CCE-036 | What role do independent trade unions play in protecting workers' rights?

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Abstract: Individual workers have limited bargaining power vis-à-vis employers; the core function of a trade union is to turn scattered individuals into a party capable of collective bargaining. This article distinguishes two questions — "whether a union exists" and "whether a union is independent": the former has a legal basis in both the People's Republic of China (mainland China) and the Republic of China (Taiwan); the key to the latter is whether the union's charter, the selection of its leaders, its funding, and its higher-level organizations can operate free of directives from employers and governments. Drawing on the Trade Union Law as amended in 2021, materials from the International Labour Organization (ILO), and the provisions of the Republic of China's Labor Union Act, the article explains how the two systems differ on who may organize, whether a separate union may be established, and to whom it is accountable, and lays out the arguments for and against independent trade unions as well as this article's evidentiary limits.

I. The Short Answer

The role of independent trade unions can be summed up in three points: first, aggregating individual workers' demands into collective bargaining power; second, providing representation in labor disputes that is not dependent on employers; third, conveying the true state of labor conditions to policymakers. Whether these three points are realized depends on "independence": whether the union's leaders are elected by its members, whether its funding comes mainly from its members, and whether it can decide for itself whether to negotiate and what action to take. One point needs to be made clear: "independent" does not mean "adversarial." In some countries, unions have long cooperated with governments and employers while remaining independent; conversely, an organization that is nominally composed of workers but in practice subject to directives from above cannot automatically perform the three functions described above, however large its membership.

II. The Legal Framework in the People's Republic of China (Mainland China): A Single Nationwide Union System

On December 24, 2021, the 32nd session of the Standing Committee of the 13th National People's Congress adopted the Decision on Amending the Trade Union Law of the People's Republic of China, which took effect on January 1, 2022[1]. The amended Article 2, paragraph 1 states: "Trade unions are mass organizations of the working class formed by workers and staff members on a voluntary basis under the leadership of the Communist Party of China, and are bridges and bonds linking the Communist Party of China with the masses of workers and staff members."[1] Paragraph 2 of Article 2 provides that the All-China Federation of Trade Unions and trade union organizations at all levels represent the interests of workers and staff members and safeguard their lawful rights and interests in

accordance with the law[2].

Article 3 provides that workers whose main source of livelihood is wage income, regardless of ethnicity, race, gender, occupation, religious belief, or educational level, "all have the right, in accordance with the law, to join and organize trade unions. No organization or individual may obstruct or restrict this"[1]. This provision appears to grant workers the right to "organize trade unions," but the words "in accordance with the law" must be read together with the other provisions. The amended Article 4, paragraph 1 requires trade unions to "uphold the leadership of the Communist Party of China" and to "carry out their work independently and autonomously in accordance with their charters"[1]. Article 6 states that trade unions, "while safeguarding the overall interests of the people of the whole country, represent and safeguard the lawful rights and interests of workers and staff members"[1].

Taken together, these provisions send three signals at once: trade unions must accept the Party's leadership; trade unions must give due consideration to the "overall interests of the people of the whole country"; and trade unions enjoy "independence and autonomy" within the scope of their charters. The "independence and autonomy" here means that trade union organizations carry out their work under Party leadership and in accordance with their charters — not that trade unions may break away from the Party and government system to set up a separate house. The 2018 annual report of the U.S. Congressional-Executive Commission on China (CECC) summarized this point as follows: the All-China Federation of Trade Unions (ACFTU) is the only trade union organization permitted under Chinese law, and its top leaders simultaneously hold positions in the government and the Communist Party of China[3]. The report also cited Xinhua news agency as reporting that the ACFTU had 303

million members in 2017[3]. This is the assessment of a body under the U.S. Congress; the PRC government does not use the word "monopoly" to describe the "only" union structure, instead emphasizing that trade unions are mass organizations under Party leadership. The two accounts address the same set of legal provisions; their disagreement lies in how to evaluate them.

III. International Standards: The Basis for Judging Independence

The ILO's 2020 country baseline materials record that China has not ratified Convention No. 87 (freedom of association and protection of the right to organize) or Convention No. 98 (right to organize and collective bargaining)[4]. The International Trade Union Confederation (ITUC) has also stated in its reports that the ACFTU is the only permitted union structure, that workers cannot freely form and join trade unions, and that they cannot freely go on strike[5].

Two limitations are worth noting. First, non-ratification of a convention does not mean freedom from all international obligations. China ratified the International Covenant on Economic, Social and Cultural Rights in 2001 but entered a reservation to Article 8(1)(a), stating that it would implement the provision only within the scope of its Constitution, its Trade Union Law, and its Labor Law[6]. Second, the ILO materials come from an international body's annual review; the government and the ACFTU submitted their views as well. This article can only quote what is on the record; it cannot judge the entire facts on the international body's behalf.

IV. The Republic of China (Taiwan) Framework: Unions May Be Organized, but with Limits

Article 4, paragraph 1 of the Republic of China's Labor Union Act (amended November 30, 2022) provides: "勞工均有組織及加入工會之權利。" ("All workers have the right to organize and join labor unions.")

[7] Paragraph 2 excludes active-duty military personnel and employees of munitions industries under or supervised by the Ministry of National Defense; paragraph 3 provides that teachers may organize and join unions under this Act; paragraph 4 provides that the association of civil servants is governed by other laws[7]. The legislative reasoning for this provision explains that it explicitly enshrines the right to organize, drawing on the spirit of the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and ILO Convention No. 87[8].

On organization procedures, Article 11 provides that organizing a labor union requires at least thirty workers to jointly initiate it by signature, to establish a preparatory committee, and, within thirty days after the founding assembly, to apply to the competent authority for a registration certificate[9]. This differs from "establishment upon approval," but a registration requirement remains.

Taiwan's law also restricts the coexistence of multiple unions. Article 9 provides that there may be only one enterprise union per enterprise; among occupational unions of the same kind within the same municipality or county (city), there may likewise be only one[10]. Teachers may only organize industrial unions and occupational unions, not enterprise unions[10]. One academic study notes that teachers' rights to organize, bargain, and strike are less complete than those of ordinary workers, and that a collective agreement concluded by a public school must first be approved by the competent authority[11]. This shows that even where the law permits the independent formation of unions, there are still critics who say the restrictions are too many.

V. A Comparison Table of the Two Systems

To avoid reducing the two systems to "having" and "not having," the following four questions can be used for comparison.

• Who may initiate? Mainland China: workers may join and organize unions in accordance with the law, but the law requires upholding Party leadership, and the ACFTU system is the legally recognized system[1][2]; Taiwan: thirty workers signing jointly may initiate[9].

• May there be competing unions at the same level? Mainland China: international organizations and a U.S. congressional body consider the ACFTU the only system[3][5]; Taiwan: only one enterprise union per enterprise, but unions at different levels and of different types may coexist[10].

• What is the relationship between higher-level unions and the government? Mainland China: ACFTU leaders simultaneously hold Party and government posts[3]; Taiwan: unions are legal persons, registered and supervised by the competent authority, but their leaders are elected by members[7][9].

• International norms? Mainland China: has not ratified Conventions Nos. 87 and 98[4]; Taiwan: the legislative reasoning refers to the spirit of international conventions[8]. Taiwan is not a member of the United Nations; how the conventions apply to it is a separate question, which this article will not pursue.

VI. The Case Against: Why Some Argue for a Unified Union System

There are at least three arguments against independent trade unions, and they deserve to be taken seriously.

First, a unified system helps stability. The PRC's official formulation positions trade unions as "bridges and bonds" linking the Party and

workers, emphasizing the safeguarding of the "overall interests of the people of the whole country"[1]. On this logic, multiple competing unions could intensify labor-management conflict and harm economic development.

Second, independent unions are not necessarily better at protecting workers. If unions are fragmented and small, their bargaining power may also be weaker; Taiwan's Labor Union Act limits each enterprise to a single enterprise union precisely out of this consideration (this article has not located the legislative reasoning for that provision; this is an inference that needs to be checked).

Third, a union's "independence" itself comes in degrees. In many countries, unions have ties to political parties. What matters is not whether ties exist, but whether members can change the leadership through elections and whether they can leave.

Responses to these arguments: first, the stability argument cannot answer who gets to decide that workers' interests are correctly represented; the legal text itself requires unions to both represent workers and safeguard the "overall interests," and does not say who decides when the two conflict[1]. Second, the risk of weak unions can be addressed through federations — Article 8 of Taiwan's Labor Union Act permits unions to form federated organizations[10]. Third, "a matter of degree" is precisely this article's point: each specific union can be assessed on four criteria — charter, elections, funding, and relations with higher-level organizations — rather than by its name alone.

VII. Self-Test: How to Tell Whether a Union Is "Independent"

Readers can test any union against the following four questions.

1. Who selects the leaders? Members' vote, or appointment from

above?

2. Where does funding mainly come from? Members' dues, or grants from employers or the government?

3. Can the union decide for itself whether to enter collective bargaining?

4. Is the relationship with the higher-level organization voluntary affiliation, or legally mandated subordination?

By these four questions, different unions within the same country may reach different conclusions. This article makes no judgment about any particular enterprise's union, because it has no corresponding factual materials.

VIII. The Case-Study Angle

This article cites only legal texts and international institutions' records that can be checked; it cites no individual labor cases. An ILO academic article records that the ILO Committee on Freedom of Association has been examining allegations concerning the detention of labor advisers and lawyers since 2016, and that the government did not provide the requested information on the individuals' circumstances in its response[12]. This is an academic article's summary of the Committee's proceedings; the PRC government's complete response has not been checked for this article. The case section is therefore offered only as a lead, not as a conclusion.

IX. The Limits of This Article

1. Only legal provisions and summary-level materials from international bodies were consulted; the full text of the Trade Union Law and the original decisions of the ILO Committee on Freedom of Association were not read provision by provision.

2. The CECC and the ITUC are both external institutions; their assessments of the "only union" and "concurrent Party-government posts" are their conclusions. The PRC government has different characterizations, presented side by side in the main text.

3. The legislative reasoning for Article 9 of Taiwan's Labor Union Act and actual union density in Taiwan were not checked for this article; no conclusion is offered.

4. The four questions in Section VII are this article's own analytical tool, not a statutory standard.

5. The article cites no specific facts about labor strikes or individual cases; these require separate research.

X. Conclusion

The value of independent trade unions lies in giving workers a collective representative that does not depend on directives from employers or governments. Mainland China's law recognizes workers' right to organize trade unions while providing that trade unions uphold the leadership of the Communist Party of China, and an ACFTU system exists; the law of the Republic of China (Taiwan) allows initiation by thirty workers signing jointly, while retaining certain categorical restrictions. The way to judge is not by name, but by the four criteria of leadership elections, funding, decision-making power, and relations with higher-level organizations. For readers who want to learn more, the safest approach is to read the legal provisions cited above directly and compare them against the text of ILO Convention No. 87.

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