6	2.7	14.5
1987	873	735	125	13	6.6	7.6	3.6	18.1
1988	1,234	1,008	206	20	9.1	10.1	5.8	20.7

30) 백승욱. 《변화와 갈등속의 중국 노동자》, 『현대 중국의 이해』(파주: 나남, 2005) p. 263

1989	1,468	1,190	245	33	10.7	11.8	7.0	25.1
1990	1,702	1,372	287	43	12.1	13.3	8.1	26.3
1991	1,972	1,589	323	60	13.6	14.9	8.9	28.0
1992	2,541	2,058	399	84	17.2	18.9	11.0	29.8
1993	3,123	3,496	526	200	21.0	21.9	15.5	37.4
1994	3,839	2,853	645	341	25.9	26.2	20.1	45.6
1995	6,096	4,396	1,149	551	40.9	40.1	37.4	62.8
1996	7,580	5,549	1,394	637	51.1	50.7	47.2	67.6
1997	7,708	5,557	1,424	727	52.6	51.6	50.5	67.0

<Source: China Statistical Yearbook 1998<sup>31)</sup>>

When the authority initiated the labor contract system in 1986, the proportion of contract workers among all workers was only 4.9%. The proportion of contract workers increased gradually, exceeding 20% for the first time after the proposal of socialist market economy. After the enactment of the <Labor Law> in 1994, the proportion of contract

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31) 国家统计局,《5-14 合同制职工人数》,『1998年中国统计年鉴』(北京:中国统计出版社,1998)

labor increased sharply and in 1997, reached 52.6%. The proportion of contract labor in China increased tenfold over the decade. The reform of employment structure indicated the redundancy of the superfluous labor and weakening of worker's right.

The transition to market economy brought about the restructuring(改制) of enterprises. At the fourth Plenary Session of the 15th CPC Central Committee in 1995, the authority decided to readjust industries in accordance with the market force, apart from the business related to national security, naturally monopolistic businesses and the business providing public goods and service. Also at the fifth Plenary Session of the 15th CPC Central Committee in 1995, the authority announced 'zhuadafangxiao'(抓大放小) which meant to invigorate large enterprises while relaxing control over small ones. The authority determined to focus on the restructuring of major enterprises and leave minor ones to fend for themselves.<sup>32)</sup> Accordingly, it caused the restructuring of the State-owned enterprises.<sup>33)</sup> The state retain ownership of large state firms and listed them on the stock market while allowing smaller firms to be leased or sold.' It was a gradual and low-profile program.<sup>34)</sup> The

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32) 장영석(2007). p. 95

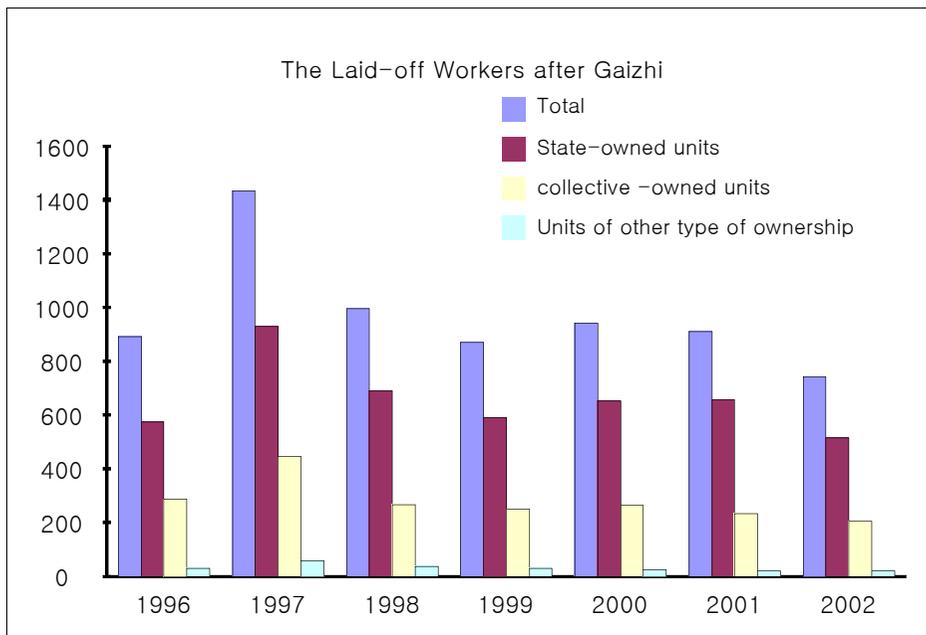
33) Ross Garnaut, Ligang Song and Yang Yao. "Impact and Significance of State-owned Enterprise Restructuring in China," The China Journal, No. 55 (January 2006): pp. 35~36

34) Ross Garnaut, Ligang Song and Yang Yao (2006). p. 39

restructuring or *gaizhi* significantly improved firm's profitability by using its finance and human resources efficiently and led firms to adopt a new business model that gave top priority to cost savings. However, the restructuring of firms and the pursuit of efficiency created another social problems.

<Table 4. The Laid-off Workers after *Gaizhi*>

Year	Total (10,000 persons)	State-owned units (10,000 persons)	Collective -owned units (10,000 persons)	Units of other type of ownership (10,000 persons)
1996	891.6	573.7	287.1	30.8
1997	1435.2	929.3	447.0	58.9
1998	995.4	691.8	266.5	37.1
1999	871.3	591.7	250.3	29.3
2000	941.7	652.7	263.3	25.8
2001	910.9	657.3	233.8	19.8
2002	741.6	515.4	205.6	20.7



<Source: Yearbook of Labor Statistics (each year)>

*Gaizhi* of S.O.Es inevitably produced massive numbers of laid-off workers(下崗人員). As mentioned above, S.O.Es in Mao's era, were economic communities that provided socio-economic goods and services to their members under the *danwei* system. But from an economic perspective, they were the main reason for the inefficiency and long term deficits of S.O.Es in the 1990s. The political functions of *danwei* and the political belief of state's control over economy and personnel management brought about the accumulation of superfluous labor in S.O.Es. Therefore, The restructuring or *gaizhi* promoted redundancy of

unnecessary workers and massive laid-off workers.<sup>35)</sup>

To summarize, Chinese reform and opening started from the consciousness of crisis of the leadership after the political and social turmoil of Cultural Revolution. The initiation of the 'dual-track system' brought about the reinforcement of market economy, entry of new enterprises and enhanced competition. Among these enhanced competition caused the restructuring of State-owned enterprises and the administration to apply the labor contract system for labor flexibility. The labor contract system replaced permanent employment and led to a massive number of laid-off workers. The increase of the laid-off workers resulted in social unrest and social security issues. It was the adverse side of reform and opening.

### **3. Hu Administration's Perception on Labor Issues**

As a result, the aforementioned economic reform resulted in creating labor issues including urban unemployment, problems in social security, incomplete labor legal system.

First of all, the economic reform caused serious unemployment problem. The success of peasant household responsibility system (家庭

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35) Lee, Hong Yung. "Xiagang, the Chinese Style of Laying Off Workers," *Asian Survey* 40 (2000). pp. 933~937

联产承包责任制) encouraged the administration to promote urban reform in mid-1980s. The reform brought about the restructuring of State-owned enterprises in 1990s.<sup>36)</sup>

In the process, numerous workers in State-owned enterprises were laid-off(下崗). The restructuring proceeded all over the country. Until 2001, 86% of State-owned enterprises experienced restructure or *gaizhi*, which led to a massive number of laid-off workers(下崗人員), which, in turn, brought about the increase of national unemployment and social unrest.<sup>37)</sup>

Secondly, the economic reform led to social security issues. The increase of the laid-off brought the problems in national social security system. The laid-off workers lost the benefits provided by *danwei* and aggravated the state's burden of social welfare and entitlement provisions.<sup>38)</sup>

The laid-off suffered from a lack of basic social security. The loss of social security such as old-age insurance, medical insurance placed a

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36) Ross Garnaut, Ligang Song and Yang Yao (2006). p. 36

37) Mun Young Cho. "On the Edge between "the People" and "the Population": Ethnographic Research on the Minimum Livelihood guarantee," *China Quarterly* 201 (March 2010), p. 26

38) Barry Naughton. "Danwei: The Economic Foundations of a Unique Institution," in Xiao Lu and Elizabeth Perry (eds.), *Danwei: The Changing Chinese Workplace in Historical and Comparative Perspective* (Armonk: M.E. Sharpe, 1997) p. 189

huge burden on their daily life, a burden that they had to deal with their own.<sup>39)</sup> The absence of social security brought about the anxiety and financial burden to the laid-off workers.

To deal with the social security issues, Jiang administration promoted a re-employment project and a new welfare system to absorb those who lost their work unit benefits such as unemployment insurance, minimum cost of living guarantee. However, these efforts had limitations due to scarcity of funds, corruption among local cadres and firm managers, insufficient supply of potential work posts, in economy and lack of unemployment insurance donation from the firms.<sup>40)</sup> It was left to the Hu administration's task to create proper laws and regulations to resolve these issue.

Finally, the economic reform caused loopholes in labor regulations at that time which were used to violate worker's right. According to Changkai(常凯) of Renmin University(人民大學), who serviced as the leader of the <Labor Contract Law> Draft Task Group(劳动合同法草案课题组组长), the <Labor Law> successfully formulated the basic principles of Chinese legal system in the labor sector. But it was imperfect due to the absence of experience in market economy and

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39) 쉰리핑.『단절』.김창경 옮김. (부산: 산지니, 2007) p. 23

40) Dorothy J. Solinger. "Labour Market Reform and the Plight of the Laid-off Proletariat," *China Quarterly* 170 (June 2002), p. 326

understanding of the legal mechanisms of the socialist market economy.<sup>41)</sup> The problems Changkai pointed out with regards to the <Labor Law> are as followed.

First, the <Labor Law> was limited in scope.<sup>42)</sup> When establishing the law, the authority lacked a realistic understanding of market economy and therefore, lacked the insight to provide protection of worker's rights. Second, as the market economy grew, new employment relationships emerged.<sup>43)</sup> The appearance of various kinds of employment relationships including labor dispatch and employment in non-enterprise units, all of which did not exist when the <Labor Law> was established in 1994, created a legal gray zone in the labor sector. Third, the law led to rampant short-term labor contracts. The employing units preferred to have short-term contract with labor in order to maintain low labor cost. Article 21 of the <Labor Law> allowed the employing units to have six-month probationary period(試用期間) when contracting labors. This article justified the employing units' bad habit of hiring labor for six months at low cost and dismissing the

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41) 常凯. 《劳动法治30年变迁, 现状与未来》,『理解中国』(北京: 中国言实出版社, 2010) p. 68

42) 金英杰. 《劳动合同法的立法背景与立法趋势》, (中国劳动和社会保障法律网) 2008.9.24

43) 黎建飞, 『劳动与社会保障法教程』(北京: 中国人民大学出版社, 2007) pp. 88~90

employee. The habitual dismissal of labor degraded the worker's morale and sense of stability. As a result, the workers showed low loyalty toward the enterprises and changed jobs frequently.<sup>44)</sup>

The fourth problem was the government's policy to sustain low-wage. The Chinese government endeavored to maintain a low-wage of labor in order to attract more foreign investment. The firms also showed their preference for low-wage workers to gain more profit. The preference led to the violation of worker's rights by becoming the leading cause of poor working conditions, such as 14-to-18-hour workdays with no overtime pay, paltry meals lacking in nourishment, physical brutality and the non-receipt of wages.<sup>45)</sup>

Finally, the <Labor Law> contained ambiguous regulations on penalties for violation. The ambiguity also undermined worker's rights. For instance, while Chapter 3 of the <Labor Law> stated that labor contracts should be concluded in written form and should contain several clauses, however, the <Labor Law> failed to specify the penalties which will be handed out if the law was not followed. As a result, a sizable number of firms evaded required written contract., knowing that they will not receive harsh punishment due to a lack of

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44) Pun Ngai and Lu Huilin(2010). p. 498

45) Dorothy J. Solinger. "The Creation of a New Underclass in China and its Implications," *Environment and Urbanization* vol. 18 (2006) p. 183

legal basis. The lack absence of a written labor contract meant workers could not provide evidence to prove the labor relationship which made it far more difficult for the workers to rely on the legal method to protect their rights. Therefore, workers were not able to receive the legal protection they deserved. The absence of a legal basis for the punishment of violation worsened the situation.

Hu administration seemed to clearly understand these problems in the labor sector, and demonstrated their opinion regarding these labor issues through two documents <the NPC Standing Committee Law Enforcement Inspection Group's Report on the Implementation of " the People's Republic of China Labor Law(全国人大常委会执法检查组关于检查《中华人民共和国劳动法》实施情况的报告)"> in 2005, and the <Guidelines of the Eleventh Five-Year Plan for Labor and Social Security Undertakings Development(劳动和社会保障事业发展“十一五”规划纲要)> in 2006.

At the 19th Meeting of the Standing Committee of the Tenth National People's Congress on December 28, 2005, the Standing Committee announced <the NPC Standing Committee Law enforcement inspection group's report on the implementation of the people's Republic of China Labor Law>. The report pointed out the rampant violation of worker's right after the enforcement of the <Labor Law>.

First, it raised the issues of the poor performance of the employing units to conclude written labor contracts including rampant short-term labor contracts and labor contract with non-normative clauses. Many employing units avoided long-term labor contract with their worker in order to evade legal responsibility. In most cases, the employing units preferred short-term contracts with less-than a year term. Some employing units created contracts with irrational clauses such as "birth, old age, sickness, and death are irrelevant to employing unit", "the firm will not be responsible for any accidents". Others even forced the workers to sign on a blank sheet of paper.

Secondly, the report pointed out the non- or late-receipt of wages and the failure to guarantee minimum wage. According to a survey in 2004, 7.8% of the workers suffered from late-receipt of wages. Another survey indicated that 12.7% of the workers worked for salaries lower than national minimum wage standard.

Third, it mentioned the rampant overtime work and poor working conditions. Numerous enterprises compelled their workers to work overtime without overtime payment. The coercion of overtime work made it difficult for the worker to take legitimate holidays. Also, the poor working condition forced the labor to expose themselves on dust, noise and toxic material.

Fourth, it criticized the social security system at that time. The people who affiliated in social security were mainly in State-owned enterprises and collective-owned firms. And most part of workers in non-state sector and individual enterprises did not join the social security system.

Fifth, the Standing Committee also pointed out the inefficient labor dispute resolution mechanism. The process of labor dispute resolution was very slow and in most cases, it required more than a year to settle down the dispute. The absence of speed in labor dispute resolution also undermined worker's legitimate right.

Hu administration also showed their recognition of labor issues in the <Guidelines of the Eleventh Five-Year Plan for Labor and Social Security Undertakings Development>. The State Council presented the challenges in and their directions for the labor sector in the Eleventh five-year period (2006~2010) of the <Guidelines of the Eleventh Five-Year Plan for Labor and Social Security Undertakings Development>. The State Council cited the challenges in Eleventh five-year period as the employment issue, social security issue and labor relationship.

The administration mentioned the employment issue first. The State Council anticipated that the influx of new labor force in the urban area

would reach 50 million in five years. It also predicted that the creation of new jobs will only amount to 40 million during the same period. The authority warned of the oversupply of labor in the foreseeable future.

The second problem that identified by the State Council was social security. As China gradually moved toward an aged society, fund-raising for social security such as old-age insurance and medical insurance became an important issue. The State Council pointed out the absence of an overall plan(统筹) for social security and the non-affiliation of numerous workers as impending problems.

Finally, the Guideline mentioned the need for improvement in labor relationships. The rapid urbanization and industrialization in China brought about a diversified economic composition which extended complexity in Chinese labor relationship as well. It became a serious task to adjust the interests among the economic agents and to conciliate labor relationships. It also became the administration's task to prohibit rampant overtime work and non-payment of wage. The State Council also admitted the necessity to improve the labor dispute resolution mechanism in order to protect the worker's rights and interests.

Bases upon the analysis of the labor issues, the authority claimed their goals in the Eleventh Five-year period as expansion of

employment, development of labor talent, completion of social security, stability in labor relationship and improvement of the legal system in the labor sector.

The authority focused on the expansion of employment. The authority announced that they will do everything to expand employment. It said it will not only provide jobs for the laid-off workers, but also create jobs for the forthcoming labor force. The authority set its sight on creating 45 million jobs in urban area to deal with employment and maintain registered unemployment rate to be less than 5%.

The second goal of the authority was the development of the labor talent. It would improve the overall labor quality by arranging institutions and policies for vocational training. The authority also decided to breed up skillful workers. To be specific, it would train 20% of Chinese workers to be advanced ones during the Eleventh Five-year period.

The authority also claimed to complete the social security system. The authority said that it would establish social security system and expand the range of social security system so that the urban workers would enjoy equal social security regardless of their jobs. And it also announced their plan to establish social security in rural area. The authority would endeavor not only to increase the number of urban

social security participants in old-age insurance, medical insurance, unemployment insurance and occupational health and safety insurance, but also to augment the social security participants in rural area in the Eleventh Five-year period.

The fourth goal of the State Council was to achieve stability and harmony in labor relationship. To be specific, the authority aimed to improve labor dispute resolution mechanism, legalize the labor relationship and popularize the labor contract system.

The fifth target for the State Council was to expand the application of legal system in labor sector. The authority claimed that it would promote law-based administration, improve labor related laws and regulations, and promote law-abiding spirit among workers and employers through the internet.

The official documents such as <the NPC Standing Committee Law Enforcement Inspection Group's Report on the Implementation of " the People's Republic of China Labor Law"> in 2005 , and <Guidelines of the Eleventh Five-Year Plan for Labor and Social Security Undertakings Development> in 2006 exhibit Hu administration's awareness of social issues. Hu administration clearly recognized unemployment, social security issues and loopholes in labor-related laws and regulations. It showed its will to improve the situation enthusiastically by establishing

specific goals for each problem.

To summarize, Chinese Communist Party's post-reform strategy to create an export-oriented economy with low wage and enhanced competition among enterprises after marketization resulted in the restructuring of State-owned enterprises, massive number of laid-off workers and increase in state burden on social security provision. The <Labor Law> which established in 1994 was unable to properly protect worker's right as it failed to keep up with the changes in the market economy. Official documents such as <the NPC Standing Committee Law Enforcement Inspection Group's Report on the Implementation of "the People's Republic of China Labor Law"> and <Guidelines of the Eleventh Five-Year Plan for Labor and Social Security Undertakings Development> indicated Hu administration's recognition of the social issues and its will to settle the problems.

### **III. Hu Administration's Approach for the Issues**

#### **1. Abolishment of Unnecessary Regulations and Positive Enactment of New Regulations**

Hu administration showed their cognition of social problems such as unemployment, social security issues and loopholes in labor related legal system. The administration put a great deal of effort to settle the issues. It showed ceaseless effort to deal with labor issues from the early stage to the late stage of Hu's leadership. The administration eliminated or revised unnecessary or improper laws and regulations and consistently established new laws and regulations in order to deal with various issues in labor the sector.

Up to March 2011, the valid laws and regulations in the labor sector amounted to 357 cases.<sup>46)</sup> Among the laws and regulations, 226 cases

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46) Chinese Laws can be divided into several categories. The Constitution(宪法) ranks the highest position as it is the basis law of China. The second-highest one is the Law(法律), which enacted by the National People's Congress or the Standing Committee of the National People's Congress. The Administrative regulations(行政法规) referred to the regulations established by the State Council, in accordance with the Laws. The Departmental rule(部门规章) referred to the rules promulgated by administrative departments. (강효백. 『중국법통론』(서울: 경희대학교출판국, 2005) pp.21~23)

were established from 2003 to 2011 during the Hu Jintao era,.

<Table 5. The Numbers of Valid Laws and Regulations  
in Labor Sector that Applicable in 2011>

The Era	Number of cases	Proportion(%)
Deng Xiaoping Era	8	2.24
Jiang Zemin Era	123	34.45
Hu Jintao Era	226	63.31

<Source: 『中华人民共和国劳动与社会保障法典』<sup>47)</sup>>

Up to 2011, 63.3% of the entire valid laws and regulations were established in Hu Jintao era. The high proportion of laws established under Hu administration should not be understood the previous leaderships' negligence in establishing labor-related laws and regulations, but as the administration's constant effort to remove improper or unnecessary regulations that did not reflect the changes in the labor sector.

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47)国务院法制办公室编. 『中华人民共和国劳动与社会保障法典』, 北京: 法制出版社 (2011),

The State Council announced <The Decision of the State Council Regarding Abolishing First Batch of Administrative Approval Items (国务院关于取消第一批行政审批项目的决定)> in the late stage of Jiang administration on January 11, 2002 and <the Decision of the State Council Regarding Abolishing Second Batch of Administrative Approval Items and Changing the Administration Method of Certain Administrative Approval Requirements (国务院关于取消第二批行政审批项目和改变一批行政审批项目管理方式的决定)> in the early stage of Hu administration on February 27, 2003. The State Council examined numerous Administrative approval items(行政审批项目) and, in the first batch, the State Council abolished 789 approval items and 406 approval items in the second batch, while revising an additional 82 items. At the time, the administration also adopted regulatory documents in labor sector. Hu administration constantly adopted laws, regulations and regulatory documents throughout its term. In 2007, the State Council cleaned up unnecessary regulatory documents in local people's governments and departments in the State Council through <Notice of the General Office of the State Council on the Work of Clearing Off Administrative Regulations and Rules(关于开展行政法规规章清理工作的通知)>.

The Standing Committee of the National People's Congress adopted

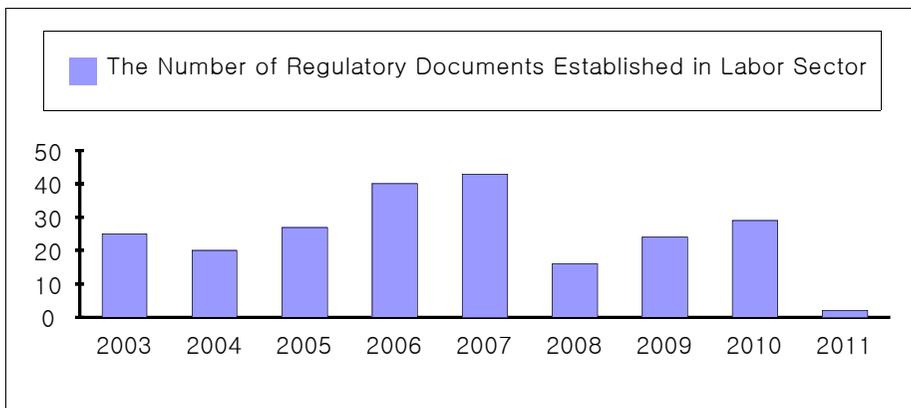
the <Decision of the National People's Congress Standing Committee on Abolishing Some Laws (关于废止部分法律的决定)> in June 2009 and abolished eight laws. The NPC Standing Committee adopted <Decision of the National People's Congress Standing Committee on Amending Some Laws(关于修改部分法律的决定)> in August 2009 and revised 59 laws and 141 articles. The administration continued to clean out unnecessary regulatory documents in 2010. The State Council promulgated the <Decision of the State Council on the Abolition of Regulations and Modification of Some of the Administrative Approval (关于废止和修改部分行政法规的决定)> in 2010 and abolished 7 administrative approvals and modified 109 administrative approvals, and also announced the <The Notice of the General Office of the State Council on Issues of Properly Cleaning up Regulations (国务院办公厅关于做好规章清理工作有关问题的通知)> to revise regulations including those of the labor sector.

As a result, the Hu administration abolished improper regulatory documents created by previous leaderships and the regulatory documents established or modified in Hu's era formed a large portion of the entire laws and regulations. The situation was the same in the labor sector. The administration's consistent effort to clean out the unnecessary regulatory documents and establish necessary laws indicat Hu

administration's concern for social issues and its will to resolve them.

<Table 6. The Number of Regulatory Documents  
Established in Labor Sector in Hu's Era>

Year	The Number of Regulatory Documents Established in Labor Sector
2003	25
2004	20
2005	27
2006	40
2007	43
2008	16
2009	24
2010	29
2011	2



<Source: 『中华人民共和国劳动与社会保障法典』 >

※The data was up to March, 2011

From 2003 to 2010, the Hu administration established at minimum 16 cases, maximum 43 cases of laws or regulations annually. Hu administration created 40 regulatory documents in 2006, the year it proclaimed its goals in the labor sector and 43 regulatory documents in 2007 when it enacted the <Labor Contract Law>, the <Labor Dispute Mediation and Arbitration Law> and the <Employment Promotion Law>.

Considering its constant cleaning of regulatory documents and establishment of new laws and regulations, Hu administration's effort to achieve harmonious society was not just a simple slogan. It showed its continuous dedication to deal with social issues by removing unnecessary regulatory documents and establishing proper laws and regulations that might reflect current situation.

## **2. Reinforcement of Labor Legal System**

The legislative trend in the labor sector shows Hu administration's

effort to enact or amend authoritative laws. The following is the list of labor related laws adopted by the Meeting of the National People's Congress or of its Standing Committee and promulgated by Order of President of the People's Republic of China.

<Table 7. Labor and Social Security Laws in China>

Year	The Name of the Law	Note
1978	State Council Provisional Regulations on Retirement and Resignation of Workers	The Standing Committee of the NPC approved the principle before the State Council announced it
1989	Administrative Procedure Law	
1999	Individual Proprietorship Enterprise Law	
2000	Chinese-Foreign Contractual Joint Ventures Law	Adopted in 1988 Amended in 2000
	Foreign-capital Enterprises Law	Adopted in 1986 Amended in 2000
2001	Code of Occupational Disease Prevention	
	Chinese-Foreign Equity Joint Ventures Law	Adopted in 1979 Amended in 1990 and 2001
2003	Administrative License Law	
2005	Civil Service Law	

2006	Protection of Minors Law	Adopted in 1991 Amended in 2006
	Enterprise Bankruptcy Law	
2007	Employment Promotion Law	
	Labor Contract Law	
	Labor Dispute Mediation and Arbitration Law	
	Individual Income Tax Law	Adopted in 1980, Amended in 1993, 1999, 2005 and 2007
2009	Administrative Reconsideration Law	Adopted in 1999 Amended in 2009
	Administrative Penalty Law	Adopted in 1996 Amended in 2009
	Labor Law	Adopted in 1994 Amended in 2009
	Safety in Mines Law	Adopted in 1992 Amended in 2009
	Work Safety Law	Adopted in 2002 Amended in 2009
	Military Service Law	Adopted in 1984 Amended in 1998 and 2009
	Trade Union Law	Adopted in 1992 Amended in 2001 and 2009
2010	Social Insurance Law	

	State Compensation Law	Adopted in 1994 Amended in 2010
	Administrative Supervision Law	Adopted in 1997 Amended in 2010
2011	Criminal Law	Adopted in 1979 Amended in 1997 and 2011

<Source: 『中华人民共和国劳动与社会保障法典』 >

※The data covers the period up to March, 2011

According to the Legislative Affairs Office of the State Council, 26 labor-related laws were adopted at the Meeting of the National People's Congress or of its Standing Committee and promulgated by the Order of the President.

Among them, 19 laws were adopted or amended under Hu administration and only 7 laws adopted by Deng or Jiang administration remained unamended. Among the 19 laws, 12 laws were amended and 7 laws were established in order to reflect current social issues.

In other words, Hu administration showed positive attitude in dealing with labor issues through the establishment and amendment of laws. Accordingly, of the 26 laws that currently influence labor sector, Hu administration established or amended 19 laws, 73% of the entire laws

in labor sector, in accordance with the current situation. A law has dominant position when it collides with the policy of other national departments. The increasing numbers of laws in the labor sector indicate the reinforcement of Chinese labor law system and Hu administration's consistent effort to maintain social stability and harmonious society.

To summarize, Hu administration showed sincere effort to achieve harmonious society in the labor sector by establishing more laws and regulations to resolve the issues. First, the increasing numbers of laws and regulatory documents demonstrates the administration's steady effort for stability in the labor sector. Hu administration constantly abolished and modified improper or unnecessary regulatory documents, while, on the other hand, it steadily established laws and regulations to achieve harmonious society in the labor sector.

Second, Hu administration ceaselessly established or amended labor related laws. 19 of the 26 laws were legislated or amended in Hu's era. It indicated the administration's will to settle the labor issues and maintain stability in labor sector. Since the law has superior position than policies promoted by other national departments, increasing number of laws in labor sector indicates Hu administration's concern for the labor sector, and also the reinforcement of Chinese labor legal system.

The consistent abolishment and establishment of numerous regulatory documents and steady enactment and amendment of laws show Hu administration's effort to achieve harmonious society in the labor sector.

#### **IV. Legislation and the Effect; the <Labor Contract Law>, the <Labor Dispute Mediation and Arbitration Law> and the <Employment Promotion Law>**

<The NPC Standing Committee Law Enforcement Inspection Group's Report on the Implementation of the People's Republic of China Labor Law> and the <Guidelines of the Eleventh Five-Year Plan for Labor and Social Security Undertakings Development> exposed the administration's perception on labor issues. Hu administration endeavored to resolve the issues by improving the labor law system; through the enactment and amendment of authoritative laws. The administration adopted <Labor Contract Law>, <Labor Dispute Mediation Arbitration Law> and <Employment Promotion Law> in 2007, and it also adopted <Social Insurance Law> in 2010 to maintain social stability in labor sector.

In the chapter, the research will analyze the contents of <Labor Contract Law>, <Labor Dispute Mediation and Arbitration Law> and <Employment Promotion Law> and examine the changes caused by the laws. And the research will discuss whether Hu administration's effort

had substantive effect on the labor sector or not. (The thesis will exclude <Social Insurance Law> as it was adopted too recently and thus, needs more time to accumulate sufficient data for analysis.)

The <Labor Contract Law>, the <Labor Dispute Mediation and Arbitration Law> and the <Employment Promotion Law> brought about three significant changes in the labor sector. First, the laws contributed to the reinforcement of worker's right and improved legal system in labor sector. Second, The <Labor Contract Law> and the <Labor Dispute Mediation and Arbitration Law> strengthened the influence of trade unions(工會), as the laws allowed legitimate engagement of trade unions in labor contract and labor dispute. Third, the laws pursued improvement in performance of labor-related administrative departments as the laws stated the principle "administration in accordance with law" and mentioned severe punishment on delinquency of duties.

The <Labor Contract Law> and the <Labor Dispute Mediation and Arbitration Law> improved labor protection and provoked a better legal system in the labor sector. However, there still remained various problems to be resolved. The <Employment Law> exposed the fact that Chinese employment was vulnerable to international economic crisis. The <Labor Contract Law> and the <Labor Dispute Mediation and Arbitration Law> also showed limitation in protecting migrant workers

who still received unequal treatment.

## **1. Fruits and Limitations of the <Labor Contract Law>**

The <Labor Contract Law>, adopted at the 28th Session of the Standing Committee of the 10th National People's Congress on June 29, 2007, deals with the loopholes in the labor law system at that time. The authority pursued the improvement of several issues that were mentioned in <the NPC Standing Committee Law Enforcement Inspection Group's Report on the Implementation of the People's Republic of China Labor Law> and the <Guidelines of the Eleventh Five-Year Plan for Labor and Social Security Undertakings Development>, such as evading labor contract, poor working conditions and frequent overtime work, and the non-receipt or late-receipt of wages.

First, the <Labor Contract Law> dealt with written labor contract issue. Article 10 of the <Labor Contract Law> stated to conclude a written form of labor contract. If the employing unit failed to conclude a written labor contract with the employee within one year from the date of employment, the employing unit and the employee will be deemed to have formed labor contract without fixed term.<sup>48)</sup> The

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48) 胡锦涛. 《中华人民共和国主席令第65号: 中华人民共和国劳动合同法》(O|

employing units must pay a penalty amounting to twice of the wage of the employee if it fails to conclude a labor contract within one year of employment.<sup>49)</sup> As <Labor Contract Law> states the penalties on the violation, the labor force enjoys the legitimate protection in labor relationship.

The <Labor Contract Law> also touches upon rampant short-term labor contract issue. The <Labor Law> allows the employing units to have six-month probationary period. It justifies employers to hire labor for six months at low cost. However, the <Labor Contract Law> restricted the customs. Article 19 of the <Labor Contract Law> regulates different probationary period for different contract term. For instance, if the labor contract is less than one year, the probationary period should not exceed one month, and if the duration of the labor contract is more than one year but less than 3 years, the probation period should not exceed two months. For a labor contract with a fixed term of three years or more or without a fixed term, the probation term should not exceed six months. In order to deal with the low-wage issue, the <Labor Contract Law> states that the wage of an employee during the probation period should not be lower than 80% of the wage

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하 劳动合同法) 第14條( 2007.6.29).

49) 劳动合同法. 第82條.

stipulated in the labor contract, nor be lower than the minimum wage of the locality where the employer is located.<sup>50)</sup> It further protected the worker's rights by stating that the labor administrative authority to order rectification if the illegally stipulated probation had been performed.<sup>51)</sup>

The <Labor Contract Law> also encouraged contract extension by stipulating economic compensation of severance. According to Article 47 of the <Labor Contract Law>, an employee should be given economic compensation based on the number of years he has worked for the employer and at the rate of one month's wage for each full year he worked. Any period of more than six months but less than one year should be counted as one year. The economic compensations payable to an employee for any period of less than six months should be one-half of his monthly wages. The clauses imposed disadvantage on the employing unit when it severed contracts with employee, therefore it gave relative pecuniary merit on the extension of the contracts, providing a possible solution to deal with the rampant short-term labor contract issue.<sup>52)</sup>

The <Labor Contract Law> also prohibited the coercion of employees to work overtime in any form and required payment for

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50) 劳动合同法. 第20條.

51) 劳动合同法. 第83條.

52) 장영석(2007). p. 277

overtime work, in case it was arranged according to the relevant provisions of the state.<sup>53)</sup> It also endowed workers the right to accuse their employing units if the working conditions are deemed to endanger his life and health. It gave the workers the right to refuse performance of dangerous operations ordered by the manager of his employer who violates the safety regulations or forces the employee to risk his life.<sup>54)</sup> As a result, the law reduced the employer's exploitation of labor. Furthermore, Article 88 of the <Labor Contract Law> states that if an employing unit forced an employee to work through the use of violence, coercion or unlawful restriction of personal freedom or provided poor working conditions, it will be subjected to administrative punishment or criminal liability. Through this article, the administration intended to secure a living worthy of human dignity of the workers.

The law also reinforced the role of trade unions. According to the <Labor Contract Law>, the trade unions are given rights to perform two functions. First, the trade unions are able to conclude collective contracts for the sake of the labor. Second, the law endowed the trade unions the right to inspect the employing units for breaches of the collective contract and infringes upon the employees' labor rights and

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53) 劳动合同法. 第31條.

54) 劳动合同法. 第32條.

interests.

First, the trade union should assist and guide workers in the conclusion and performance of labor contracts with their employing units, and establish a collective consultation mechanism with the employing units in order to protect the lawful rights and interests of workers.<sup>55)</sup> Second, the trade union had the right to engage in formulating labor rules and regulations such as labor compensation, working hours, leave and rest, occupational safety and hygiene, insurance and welfare, training, work discipline or work quota management and so on. If, during the implementation of a rule or regulation or decision on a material matter, the trade union was allowed to raise the issue with the employing units and had it amended after consultation.<sup>56)</sup> Third, the trade union, as the labor representative, had legitimate right to conclude a collective contract on such matters as labor compensation, working hours, rest, leave, work safety and hygiene, insurance, benefits with the employing units.<sup>57)</sup> Finally, it had the right to require information on the reasons for termination when the employer decided to terminate a labor contract unilaterally. The trade union had the right to demand that the employer made the necessary

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55) 劳动合同法. 第6條.

56) 劳动合同法. 第4條.

57) 劳动合同法. 第51條.

adjustment if the employer violated laws, administrative regulations or the labor contract.<sup>58)</sup> These rights given to the trade unions could be understood as the administrative intention to protect worker's right by increasing role of the trade union. Consequently, <Labor Contract Law> reinforced the role of trade union in protection of worker's right as the law allowed the trade union, as a representative of the labor force, to conclude collective contract with employing units for working condition and welfare.

Also, the trade union could inspect the employer's fulfillment on collective contract and allowed to demand reparation if the employing units failed to perform their duty. If the employing units ignored the collective contract and violated the worker's right, the trade union allowed to demand the assumed liability in accordance with law. And if a dispute arising from the performance of the collective contract, the trade union could apply for arbitration and institute legal proceedings in accordance with the law.<sup>59)</sup> Accordingly, the <Labor Contract Law> played a role as a medium for trade union to represent worker's right and for maintaining a stable relationship between employer and workers.

As a result, the <Labor Contract Law> strengthened power of the

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58) 劳动合同法. 第43條.

59) 劳动合同法. 第56條.

trade unions. The trade unions entitled legitimate right to conclude collective contract for the sake of the labor, in terms of labor conditions and welfare. Therefore, the workers could avoid unnecessary damages that might come from their ignorance of the related laws.

The <Labor Contract Law>also promoted the principle "administration in accordance with law" in the labor administrative departments of the local people's governments. The law's Article 73 to 79 describe the responsibility of labor related administrative departments on supervising and management of the implementation of the labor contract system. The <Labor Contract Law> also clarified the punishment and criminal liability of the administrative authority or officials, in the case where they neglected their duty or exercised authority in violation of the law.<sup>60)</sup> The labor administrative departments of the local people's governments at the county level or above are required to supervise and inspect the implementation of the labor contract system including the employers' formulation and implementation of rules and regulations directly related to the immediate interests of workers, the conclusion and termination of labor contracts between employers and employees, and their compliance with relevant regulations.<sup>61)</sup> As a result, the local

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60) 劳动合同法, 第95條.

61) 劳动合同法. 第74條.

administration are given the responsibility to perform significant role in labor relationship.

The <Labor Contract Law> reinforced the worker's right by resolving the loopholes of the previous legal system in labor sector. It intended to improve the rampant short-term labor contract and conclusion of written labor contract issues. It also endowed more legitimate power to trade unions as it allowed the trade unions to conclude collective contract and inspect the employing units for the sake of workers. <Labor Contract Law> emphasized responsibility and engagement of the labor administrative department to maintain justice in labor contract. Simply put, it intended to improve workers' rights and the legal system in the labor sector for better labor relationship.

According to the 'Report of Migrant Workers in Pearl River Delta(珠江三角洲农民工调查报告)', which was conducted before the enforcement of the <Labor Contract Law>, in 2006, the proportion of the migrant worker that concluded written labor contract was 42%<sup>62)</sup>. Another report conducted before the <Labor Contract Law>, in 2007, "Report on the Problems of the Migrant Workers in Zhejiang Province (浙江农民工问题调查报告)", also claimed that the proportion of the

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62) 城市化进程中的农民工问题课题组.《珠江三角洲农民工调查报告(2006)》, 『珠江经济』2007年第8期.

workers with the written labor contract amounted to 49%.<sup>63)</sup> The situation was quite similar in Hangzhou(杭州), where only 40.6% of workers had concluded written labor contracts.<sup>64)</sup>

However, the <Labor Contract Law> improved the rampant avoidance of written labor contract issue. According to the <Report on the Implementation of Labor Contract Law (《劳动合同法》实施情况调研报告)>, announced at the 23th Meeting of the Standing Committee of the 11th National People's Congress, the proportion of workers under written labor contracts amounted to 97% in above-scale enterprises in late 2010. The survey conducted after enforcement of the <Labor Contract Law> in Pearl River Delta, also showed that 58.14% of the labor concluded written labor contracts.<sup>65)</sup> As a result, the <Labor Contract Law> contributed to the increase of the conclusion of written labor contracts and strengthened the worker's rights in a broader sense.

<Table 8. Proportion of the workers  
who worked more than 48 hours per week(%)>

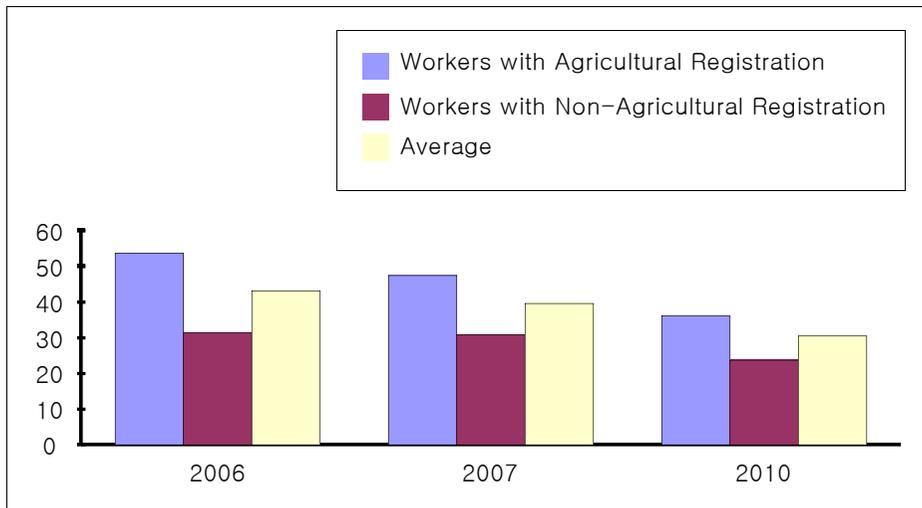
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63) 陈思达, 张春玉.《浙江农民工问题调查报告》,『浙江經濟』(2007.6.27)

64) 刘辉, 周惠文.《农民工劳动合同低签订率问题的实证研究》,『南京师范大学学报』(2007.04.15)

65) 刘林平, 陈小娟.《制度合法压力与劳动合同签订-对珠江三角农民工劳动合同的定量研究》,『中山大学学报No.1 2010』, vol.50 p. 153

Year	Workers with Agricultural Registration	Workers with Non-Agricultural Registration	Average
2006	53.7	31.3	43.2
2007	47.4	30.9	39.6
2010	36.1	23.6	30.5



<Source: Yearbook of Labor Statistics (each year)>

<Table 8> shows the rampant overtime work situation at that time. According to the <Yearbook of Labor Statistics>, before the enforcement of the <Labor Contract Law>, in 2006 and in 2007, 40% of the entire workers worked more than 48 hours per week. In particular, the workers with agricultural registration did more overtime

work than the workers with non-agricultural registration. The <Labor Contract Law> gave workers the right to reject the poor working conditions and to accuse the employing units when they got inhumane treatment.<sup>66)</sup> Further, it stated the criminal penalty of the employing units if the employing units forced the workers to work through violence, coercion or unlawful restriction of personal freedom.<sup>67)</sup> As a result, the law intended to protect worker's right by improving the rampant overtime work issue. In 2010, the proportion of the workers who worked more than 48 hours per a week was reported to be 30.5%, approximately 10% lower than that of 2006. It was a proper consequence for the administration as it pursued the labor stability and improvement of legal system in the labor sector in the Eleventh Five-year period.

In general, the <Labor Contract Law> brought about more protection of worker's rights. To investigate the influence of the <Labor Contract Law> in labor relationship in more detail. The research will look through the situation based on the surveys conducted in different areas such as Guangdong Province(廣東省),<sup>68)</sup> Beijing(北京市),<sup>69)</sup> Liaoning

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66) 劳动合同法, 第31~32條.

67) 劳动合同法, 第88條.

68) 李爽, 譚永生, 馮杰. 《广东省劳动合同法实施影响调研报告》, 『宏观经济』, 2009年第1期.

69) 薛长里. 《劳动合同法实施效果实证研究》, 『法治论坛』, 2011年02期.

Province(遼寧省),<sup>70)</sup> Quanzhou City of Fujian Province(福建省泉州市)<sup>71)</sup>.

According to the surveys, the different areas showed common figures after the enforcement of the <Labor Contract Law>. First, the enforcement of the <Labor Contract Law> gave a burden to the enterprises. Second, the increase of conclusion of written labor contract brought about the extension of the period in labor contract, as the administration had expected. However, most of the contracts were concluded in three years or less than three years. Third, the affiliation of social security remained uninterested among migrant workers. It brought about migrant workers' low participation of social security. And increasing role of the trade unions in labor relationship would hardly guarantee protection of worker's right due to the corporatist characteristics of trade unions. Finally, the local administration also in trouble inspecting the observance of the labor related laws and regulations as they were short-staffed.

First of all, the <Labor Contract Law> gave different impact on different kind of enterprises. According to the research on the

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70) 李向民. 《劳动合同法实施情况调查 - 基于企业员工的角度》, 『辽宁工业大学学报(社会科学版)』, 2009年第06期

71) 廖秋子. 《构建新型和谐的劳动关系-劳动合同法在泉州实施情况调查分析》, 『福建论坛·人文社会科学版』, 2009年第2期.

implementation of the <Labor Contract Law> in Guangdong Province, large enterprises, foreign-invested enterprises and State-owned enterprises which already had good labor management system and paid their share of social insurance for their employees even before the <Labor Contract Law>. Therefore they did not feel frustrated about the enforcement of the <Labor Contract Law>. Also, among small enterprises, the capital-intensive ones did not feel much pressure from the enforcement of the <Labor Contract Law>, as they did not have to increase their expenditure on the labor force.<sup>72)</sup> The same results were found in the survey done at Quanzhou City of Fujian Province. Limited-liability companies, foreign-invested enterprises, above-scale enterprises already had a good management and operation system. Thus, they did not experience a dramatic change after the enforcement of the <Labor Contract Law> in terms of labor contracts. Capital-intensive enterprises mainly involved in electronics and machineries needed to prevent turnover of the advanced-skilled labor so it was important for them to conclude long-term labor contracts with the workers. Accordingly, the enforcement of the <Labor Contract Law> did not cause significant change in capital-intensive enterprises in Quanzhou.<sup>73)</sup>

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72) 李爽, 谭永生, 冯杰(2009). p. 36

73) 廖秋子(2009). p. 156

On the other hand, small, labor-intensive enterprises felt pressure from the enforcement of the <Labor Contract Law> as the enterprises maintained their competitive edge through cheap labor cost. Beijing also showed a similar phenomenon. In one survey, 80% of enterprises mentioned that they revised their regulations and felt pressure about the human resource management after the <Labor Contract Law>.74) The enterprises' "management in accordance with law(依法经营)" brought about an increase in labor related cost, which meant increase of overall expenditure.

According to <Table 9> and <Table 10>, rose for there enterprises expenditure mainly in three categories; social security, economic compensation and overtime work payment, after the enforcement of the <Labor Contract Law>.

<Table 9. Category of Increased Expenditure for Enterprises in Guangdong Province after <Labor Contract Law >>

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74) 薛长里(2011). p. 49

Category	Proportion(%)
Social Security	32.9
Economic Compensation	23.7
Overtime work Payment	22.4
Human Resource Management	18.4

<Source: 《广东省劳动合同法实施影响调研报告》 >

<Table 10. Category of Increased Expenditure for Enterprises in Beijing after the <Labor Contract Law >>

Category	Proportion(%)
Social Security	25
Economic Compensation	21
Overtime Work Payment	16
Human Resource Management	11
Payment on Probationary Period	9

<Source: 《劳动合同法实施效果实证研究》 >

The category that gave the most burden on the enterprises was social insurance expenditure. Article 17 of the <Labor Contract Law> required

the inclusion of social insurance in labor contract, and Article 74 stated that the labor administrative departments of the local people's governments at the county level or above should supervise and inspect the implementation of the employing unit's participation in various types of social insurance and payment of social insurance premiums.<sup>75)</sup> As a result, the enterprises were forced to pay social security, which caused the increase in expenditure and great pressure to the enterprises.

Secondly, the enterprises felt pressured from the increase of economic compensation for the termination of labor contract. According to Article 46 of the <Labor Contract Law>, the employing unit had to pay economic compensation if it refused to renew the labor contract with the employee. As mentioned before, according to Article 47, the employing unit were required to pay economic compensation based on the number of years the employee had worked for the employing unit at the rate of one month's wages for each full year of employment. Consequently, the enterprises experienced an increase of expenditure in labor cost. The regulation on the payment for probationary period also forced the enterprises to increase their labor-costs.

Finally, the enterprises felt pressure from the increased payment for overtime work. Due to Article 31 of the <Labor Contract Law>, the

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75) 劳动合同法, 第74條.

employing unit must pay overtime wages to the employee in accordance with the relevant state regulation. This became a burden for the enterprises as they had to follow the proper standard for the overtime payment based on state or local regulation.

<Table 11. The Factor that Influenced Financial Problems -  
(Response of Guangdong Entrepreneurs (Answered in Plural))>

The Factor that Influenced Financial Problems	Proportion (%)
Rising Energy and Raw Material Prices	85.7
Appreciation of RMB	62.5
Integration of Enterprise Income Tax and Foreign-Funded Enterprise Income Tax	50
Rising Labor Cost Due to <Labor Contract Law>	25
Decrease in Export Tax Rebate	25

<Source: 《广东省劳动合同法实施影响调研报告》 >

The enforcement of the <Labor Contract Law> caused increase in social security expenditure and the labor cost of the firms, especially

labor-intensive enterprises. As a survey on Guangdong entrepreneurs indicates, 25% of entrepreneurs felt pressure on the rise in labor cost after the <Labor Contract Law>. It was one of the major factors that suppressed the firms along with rising energy and raw material prices and appreciation of *Remminbi*.

The intention of the <Labor Contract Law> was to build and develop a harmonious and stable labor relationship by protecting the legitimate rights and interests of workers.<sup>76)</sup> Considering the purpose of the <Labor Contract Law>, it was inevitable for the new law to decrease the economic profit of employers for the sake of worker's economic interest. However, increased labor cost resulted in harmful side-effects on worker's job hunting and employment as the enterprises now hesitated to hire new labor. According to the report of the Shanghai Local People's Congress, 'Shanghai Bailian Group(上海百联集团)', which generally employed 100~200 college graduates annually to train them as the 'future executives', did not hire any college graduates in 2008 as a after-effect of the <Labor Contract Law>.<sup>77)</sup> Also, 'Shanghai Jinjiang Taxi Company(上海锦江出租汽车公司)' did not hire new labor apart from additional taxi drivers, and even when it did,

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76) 劳动合同法, 第1條.

77) 劳动合同法与劳动行政管理关系研究课题组. 《劳动合同法与劳动行政管理关系研究》, 『政府法制研究』, 2009年 第6期. p. 16

only employed retirees.<sup>78)</sup> Given the fact that one of the main reasons for the proposal of harmonious society was to resolve the unemployment issue, this was a very ironic outcome - the <Labor Contract Law> functioned as an obstacle for employment.

<Table 12. The Present Condition of Labor Contracts in Each Region>

The Term of Labor Contract	Beijing (%)	Liaoning Province (%)	Quanzhou City in Fujian Province (%)
Less than One Year	6	5.81	28.9
One~Three Years	71	54.61	48.4
Three~Five Years	16	18.84	8.1
More than Five Years	3	3.95	6.2
Contract Without Fixed term	4	3.95	8.4

<Source: 《劳动合同法实施效果实证研究》，《劳动合同法实施情况调查- 基于企业员工的角度》，《构建新型和谐劳动关系－劳动合同法在泉州实施情况调查》>

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78) Abid. p. 16

Second, another goal of the <Labor Contract Law> was to deal with rampant short-term labor contracts. However, the <Labor Contract Law> failed to improve the situation in contrast to the administration's expectation. 77% of the workers in Beijing, who concluded labor contract, concluded contracts whose contract period was less than three years. 77.3% of the workers in Quanzhou of Fujian Province and 60.42% of workers in Liaoning Province. As the surveys indicate, most of labor contracts were concluded for terms of less than three years even after the enforcement of the <Labor Contract Law>. It was because such a term of labor contract coincided with the relation that concerned gain and loss between enterprise and labor. From the view point of the enterprise, there was little incentive to conclude a long-term labor contract with relatively less skillful, replaceable workers, without advanced technique, as it became more difficult to dismiss its employees due to the <Labor Contract Law>. In this sense, the enterprise evaded the conclusion of long-term labor contracts and preferred relatively short-term.

From the labor's perspective as well, the long-term labor contracts were undesirable. The unskilled workers, especially the migrant workers, preferred to maintain their mobility so that they could change jobs

when one that offers more wage and better working condition comes along.

<Table 13. Problems Faced by Labor  
with the New Regulations of the Labor Contract>

Problems Brought About By the New Regulations	Proportion(%)
Inconvenience for Changing the Jobs	68.2
Mandatory Affiliation of Social Security that they did not want to	25
Decrease of Overtime Work and Decrease in Income, As a Result	15.9
Increased Expenditure on Social Security and Decrease in Their Income, As a Result	13.6

<Source: 《广东省劳动合同法实施影响调研报告》 >

<Table 14. Desirable Contract Term for the Labor  
-the Response of Workers in Guangdong Province>

Desirable Contract Term	Proportion(%)
One Year	37.8
Two Year	25.9

Ten Year	13
Contract Without Fixed Term	13

<Source: 《广东省劳动合同法实施影响调研报告》 >

According to <Table 13>, 68.2% of the workers showed concern that a labor contract might constrain their mobility for better jobs. For this reason, the workers did not prefer long-term labor contract. As <Table 14> indicates, 37.8% of workers hoped to conclude labor contracts with a one-year term, and 25.9% of workers favored two-year term labor contracts. Obviously, most of the workers in Guangdong Province did not want to conclude long-term labor contracts for their own interest.

The result of the survey shows that the <Labor Contract Law> was insufficient in dealing with the rampant short-term labor contract problem. This was mainly because the parties concerned - labor and enterprise - had interests, which did not match with long-term contracts. The worker's high preference of the mobility for better jobs would be a bad omen for Chinese economy, as it might bring about the shortage of labor force.

<Table 15. Participation in Social Security

Among Migrant Workers in Different Professions, in 2009 (%)>

Profession	Old-Age Insurance	Work Injury Insurance	Medical Insurance	Unemployment Insurance	Maternity Insurance
Manufacturing	8.8	27.5	14.7	4.2	2.4
Construction	1.8	15.6	4.4	1.0	0.6
Transport, Storage and Post	10.7	27.2	15.4	6.1	3.5
Wholesale and Retail Trades	6.1	11.6	8.3	3.1	1.8
Hotels and Catering Services	3.6	11.2	7.1	1.7	0.8
Services to Households and Other Services	4.8	14.2	9.4	2.7	1.6

<Source: 《中国人口与劳动问题报告》 2010年版>

<Table 16. Perception of Migrant Workers

who did not participate Social Security >

Item	Proportion(%)
Willing to Participate Social Security in the	39.28

Future		
Unwilling to Participate Social Security in the Future		60.72
The reason for Unwillingness (For the respondents who wanted to remain as nonparticipant)	Social Security is not transferable to other place	42.33
	Difficult to Get Refund, if they want to cancel the social security	26.62
	Social Security is useless	20.17
	Difficult to Pay Social-security Tax	7.39
	Other Reasons	3.49

<Source: 《构建新型和谐劳动关系－劳动合同法在泉州实施情况调查》>

Third, participation in social security still remained low. As can be seen from <Table 15>, the migrant workers' participation in social security is low with a strong negative attitude toward getting old-age insurance.<sup>79)</sup> The strong negative attitude strings from the current policy

79) 肖进成. 《劳动合同法实施效果研究－以保护农民工的合法权益为视角》, 『调研世界』, 2011年 第9期. p. 32

on the provision of pension insurance. According to the current policy, the administration who provides pension insurance to the men over sixty and women over fifty five that had paid the old-age insurance for more than 15 years. The Ministry of Human Resources and Social Security's announcement of the <Ways to Participate Basic Pension Insurance for the Migrant Workers(农民工参加基本养老保险办法)>, in February 5, 2009, set the monthly payment for the old-age insurance - 80 to 120 RMB per month, which was a large burden for the migrant workers who barely made enough income for daily living. In one survey, 66% of the migrant workers showed their discomfort towards the old-age insurance.<sup>80)</sup>

The migrant worker's reluctance to participate in social security was also related to their mobility. The migrant workers who had left their farm temporarily had the tendency to return home after earning sufficient money. Therefore, they did not feel the necessity to have a permanent residence in the urban area. Since social security was untransferable when moving to another place, the migrant workers did not want to pay insurance for an uncertain future.<sup>81)</sup>

Consequently, the <Labor Contract Law> made a relatively huge

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80) Abid. p. 32

81) 김병철. 《중국 비정규직 현황: 농민공을 중심으로》, 『국제노동브리프』, 2010년 9월호. p. 93

achievement in propagation of written labor contract conclusion, but did not improve the migrant worker's low participation in social security. For instance, a survey research on the implementation of the <Labor Contract Law> in Linhai City of Sichuan Province(四川省臨海市) showed that among the workers who responded, 82.46% answered that they had concluded a written labor contract. However, among the respondents, only 45.57% participated in social security.<sup>82)</sup> Up to now, even after the proposal of harmonious society and the enforcement of the <Labor Contract Law>, the worker's participation in social security remains low. The participation in the social security does not have much incentive to migrant workers, whose hardships did not allow them to think about their future.

One of the significant features of the <Labor Contract Law> was the reinforcement of the trade union's legal status. The administration expected trade unions to represent labor interest and perform as a moderator between labor and enterprise. In other words, it intended to improve stability in labor relationship.<sup>83)</sup>

However, it is arguable whether the trade unions truly represent labor

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82) 叶晓琼, 朱骏, 范树伦, 伏勇. 《完善劳动争议处理机制有效化解劳动纠纷》, 『行政法制』, 2011年9月(第13卷, 第4期). p. 42

83) 张虹. 《浅谈国企在新形势下构建和谐劳动关系的途径》, 『石油教育双月刊』, 2011年4月. p. 102

interests. Article 4 of the <Trade Union Law> states the roles of the trade unions, that "Trade unions must abide by and safeguard the Constitution..., focus on the economic development, adhere to the socialist road and people's democratic dictatorship, insist on the leadership of the Chinese Communist Party and the guidance of Marxism Leninism, Mao Zedong Thought and Deng Xiaoping Theory, and persevere in reform and opening to the outside world and the trade union work shall be carried out independently and voluntarily in accordance with <Trade Union Constitution>."

The fundamental principles of the trade unions clarified by the <Trade Union Constitution> defines trade unions as "mass organizations of the Chinese working class under the leadership of Chinese Communist Party' in its General Principles"

The fundamental rules of the trade unions such as the <Trade Union Law> and <Trade Union Constitution> claim that Chinese trade unions were under the guidance of Chinese Communist Party. It clearly demonstrates trade unions' corporatist characteristics. Therefore, it is debatable whether the trade unions are able to represent the worker's economic and political interests and rights. Despite their improved legal status, the trade unions are limited in protecting worker's right because of their corporatist feature.

Finally, the local people's governments were also in trouble in coping with the <Labor Contract Law>. The <Labor Contract Law> consolidated administrative rights and functions in supervising and managing labor relationships. However, local governments experienced difficulty in exerting its function due to the insufficient staffing. For example, Quanzhou City of Fujian Province is responsible for supervising 120,000 enterprises and about three million workers. However, the number of inspection staff in the local administration was 71, which is very few considering the number of enterprises and workers.<sup>84)</sup> Guangzhou of Guangdong Province is also a very similar case, which only had 137 labor inspection staff in charge of the labor security in Guangzhou, about 500,000 enterprises and 690,000 workers in the region.<sup>85)</sup> The local governments suffered from manpower shortage in handling labor inspection. The lack of inspection staff inevitably caused poor performance of "administration in accordance with law".

To summarize, the <Labor Contract Law> strengthened worker's rights by arising in conclusion of written labor contracts. Through re-adjusted the legal right of labor, trade unions and local governments.

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84) 廖秋子(2009). p. 157

85) 李爽, 谭永生, 冯杰(2009). p. 40

On the other hand, however, there still remained several problems, even after the enactment of the <Labor Contract Law>. First, for the labor-intensive enterprises, the law caused an increase in labor cost as the law required more expenditure on social security, economic compensation for the termination of labor contract and overtime allowance. The enterprises underwent difficulties as they suffered from other external factors including increasing price of raw materials. The increment of labor cost forced the enterprises to evade to employ new labor force and brought about negative influence on job market. Second, the <Labor Contract Law> failed to solve the rampant short-term labor contract issue. The interests of the labor and the enterprise made both side to prefer on the short-term contracts. Short-term labor contracts still prevailed despite the administration's effort to promote long-term labor contracts for more stable labor relationships. Third, the participation of social security remained low. The migrant workers preferred to secure labor mobility and they held skeptical views on joining social security which required a long time of stationary residence to get the benefit in the future. Fourth, due to corporatist characteristics, the trade unions had limitation in fully representing the workers interests and rights. Fifth, manpower shortage in inspecting labor relationship was a severe problem for the local

people's governments to perform "administration in accordance with law" in the labor sector.

The problems mentioned above showed that the administration was unable to fully accomplish the goal it set up when enacting of the <Labor Contract Law>. The unresolved issues indicate the need for the administration to consider various factors to achieve harmonious society including the increased burden on enterprise in terms of labor cost, the migrant worker's preference for mobility and the local people's governments' shortage of staff members for supervision of the labor sector.

## **2. Accomplishments and Limitations of the <Labor Dispute Mediation and Arbitration Law>**

The <Labor Dispute Mediation and Arbitration Law> was adopted at the 31st Meeting of the Standing Committee of the 10th National People's Congress on December 29, 2007. As outlined in Article 1, it was enacted in order to protect the lawful rights and interests of the parties and to promote harmonious and stable labor relationships.<sup>86)</sup> With the enforcement of the <Labor Dispute Mediation and Arbitration

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86) 胡锦涛. 《中华人民共和国主席令第80号: 中华人民共和国劳动争议调解仲裁法》(이하 劳动争议调解仲裁法), 第1條. (2007.12.29)

Law>, the administration managed to improve the efficiency of the labor dispute resolution mechanism and the legal system in the labor sector and bring more stability in the labor relationships.

The <Labor Dispute Mediation and Arbitration Law> allowed workers to pursue their interests and rights within the legal boundary. First, it enabled the workers concerned to invite the trade union to participate in the consultation with the employing unit when a labor dispute took place.<sup>87)</sup> Second, in order to protect illiterate worker, the labor-dispute mediation commission received the application for the mediation of the labor disputes both orally and in writing,<sup>88)</sup> which helped reduce the psychological pressure on the workers. It also guaranteed free arbitration for labor disputes,<sup>89)</sup> alleviating the worker's economic burden in labor dispute mediation and arbitration. In sum, the worker gained a legitimate route to protect their lawful rights.

The <Labor Dispute Mediation and Arbitration Law> also allowed the applicants to initiate a litigation at a people's court when the labor-dispute arbitration commission rejected the application without a proper reason.<sup>90)</sup> Also if the employing unit failed to perform according

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87) 劳动争议调解仲裁法, 第4條.

88) 劳动争议调解仲裁法, 第12條.

89) 劳动争议调解仲裁法, 第53條.

90) 劳动争议调解仲裁法, 第29條.

to the mediation agreement within the prescribed time limit, the workers concerned could appeal to the people's court for a payment.<sup>91)</sup> The clauses offered the workers legitimate ways to protect their rights during the process of labor dispute resolution, giving the workers additional protection.

Another noticeable feature of the <Labor Dispute Mediation and Arbitration Law> is the increasing role of the trade unions in the labor dispute resolution process. The trade unions could engage in a labor dispute if the worker concerned asked the organization to join in the consultation with the employing unit, in order to reach a settlement.<sup>92)</sup> The trade unions could also be involved in the labor dispute arbitration process as a member of labor-dispute arbitration commission as the representative of the workers, along with the representatives of the administrative department of labor and the enterprises.<sup>93)</sup> In other words, the trade unions were able to go beyond their past limitation in representing the worker's rights and interests in terms of protests and litigation against employing units and could play an important role legally in dealing with labor dispute.<sup>94)</sup>

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91) 劳动争议调解仲裁法, 第16條.

92) 劳动争议调解仲裁法, 第4條.

93) 劳动争议调解仲裁法, 第19條.

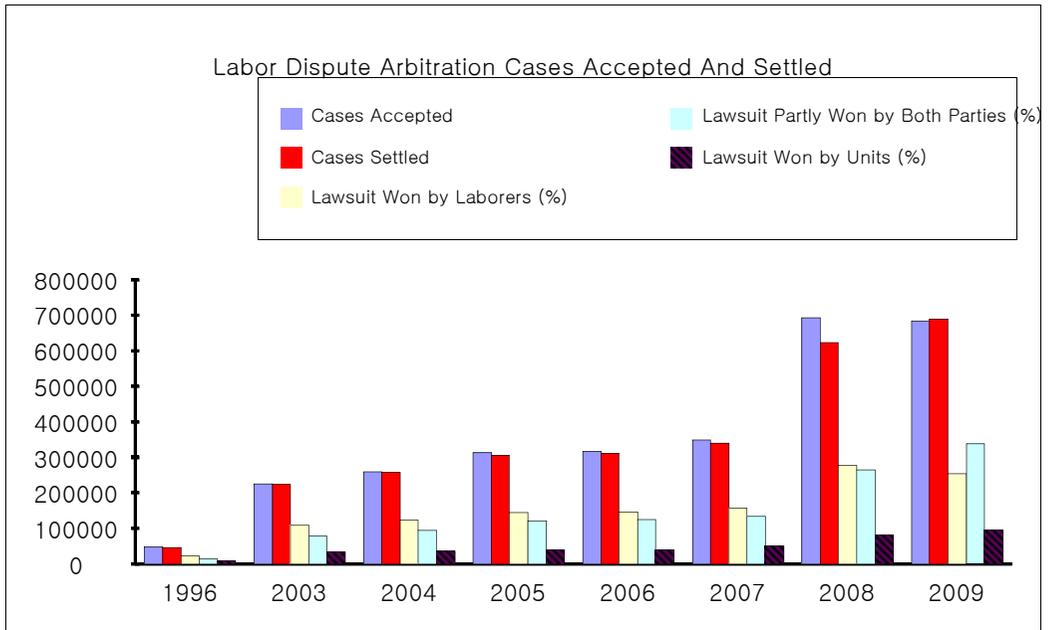
94) Mary E. Gallagher, "China: The Limits of Civil Society in a Late Leninist State," in Muthiah Alagappa (ed.), *Civil Society and Political Change in*

<Table 17. Labor Dispute Arbitration Cases Accepted And Settled>

Year	Cases Accepted	Cases Settled	Lawsuit Won by Laborers (%)	Lawsuit Partly Won by Both Parties (%)	Lawsuit Won by Units (%)
1996	48,121	46,543	23,696 (50.9)	13,395 (28.8)	9,452 (20.3)
2003	226,391	223,503	109,556 (49.0)	79,475 (35.6)	34,272 (15.3)
2004	260,471	258,678	123,268 (47.7)	94,041 (36.4)	35,679 (13.8)
2005	313,773	306,027	145,352 (47.5)	121,274 (39.6)	39,401 (12.9)
2006	317,162	310,780	146,028 (47.0)	125,501 (40.4)	39,251 (12.6)
2007	350,182	340,030	156,955 (46.1)	133,864 (39.4)	49,211 (14.5)
2008	693,465	622,719	276,793 (44.5)	265,464 (42.6)	80,462 (12.9)
2009	684,379	689,714	255,119 (37.0)	339,125 (49.2)	95,470 (13.8)

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*Asia: Expanding and Contracting Democratic Space* (Stanford: Stanford University Press, 2004) p. 430



<Source: Yearbook of Labor Statistics (each year)>

The <Labor Dispute Mediation and Arbitration Law> also contributed to improve worker's rights. After the enforcement of the <Labor Dispute Mediation and Arbitration Law>, the cases of labor dispute arbitration amounted to 690,000 in 2008, a 97% increase in numbers than that of 2007, and more than three times higher than that of 2003 the early stage of Hu administration. As the statistics show, the proportion of the lawsuits won by the workers or partly won by both parties are higher than the proportion of lawsuits won by the employing units, implying that the workers concerned were able to

receive compensation for previous unfair treatment done by the employers. The <Labor Dispute Mediation and Arbitration Law> removed economic and mental barriers in application for labor dispute mediation and arbitration. It also allowed the trade union's legitimate involvement in labor dispute resolution process. As a result, the <Labor Dispute Mediation and Arbitration Law> contributed to protect worker's rights and interests.

On the surface, the <Labor Dispute and Mediation Law> seems to safeguard the worker's rights and interests successfully. However, it also had several problems to figure out when looked in detail. To examine the situation critically, it is necessary to look at the main feature of Chinese labor dispute resolution mechanism. The mechanism consists of four steps - reconciliation, mediation, arbitration and litigation.<sup>95)</sup> The reconciliation refers to the settlement of the labor dispute by the parties concerned on their own.

If the parties failed to settle the dispute, it would go on to the next step, mediation. Here, a third party becomes involved to induce compromise and resolve the labor dispute. The parties concerned could apply for labor dispute mediation at the designated labor-dispute

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95) 정상원. 『중국노동법』. 노정환, 중국정법학회, 사법연수원 중국법학회 옮김. (서울: 삼성경제연구소, 2008) pp. 700-701

mediation commission in the enterprise or at a local labor-dispute mediation institution. The mediation commission will then try to make an agreement within 15 days from the date that it received the application. If the parties could not reach the agreement of mediation within 15 days, they could make a formal request for the arbitration in accordance with law.

Arbitration gives the decision-making powers to the labor-dispute arbitration commission, leaving the concerned parties to follow the decision. According to Article 19 of the <Labor Dispute Mediation and Arbitration Law>, a labor-dispute arbitration commission is composed of representatives of the administrative department of labor, the trade union and the enterprise. In accordance with Article 43, the labor-dispute arbitration commission must finish making the arbitral award within 45 days from the day that it accepted the arbitration application. If an extension was needed due to the complexity of the case, the commission could extend the due date 15 days with the approval of the director of the labor-dispute arbitration commission. When the parties concerned were dissatisfied with the arbitral award, they could initiate a litigation at the people's court within 15 days from the date they received the award, except for the disputes involving the recovery of labor remuneration, medical expenses for job-related injury, economic

compensations and the amount which did not exceed that of the standard local monthly wage rates multiplying 12 months and disputes on working hours, the period of rest and vacation in the course of applying the occupational standard of the state.

<Table 18. The Cases Accepted by the Labor Dispute Mediation Commission and The Cases Successfully Mediated by the Commission>

Year	Cases Accepted	Cases Mediated	The Rate of Successful Mediation(%)
2002	253,813	57,907	22.8
2003	192,692	51,781	26.9
2004	192,119	54,537	28.4
2005	193,286	42,036	21.7
2006	340,193	63,020	18.5
2007	318,609	59,163	18.6
2008	322,955	66,563	20.6
2009	275,771	67,700	24.5

<Source: Yearbook of Labor Statistics (each year)>

As <Table 18.> indicates, the cases of labor disputes successfully mediated by the mediation commission amounted to 67,700 in 2009. This is a relatively low rate of success, as the total number of the cases amounted to 275,771. The low success rate comes from the fact that the mediation commission is consisted of the representatives of labor and enterprises, which in turn, means that it lacks a third party who could negotiate the dispute in a neutral position.<sup>96)</sup> Accordingly, it is hard to reach a successful middle-ground and the dispute usually went on to the next process, arbitration.

The proportion of cases which initiate litigation after the labor dispute arbitration remains high, due to the dissatisfaction with the arbitral award, demonstrating the limitation of the labor dispute arbitration system which resolves only a half of the labor disputes they accept.<sup>97)</sup>

<Table 19. The Proportion of Litigation after the Arbitral Award>

Year	Cases of Arbitration of	Cases of Litigation of	The Proportion of Initiation of
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96) 하현수(2010). p. 101

97) 张丽霞. 《我国劳动争议解决制度的功能与结构研究》, 『法学杂志』, 2011年第S1期. p. 262

	Labor Dispute	Labor Dispute	Litigation After Arbitration
2008	622,719	286,221	45.96%
2009	689,714	317,072	45.97%
2010	561,200	327,407	58.34%

<Source: Work Report of Supreme People's Court 2010>

The Supreme People's Court produced the "Work Report of Supreme People's Court 2010" in May 25, 2011. According to the report, in 2008, the labor-dispute arbitration commissions received and examined 622,719 cases and the people's courts resolved 286, 221 cases of labor dispute litigation in the same period. The statistics indicated that in about the half of the cases, the concerned parties received dissatisfactory with the arbitral awards. Hence, they chose to initiate litigation to settle the disputes. It was a similar situation in 2009. The number of cases of labor dispute arbitration reached 689,714 in 2009 and the number of the labor dispute settled by litigation mounted to 317,972. The proportion accounted for 45.97% of the entire cases of the labor dispute arbitration. In 2010, the number of the arbitration amounted to 561,200 and at the same time, the labor disputes resolved

by litigation amounted to 327,407, 58.34% of the entire cases of arbitrated labor dispute.

The frequent cases where the concerned parties are dissatisfied with the decision on arbitral awards, and also where litigation is initiated at the people's court show that the labor dispute resolution mechanism did not operate as the administration had expected. As a result, almost half of the labor disputes were settled in the last stage of the labor dispute resolution system, the litigation. Outwardly, the labor dispute arbitration seemed to deal with the labor dispute successfully. However, it still exposed several weak points in resolving the disputes. To understand the reasons for the phenomenon, it is necessary to examine the mechanism from the perspectives of different parties - labor, enterprise and government.

From the worker's perspective, the <Labor Dispute Mediation and Arbitration Law> reduced the cost for the application of labor dispute resolution process. For instance, the labor dispute litigation fee of Beijing Chaoyang District(北京市朝阳区) was only 10 Chinese Yuan.<sup>98)</sup> Workers were able to apply for the mediation and arbitration orally, relieving not just economic, but also psychological pressure of the

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98) 沈明明, 代爱军. 《劳动争议案件调解率下降的原因及其对策》, 『成人教学刊』, 2010年 第5期. p. 33

workers concerned. Consequently, the workers abused the application.

<Table 20. Workers' Understanding of Labor-related Laws and Regulations>

Understanding of <Labor Contract Law>	Liaoning (%)	Beijing (%)
Highly Interested and Studied <Labor Contract Law>	9.77	3
Fairly Interested and Understand <Labor Contract Law>	27.21	26
Moderately Interested But do not Understand the Law	49.77	62
Not Interested in the Law	13.26	9

<Table 21. Workers' Understanding of <Labor Contract Law> in Quanzhou>

Understanding of <Labor Contract Law>	Proportion(%)
High	26.15
Moderate	31.35
Not Much	42.5

<Source: 《劳动合同法实施效果实证研究》，《劳动合同法实施情况调查- 基于企业员工的角度》，《构建新型和谐劳动关系－劳动合同法在泉州实施情况调查》>

Secondly, due to the increase in the workers' understanding on labor related laws, as the result of the administration's effort for the "popularization of law(普法)", the worker's awareness of their rights and interests were raised and, therefore, caused more labor disputes. However, as the <Table 21> revealed, their incomplete understanding of the laws and regulations made the workers demand more reparation than the regulation stated, and led to frequent application to a higher institution in labor dispute resolution mechanism.<sup>99)</sup>

In case of the enterprises, the enterprises had a tendency to drag on the labor dispute to a people's court, even when they recognized their violation of the laws or regulations and knew the litigation would not be effective for them, in order to gain time.<sup>100)</sup> Extending the labor dispute is more advantageous to the enterprise and disadvantageous to the workers because laborers frequently change their job and residence to earn money. The workers usually not have enough time to settle a labor dispute because they need to work and, extending the labor dispute resolution could cause the economic damage to the workers and impose psychological pressure.<sup>101)</sup> The enterprise concerned endeavored

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99) 杭鸣, 陈传胜. 《劳动合同法的实施与劳动争议审判》, 『法治论坛』, 2011年第2期. p. 62

100) Abid. p. 62

101) 宋涛. 《试论我国劳动仲裁制度的问题与完善》, 『法制与社会』, 2010年1月(下). p. 24

to exploit this advantage by dragging on the dispute until the final judgement.

The second reason for the enterprises to drag on the resolution of the labor dispute was for their survival. Some enterprises failed to transform their illogical labor management system after the enforcement of the <Labor Contract Law> because it meant an increase of the expenditure on labor cost. Many firms declared bankruptcy as they could carry on the transition of their own system.<sup>102)</sup> The desperate situation of the enterprises made it difficult for them to pay the arbitral award. Article 51 of the <Labor Dispute Mediation and Arbitration> states the parties must perform the statement of the mediation or the award within a time limit. If one party failed to do so before the expiration of the time limit, the other party can apply to a people's court for execution in accordance with the relevant provisions of the <Civil Procedure Law>. However, the law does not mention the punishment for when the party refuses to pay the awards, leaving no way for the labor-dispute arbitration commission to do anything in such a case.

Therefore, the enterprises procrastinated their duty to perform the

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102) 邓陕峡. 《劳动争议解决机制的实证调研报告 - 对C市L区劳动争议解决机制的考察》, 『探索与争鸣理论月刊』, 2010年 第2期. p. 120

award by using loopholes in the current legislation and the weak points of the workers, all of which led to the increase of litigation in the people's court.

Finally, the local governments had problems in operating the labor dispute resolution mechanism. In particular, the local governments suffered from the lack of staff, which degenerated the quality of labor dispute arbitration. For example, in Leshan City of Sichuan Province (四川省樂山市), 25 members in the labor dispute commissions received and treated 1,276 cases of labor dispute arbitration in 2008, and were in charge of 453,100 workers' labor dispute issues.<sup>103)</sup> In Chaoyang District, Beijing currently only has 16 members in the labor dispute arbitration commission had to deal with 14,000 cases of labor disputes. In Quanzhou City, Fujian Province, 21 commission members annually settled about 5,000 cases of labor dispute.<sup>104)</sup> In Guangzhou, 3 members were in charge of 30,000 labor dispute cases annually.<sup>105)</sup>

The short time limit placed an arbitration also caused the quality of labor dispute arbitration to fall. The <Labor Dispute Mediation and Arbitration Law> set the time limit to make an award as 45 days, allowing an extension of 15 days only with the approval of extensio

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103) 叶晓琼, 朱骏, 范树伦, 伏勇(2011). p. 42

104) 廖秋子(2009). p. 157

105) 李爽, 谭永生, 冯杰.(2009). p.40

n.<sup>106)</sup> As a result, the members of the arbitration commission did not have enough time to investigate the case thoroughly. It inevitably degenerated the quality of arbitration, and became one of the reasons for the parties concerned to feel dissatisfactory and initiate litigation to the people's court.

In other words, manpower shortage and time limitation gave excessive burden to the labor dispute arbitration commission, and caused negative influence on the process of labor dispute arbitration.

The <Labor Dispute Mediation and Arbitration Law> seemed to achieve a great success when looking at the statistics in the accepted and settled cases of labor arbitration. However, the "Work Report of Supreme People's Court 2010" claims that about half of the arbitrated labor dispute cases went on to litigation. This fact indicates that even after the enforcement of the <Labor Dispute Mediation and Arbitration Law>, in most cases, the resolution was extended to the court. As such, the labor dispute resolution mechanism did not operate as expected, due to the various reasons illustrated above from the perspectives - the worker, enterprise and local administration.

### **3. The Intention and Limitation of the <Employment**

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106) 劳动争议调解仲裁法. 第43條.

## **Promotion Law>**

The <Employment Promotion Law> was enacted in order to keep up with the administration's goals to deal with employment issues as announced in the <Guidelines of the Eleventh Five-Year Plan for National Economic and Social Development>. Article 1 of the <Employment Promotion Law> stated the purpose of the law as "to promote employment, coordination between economic development and employment increase, and harmony and stability of society."

The notable features of the <Employment Promotion Law> are government-led extension of employment and consolidation of the principle, "governing according to the law" in government-led employment promotion. Among the 68 articles, the <Employment Promotion Law> mentioned the "people's government" about 30 times, indicating the important role of the local government in job creation and employment promotion. The government's duty on job creation and education of the unemployed is specifically outlined in the law as well. The people's government at or above the country level must set budget for employment promotion,<sup>107)</sup> establish a sound unemployment insurance scheme to ensure the basic living standards of the

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107) 胡锦涛,《中华人民共和国主席令第70号: 中华人民共和国就业促进法》(이하, 就业促进法), 第15條 (2007.8.30).

unemployed<sup>108)</sup> and provide public welfare jobs.<sup>109)</sup> It must also endeavor to promote employment by supporting persons who start undertaking independently, by giving various benefits.<sup>110)</sup>

In terms of education, the local people's governments at or above county level should encourage enterprises to perform vocational education and training, in order to promote employment.<sup>111)</sup> The state must provide preferential policies on the enterprises who hire the unemployed and the disabled in accordance with law,<sup>112)</sup> and support the cost of vocational education to give incentive for the enterprise to create more jobs. The goal of this was to help the workers in finding another job more easily when they leave their employing units. According to the <Employment Promotion Law>, the people's governments at or above county level also had the responsibility to supervise the work of its subordinate departments and the governments at the level right below them,<sup>113)</sup> especially regarding the management of the special funds for employment.<sup>114)</sup> The law also clarified severe punishment in case of violation of the provisions of the <Labor

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108) 就业促进法, 第16條.

109) 就业促进法, 第52條.

110) 就业促进法, 第19條.

111) 就业促进法, 第47條.

112) 就业促进法, 第17條.

113) 就业促进法, 第58條.

114) 就业促进法, 第59條.

Promotion Law> by the administrative department of labor or other related departments,<sup>115)</sup> strengthening administrative restrictions.

To summarize, the <Employment Promotion Law> was enacted to achieve ‘harmonious society’ by solving the unemployment issue and promoting employment, so that it could eliminate potential factors that increase social unrest and unemployed population. It promoted government-led job creation activities, and stated the local people’s governments’ duty to set a special budget for employment promotion, support enterprises to exert vocational training and education, and supervise their lower governments’ employment-related activities. The <Employment Promotion Law> reflected Hu administration’s concern on the unemployment issue and its government-led approach to settle the problem.

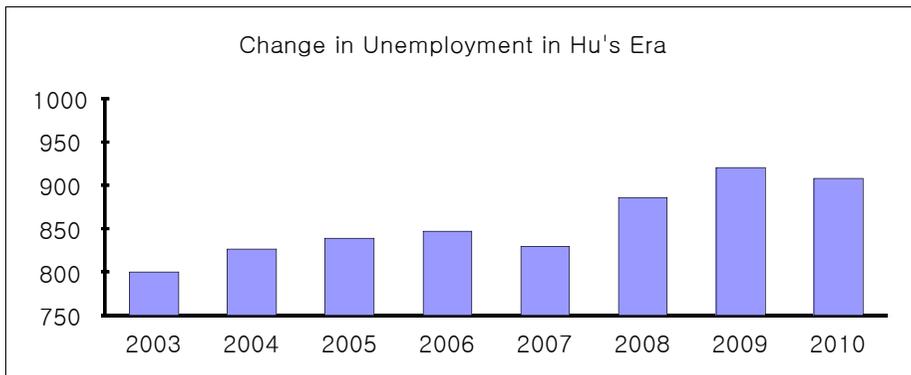
However, the much anticipated <Employment Promotion Law> failed to perform its expected function due to the global economic crisis of 2008. The number of the registered unemployed amounted to 9,080,000. It meant the worsening of the unemployment problem than that of 2003, in Hu’s early stage.

<Table 22. Change in Unemployment in Hu’s Era>

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115) 就业促进法, 第61條.

Year	Registered Unemployment (10,000 persons)	Registered Unemployment Rate(%)	Increase Over Preceding Year (%)
2003	800.0	4.3	3.9
2004	827.0	4.2	3.4
2005	839.0	4.2	1.5
2006	847.0	4.1	1.0
2007	830.0	4.0	-2.0
2008	886.0	4.2	6.7
2009	921.0	4.3	4.0
2010	908.0	4.1	-1.4



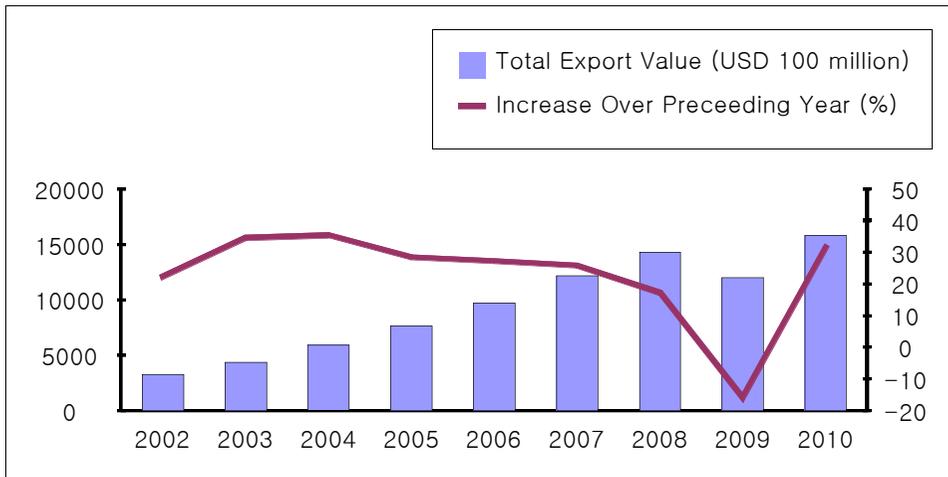
<Source: Yearbook of Labor Statistics (each year)>

The <Employment Promotion Law> failed to improve the unemployment issue. The rapid increase of the unemployment rate was

stabilized after 2003. The enforcement of the <Employment Promotion Law>, however, could not bring about significant change in unemployment. Rather, the unemployment problem became more serious than ever after the enforcement of the law, not because of the law itself but because of external factors such as global economic crisis and other economic issues, exposing the fact that Chinese labor issues and economic issues were also vulnerable to international economic system and its change.

<Table 23. The Annual Export Value Since 2002>

Year	Total Export Value (USD 100 million)	Increase Over Preceding Year (%)
2002	3,256.0	22.4
2003	4,382.3	34.6
2004	5,933.3	35.4
2005	7,619.5	28.4
2006	9,689.7	27.2
2007	12,186.4	25.8
2008	14,285.5	17.2
2009	12,016.6	-15.9
2010	15,799.3	31.5



<Source: China Statistical Abstract 2011>

According to <China Statistical Abstract 2011>, China showed more than 20% increase in export rate after joining WTO in 2002. However, the export increased at a rate lower than 20% in 2008 for the first time after joining WTO, and in 2009, it became minus 15.9%. Such a decrease in export rate brought about the decrease of jobs. The Chinese Academy of Social Sciences estimated the influence of decreasing export rate on job reduction, illustrated in <Table 24> below.

<Table 24. The Estimation of the Decreasing Export's Impact on  
The Job Reduction in 2009>

Item	Decrease in Export Value (100 million RMB)	Decrease Over Preceding Year (%)	Job Reduction in 2009 (10,000persons)
Farming	85	8.43	1008
Mining and Quarrying	113	8.43	62
Manufacturing	7966	8.43	721
Production and Supply of Electricity, Gas and Water	8	8.43	28
Construction	30	8.43	8
Transport	160	5.59	112
Wholesale and Retail Trade & Catering Services	253	5.59	288
Real Estate Trade	32	5.59	17
Finance and Insurance	3	5.59	17
Social Services	94	5.59	79
Total	8745	8.17	2340

<Source: 人口与劳动绿皮书(2009)>

Considering the expectation of the Ministry of Labor and Social Security in 2000, the reduction of 23,400,000 jobs in 2009 had a negative influence on the administration's employment promotion policies. The transition of the export-centered Chinese economic system to a domestic-centered one seemed necessary for employment promotion and ultimately, harmonious society.

The administration accomplished its intended goal for the unemployment problem when the economy recovered its stability. In 2010, the administration created 9,310,000 jobs in urban areas and 4,400,000 laid-off workers got re-employed.<sup>116)</sup> As a result, registered unemployment decreased 0.2% than that of in 2009. If Chinese economy escapes from the economic crisis and remain stable, the administration will consistently deal with the unemployment. On the other hand, the international economic crisis can bring about huge amount of unemployment, irrelevant to the will of the administration, and its policy to promote employment. China's vulnerability on international economy system limited the force of authoritative laws, in

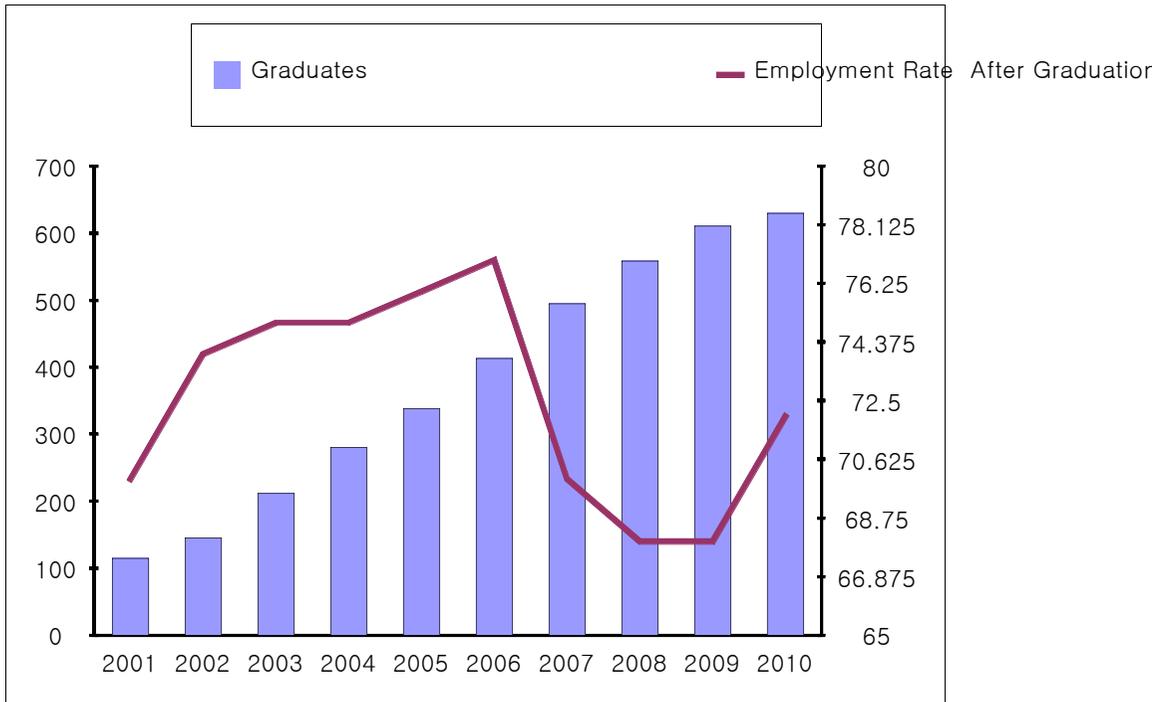
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116) 乔健. 《2010年中国职工状况》, 『2011年中国社会形势分析与预测』 (北京: 社会科学出版社 2011): p. 246

this case, the <Employment Promotion Law>.

<Table 25. Graduates of the Higher Education Institutions and Their  
Employment Rate since 2001>

Year	Graduates (10,000 persons)	Employment Rate After Graduation (%)
2001	115	70
2002	145	74
2003	212	75
2004	280	75
2005	338	76
2006	413	77
2007	495	70
2008	559	68
2009	611	68
2010	630	72



<Source: 全国教育事业发展统计公报 each year, (cited from 《当代中国就业问题与和谐社会构建研究》)>

Secondly, the decrease in the employment rate of the highly educated did not get better after the enforcement of the <Employment Promotion Law>. In the recent decade, the number of people who graduated institutions of higher education rapidly increased from 1,150,000 in 2001 to 6,110,000 in 2010. However, it has been hard for them to find a job immediately after graduation since 2006. In 2009, the second year of the enforcement of <Employment Promotion Law>, only 68%

among the higher education institution graduates, were able to get jobs and about 1,500,000 graduates remained unemployed.

The Chinese Academy of Social Sciences viewed the unemployment problem of the highly educated as the problems in higher educational institutions - that they are not teaching useful knowledge for employment, with improper curriculum and subjects for their future job-hunting. As a result, the graduates failed to meet the standard of the society when looking for jobs. The Chinese Academy of Social Sciences also pointed out the graduates' lack of preparation for employment, weighted preferences for specific jobs and too much expectation on treatment and salary.<sup>117)</sup>

To deal with this problem, the State Council announced <Notification of General Office of State Council on Strengthening Work of University Graduates' Employment(国务院办公厅关于加强普通高等学校毕业生就业工作的通知)> in 2009. The administration encouraged the highly educated to find jobs in rural area, non-state sector, science research centers and small enterprises and promoted entrepreneurship. The notification also pledged to provide employment service for the graduates and job training programs and give aids to the graduates who

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117) 蔡昉主编. 『人口与劳动绿皮书(2009)』, (北京: 社会科学院文献出版社 2010): p. 53

are in poverty. However, the unemployment rate of the young amounted to 6.6% in 2005, comprising 33% of the entire unemployment. The ratio of unemployment of the highly educated increased from 16.9% in 2000 to 17.2% in 2005.<sup>118)</sup>

Finally, the law was limited in scale in terms of job creation. In 2009, migrant workers on job hunt were about 11,000,000 people; registered unemployed 8,300,000; graduates, 6,100,000; and the graduated but still unemployed at the previous year 1,500,000. Therefore, the administration had to create 26 million jobs in order to completely resolve the unemployment problem.<sup>119)</sup> However, urban job creation based on economic growth is estimated at 9 million jobs annually.<sup>120)</sup> If China maintains its rapid economic development, the administration might be able to deal with the unemployment gradually. But if Chinese economy becomes unstable, the unemployment issue will take a serious turn.

In 2006, when announcing the Eleventh Five-Year Plan, the Ministry of Labor and Social Security anticipated a continual influx of the labor to the urban area until 2030 with 10 million people entering labor market annually. The administration would provide sufficient jobs for

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118) 蔡昉主编(2010). p. 57

119) 蔡昉主编(2010). p. 58

120) 蔡昉主编(2010). p. 58

the labor influx as long as China maintains its economic development as now. However, if China experiences economic recession, the administration will confront increase of unemployment and social unrest.

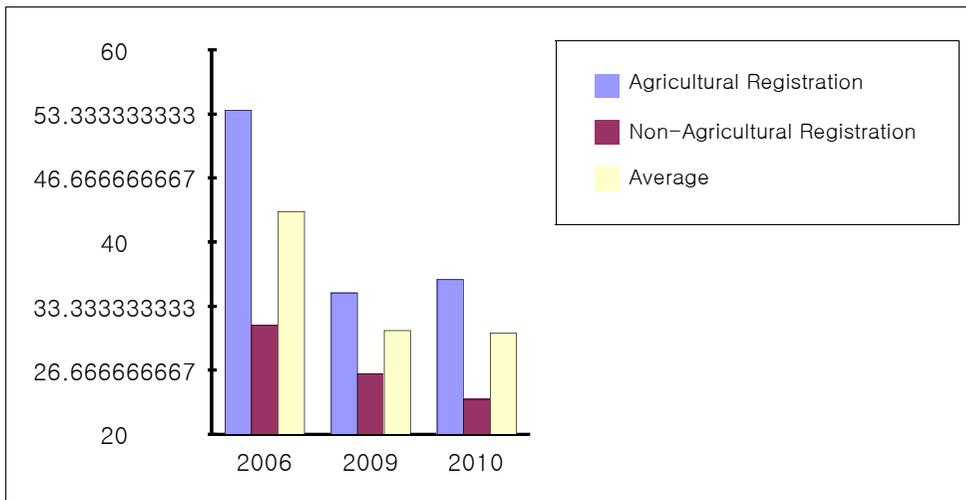
To summarize, the <Employment Promotion Law> was enacted to "promote employment, coordination between economic development and employment increase, and harmony and stability of society." But the <Employment Promotion Law> itself could not create jobs for the unemployed because the basic premise of the <Employment Promotion Law> is the stable economic development of China and the <Employment Promotion Law> itself can only encourage local people's governments and other organizations to help employment or re-employment of the unemployed and workers. Therefore, Chinese unemployment problem and outcome of the <Employment Promotion Law> is heavily dependent on its economic success, while 10 million workers entering the urban area until 2030 each year stands as another obstacle in dealing with the unemployment issue.

#### **4. The Problems that The Legislation Could Not Resolve**

<Table 26. Proportion of the Workers who Worked More Than 48

Hours per Week After <Labor Contract Law> (%)>

Year	Agricultural Registration	Non-Agricultural Registration	Average
2006	53.7	31.3	43.2
2009	34.7	26.3	30.8
2010	36.1	23.6	30.5



<Source: China Labour Statistical Yearbook (each year)>

Despite the administration's effort and legislation of the <Labor Contract Law> and the <Labor Dispute Mediation and Arbitration Law>, there were still people in Chinese society who were neglected.

As <Table 26> shows, the workers with rural registration or migrant workers put in more working hours than the workers with non-agricultural registration. The effort to decrease overtime work least benefited the migrant workers. In 2010, 36.1% of the workers with agricultural registration worked more than 48 hours a week. This figure is 12% higher than the workers with non-agricultural registration, even higher than before the enforcement of <Labor Contract Law> in 2006. Therefore, the workers with agricultural registration worked in inferior, discriminative conditions than workers with non-agricultural registration.

The income gap between the migrant workers and ordinary workers was another problem. According to an announcement of the Ministry of Human Resource and Social Security in 2011, the average income of migrant worker amounted to 1,670 Yuan, slightly over the national standard of minimal wage, 1320 Yuan.<sup>121)</sup> According to this figure, a migrant worker's average income is only about half of an ordinary urban worker's, income which was reported in the <China Statistical Yearbook 2011> as 3,044 Yuan.<sup>122)</sup> The discrimination in working

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121) 人力资源和社会保障部. 《今年全国农民工平均月工资已达1690元》, (中国新闻网 2011. 03. 08), 人力资源和社会保障部. 《2011年全国各地最低工资标准一览表》, (中顾法律网 2011. 02. 26)

122) The <China Statistical Yearbook 2011> claims the annual income of the average urban worker as 36,539 Yuan, which means the monthly income is 3,044 Yuan, if the figure is divided by 12.

condition and average income based upon one's registration, which the <Labor Contract Law> and the <Law of the Labor Dispute Mediation and Arbitrations> does not touch upon, exacerbates the widening gap between the rich and the poor and is a potential risk for social unrest. Simply put, Hu administration's pursuit of harmonious society failed to reduce discrimination of migrant workers in working condition and income inequality.

The analysis of the authoritative laws that adopted at the sessions of the Standing Committee of National People's Congress in Hu's era such as the <Labor Contract Law>, the <Law of the Labor Dispute Mediation and Arbitrations> and <Employment Promotion Law> can be summarized as below. On the one hand, the laws brought about the reinforcement of worker's rights and interests. The <Labor Contract Law> caused an increase in the conclusion of written labor contract and protection of labor's working condition. The <Law of the Labor Dispute Mediation and Arbitrations> provided a legitimate process for the workers to protect their rights. The laws together endowed the trade unions more power as they could make a collective contract as a representative of the workers in the unit and engage in labor dispute with the workers. The laws also tightened the administrative department's "administration in accordance with law." These can be

seen as the most significant features which appeared after the proposal of harmonious society that gave positive influence on dealing with problems in the labor sector.

However, the <Labor Contract Law>, the <Law of the Labor Dispute Mediation and Arbitrations> and the <Employment Promotion Law> had limits as well. The <Labor Contract Law> led to an increase in labor cost to the enterprise, and as a result, gave negative impact on the labor market. The <Labor Contract Law> was unable to give effect in terms of extending labor contract terms due to the conflict with the interests of the worker and employing unit. The enforcement of the <Labor Contract Law> did not provide enough incentive to the migrant workers to join social security, as their registration did not allow them to reside in one place permanently and their economic condition made them reluctant to join social security. The <Labor Contract Law> enhanced the trade union's influence, however, the unions' corporatist features are obstacles when protecting the workers properly. The shortage of inspection staff members in local people's governments caused inefficiency in the surveillance of labor related regulation observance.

The <Labor Dispute Mediation and Arbitration Law> forced the problem of a high portion of litigation going to the people's court after

labor dispute arbitral award, despite the increasing numbers in labor dispute arbitration. The worker's abuse of litigation, the enterprise's malicious rejection to perform the arbitral award and labor dispute arbitration commission's excessive tasks blocked the effective operation of the labor dispute arbitration mechanism.

The <Employment Promotion Law> failed to make much influence on job creation because the Chinese economy was heavily dependent on export and vulnerable to international economic system. The global economic crisis in 2008 exposed the weakness of the Chinese labor market and its dependence on international economy. The continual influx of new labor force into the urban area also brought additional burden for job creation. And currently, the government-led job creation is based on the proportion of stable economic growth. If the administration wants to provide jobs continuously, it needs maintain its present stable economic development.

The laws and other regulations could not remove discrimination of migrant workers, and migrant workers put more hours for less wages than the workers with non-agricultural registration.

Simply said, the administration has been struggling to achieve 'harmonious society' and social stability, and while the workers enjoy more protection on their interests and rights than they did during Deng

Xiaoping and Jiang Zemin era, the administration needs to put in more detailed effort if it wants to achieve stable labor relationship.

## **V. Conclusion: Harmonious Society in the Labor Sector**

After the proposal of "harmonious society", Hu administration showed substantive effort, not leaving "harmonious society" as a hollow slogan for reinforcing one's political position, in dealing with problems in the labor sector. Hu administration's approach had three features.

First, it showed consistent recognition of the problems of the labor sector. Hu administration made clear goals in the Eleventh Five-Year Plan such as extension of employment, development of worker's talent, improvement of social security system, reinforcement of labor stability and extension of legal institutions in labor sector. The administration put coherent effort to achieve the goals throughout Hu's reign.

Secondly, Hu administration cleared up discrepant regulations to the present, and established necessary regulations. It also enacted or amended 22 of 32 laws applied to the labor sector. All these activities indicate the administration's consistent effort in dealing with labor problems.

Third, it strengthened the legitimate influence and reinforced the responsibility and 'administration in accordance with law' of the administrative departments to protect worker's rights and interests. The trade union legitimately engages in labor contract and labor dispute, and

it received the legal right to represent the workers in labor relationships. The administration reinforced the administrative department's "administration in accordance with law" and duty to supervise the next lower administrative department, as the laws state severe punishment on the violation of the laws and regulations.

However, the efforts also exposed the limitations in achieving harmonious society. Although the <Labor Contract Law> and the <Labor Dispute Mediation and Arbitration Law> accomplished the protection of worker's rights, the laws revealed unexpected loopholes that come from different reasons. The <Labor Contract Law> caused increasing labor cost to the enterprise and ironically caused negative influence on worker's employment. Migrant workers still avoided joining social security. The corporatist feature of the trade union limited them in representing the workers. The local people's governments suffered from undermining when inspecting labor relationship.

The <Labor Dispute Mediation and Arbitration Law> also revealed problems. The workers concerned abused application for arbitration and litigation with the reduced application cost. The enterprises concerned disobeyed the arbitral award frequently. The labor dispute arbitration commissions were short-staffed and did not have enough time to investigate the cases thoroughly.

The <Employment Promotion Law> exposed the vulnerability of employment issue to international economy. And the <Labor Contract Law>, the <Labor Dispute Mediation and Arbitration Law> and the <Employment Promotion Law> failed to improve the treatment of migrant workers.

Despite these problems, Hu administration's effort made significant achievement in general. Hu administration's attempt to resolve labor issues were highly welcomed and supported by the citizens and workers. As the survey below shows, the workers showed their confidence towards the national laws.

<Table 27. The Workers' Evaluation of the <Labor Contract Law> >

	<Labor Contract Law> is Good for the Workers	It is Break-Even	<Labor Contract Law> is Harmful to the Workers
Proportion(%)	60.23	27.91	11.86

<Source: 《劳动合同法实施情况调查－基于企业员工的角度》>

<Table 28. The Workers' Trust in the <Labor Contract Law>>

	I Trust in the	The Key is	I Can't Trust	I Don't
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	Law, National Legal System Goes on Better and Better	the Law Enforcement	the Law and Legal System	Know yet
Proportion(%)	72.56	21.86	2.33	3.26

<Source: 《劳动合同法实施情况调查－基于企业员工的角度》>

Such success was because of Hu administration's comprehensive understanding of social issues such as unemployment, social security issue and incompleteness of legal system in the labor sector and its dedication in dealing with the issues through specific goals and consistent pursuit. The ten years of Hu administration's effort for social stability appealed to the workers, and the achievements in protecting worker's rights brought by the <Labor Contract Law> and the <Labor Dispute Mediation and Arbitration Law> made them support the regime and its development of legal system.

However, the success may seem greater because of the little consideration for worker's rights and interests demonstrated by previous leaders. Deng Xiaoping and Jiang Zemin promoted 'First rich theory' and focused more on economic development than the protection of workers. As a result, the workers may feel satisfied with relatively

better treatment of Hu administration in spite of the many problems that still exist in the labor-related laws and regulations.

Several problems after enforcement of the <Labor Contract Law>, the <Labor Dispute Mediation and Arbitration Law> and the <Employment Promotion Law> show the difficulties the Hu administration's face in achieving harmonious society. Although the workers may be satisfied with the current improvement in treatment, the various problems which arose while enforcing the <Labor Contract Law>, the <Law of the Labor Dispute Mediation and Arbitrations> and the <Employment Promotion Law> can be potential obstacle in social stability and stable economic development. Dealing with these leftover problems are left on the shoulders of the next generation leaders, who will succeed Hu administration, to pay attention to labor issues.

The thesis examines Hu administration's harmonious society and the changes in the labor sector. One significant limitation in this thesis is the lack of analysis on the ordinary worker's perception on the administrative efforts, as this paper focused on official data and statistics and adopted a top-down approach in examining the problems, rather than fieldwork research. Additional fieldwork is necessary to figure out the substantive outcome of the policies.

For instance, Lianjiang Li and Kevin J. O'Brien examine the rural

resistance movements through fieldwork. They pointed out the way the resistance leaders work- how they formulated the claims of the group, led collective petitions, recruited activists and devised the strategy to fight. Li and O'Brien argue that the local government tried to settle the resistance by suppressing the leaders.<sup>123)</sup>

Hongyi Lai also points out the reasons for the demonstration of Weng'an County(瓮安县), Guizhou Province(贵州省) in 2008 as the pro-economic development policy of the local government and people's distrust on the government's effort to maintain public peace<sup>124)</sup>

These studies indicate the importance of fieldwork in figuring out the real effect of the labor policies on the workers. At present time, this research lacks the analysis on the administration's effort for harmonious society from the labor's perspective, hence, it awaits to be supplemented in the future.

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123) Lianjiang Li and Kevin J. O'Brien, "Protest Leadership in Rural China," *China Quarterly* Vol.193 (March2008), pp.1-23

124) Hongyi Lai, "Uneven opening of China's Society, Economy, and Politics: Pro-growth Authoritarian Governance and Protests in China," *Journal of Contemporary China* Vol.19, No.67 (November2010), pp.819-835

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국문 초록

## 후진타오 시기 조화사회와 노동분야의 변화

윤태희

조화사회란 2004년 9월 19일 중국공산당 16기4중전회에서 ‘가장 광범위하게, 최고로 노력하고 모든 적극적인 요인을 동원하여, 지속적인 사회주의 건설과 조화사회의 능력을 제고할 것을 견지’라는 내용으로 최초로 제기된 개념이다. 후진타오 정부는 조화사회라는 슬로건을 제창한 이후 노동 분야의 각종 문제 해결에 실질적인 노력을 기울였다.

후진타오 정부는 노동 분야의 문제를 개선하기 위해 불필요한 규범들의 삭제와 수정을 지속적으로 추진하였고, 노동 문제 해결에 필요한 규범들을 꾸준히 제정하였다. 중국 당국의 노동관련 법률의 제정 및 수정은 후진타오 집권 시기 지속적으로 일어났으며, 이는 후진타오 정부의 노동 문제 해결을 위한 끊임없는 노력을 반증한다.

조화사회 제기 이후 제정된 <노동계약법>, <취업촉진법>, <노동쟁의조쟁중재법> 등의 법률들은 노동자의 권익강화, 노동조합의 역량강화, 정부의 노동 분야 의법행정 강화 등의 성과를 거두었다. 그러나 <노동계약법>은 기업의 노동자에 대한 부담증가와 그에 따른 취업시장의 악화, 노동계약 기간의 단기문제 지속, 농민공의 사회보

장 회피 지속 등의 문제와 노동조합의 자체적인 조합주의적 성격 및 지방정부의 인력 부족 등의 한계를 노출시켰다. <노동쟁의조정중재법>역시 노동쟁의 조정 및 중재절차에서 문제가 해결되기 보다는 최종적으로 법원 판결을 통해 노동쟁의 문제가 해결되는 비중이 여전히 높다는 문제를 보였다. 이러한 문제는 노동자의 소송남발, 기업의 악의적인 중재판결 이행거부 및 노동쟁의 중재위원회에 부여된 과도한 노동쟁의 중재 부담이 그 원인이었다. <취업촉진법> 역시 2008년 금융위기 이후 취업 문제가 해외경제에 취약하다는 문제를 보여주었다.

결론적으로 후진타오 시기 노동 문제의 해결 노력은 실질적이었으며, 후진타오 정부는 매우 진지한 자세로 이에 임했다고 볼 수 있다. 그러나 <노동계약법>, <노동쟁의조정중재법>, <취업촉진법> 등의 사례에서 보듯이 표면적인 노동자의 권익 향상이 있었으나, 세부적인 측면에서 살펴보면 많은 문제가 여전히 존재한다. 그러나 상기한 다양한 문제점들에 불구하고 노동자들은 정부의 노동정책에 높은 지지를 보낸다. 그 원인은 과거 덩샤오핑, 장쩌민 시기 선부론(先富論)에 입각한 경제성장정책에 의해 누리지 못한 권익보호를 후진타오 시기 누릴 수 있게 되었기 때문이다. 따라서 앞으로도 지속적인 당국의 노력이 필요 할 것이다.

주제어: 후진타오, 조화사회, 노동계약법, 노동쟁의조정중재법, 취업촉진법

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