



The Struggles of Temporary Agency Workers in Xi's China

Changchun FAW-Volkswagen assembly line. PC: Wang Yuwen.

ZHANG Lu

In China, temporary agency workers often receive as little as half the pay and none of the benefits enjoyed by their 'regular' counterparts, which has resulted in high-profile struggles across sectors. In his essay, Zhang Lu examines their recent collective actions in the automotive industry, pointing to the challenges and potentials for future labour activism in contemporary China.

In recent years, China has witnessed rising activism among temporary agency workers—workers who are hired through labour agencies and are now a main component of the Chinese workforce across sectors. Several high-profile struggles by agency workers in the automotive industry have highlighted their grievances and their ability to mobilise. These include collective actions from workers at FAW-Volkswagen (FAW-VW), Guangzhou Ai Paiké Auto Parts Co., Ltd (APAC), and Guangzhou NHK Spring Precision Co., Ltd (NHK) for equal pay and unpaid benefits. What is the nature of their grievances and the extent of their bargaining power? What strategies do agency workers use to protest and to make their claims to employers? What are the trends and implications of agency workers' struggles for labour relations and worker activism in Xi's China? This essay seeks to address these questions by taking a close look at the recent struggles by agency workers in the automotive industry.

Labour Dispatch and Contested Regulation

The growth of precarious work has come to characterise a significant global trend over the last few decades. One of the fast-growing forms of precarious work in many countries has been temporary agency work (TAW), better known as labour dispatch (*laowu paiqian*) in the Chinese context. The core feature of TAW is a triangular structure that separates employment from the actual use of labour: a temporary agency worker is employed by a temporary staffing agency, and then dispatched to work at the user company. TAW has attracted much public and scholarly scrutiny, as it challenges the conventional definition of employment relationships and complicates the legal and financial obligations employers have to their employees (Gonos 1997; Vosko 2010).

In China, the dramatic rise of labour dispatch since the late 1990s has had far-reaching consequences for Chinese workers and labour relations. Although China does not provide official statistics on labour dispatch, according to a survey conducted by the All-China Federation of Trade Unions (ACFTU), the country's agency workers reached 37 million in 2011, accounting for 13.1 percent of the total actively employed population. Moreover, instead of being confined to temporary, auxiliary, or substitute positions, agency workers are increasingly being used in permanent positions or on a long-term basis in a wide range of industries. In fact, 39.5 percent of the surveyed agency workers had worked for the same client firms for more than six years. In particular, state-owned enterprises (SOEs) had the highest percentage of agency workers, accounting for 16.2 percent of their total workforce (ACFTU 2012). Agency workers have been subjected to discriminatory treatment at work, including lower pay, fewer benefits, harsher disciplinary action, and lack of job security and advancement opportunities compared to regular employees at the client firms. The ambiguous triangular employment

relationship, combined with the lack of regulation, has led to rampant violations of workers' rights.

It was against this backdrop that the 2008 Labour Contract Law devoted 12 articles to the regulation of labour dispatch. However, the lack of specific, enforceable measures, led to an explosive growth of agency workers since the passage of the Law. In 2013, the Law was amended to close the loophole and address the rampant use of labour dispatch. On 1 March 2014, the Interim Provisions on Labour Dispatching took effect, which requires companies in China to reduce the use of agency workers to 10 percent of their total employees by 1 March 2016. Faced with stricter regulations, many employers responded by laying off agency workers or continuing to use labour dispatch under the guise of outsourcing or subcontracting to bypass the 10 percent limit (Peng 2016). To defend their employment and legal rights, temporary agency workers across a range of industries have been protesting, petitioning, and filing lawsuits against layoffs and unequal treatment at work. The year-long struggles by FAW-VW agency workers for 'equal pay for equal work' highlight the plight of agency workers and their determination to defend their legal rights.

The Struggles of AFW-VW Workers

The use of temporary agency workers has proliferated throughout the automotive industry since the mid-2000s, along with the restructuring and rapid expansion of the industry (Zhang 2015). As of 2016, there were around 3,500 agency workers at FAW-VW Changchun plant, and many of them had been working at the company for more than ten years in skilled core production positions. Despite doing the same work as regular workers, the agency workers were only paid half as much and did not enjoy the same benefits. Emboldened by the new regulations, in November 2016

several thousand temporary agency workers in FAW-VW's Changchun plant began their struggle for equal pay for equal work, when the two-year transitional period for compliance with the 2014 Interim Provisions on Labour Dispatching expired and their employer had still not made the legally required adjustments to limit the use of agency labour (China Labour Bulletin 2017a).

The agency workers at FAW-VW demonstrated tremendous determination, persistence, and unity throughout their struggles. They first filed a complaint with the ACFTU, demanding compensation for years of unequal pay and the signing of formal employment contracts with FAW-VW. Then, they elected three representatives who, alongside trade union officials, engaged in collective bargaining with the management of FAW-VW and their labour agencies between December 2016 and January 2017. After several failed bargaining sessions, the workers filed a collective dispute case with the Changchun labour dispute arbitration committee, and later brought FAW-VW to court. After the court rejected their case, between February and May in 2017 the agency workers organised several demonstrations (China Labour Bulletin 2017a). However, their protests were met with police harassment. In May 2017, the three worker representatives, Fu Tianbo, Wang Shuai, and Ai Zhenyu, were arrested for 'gathering crowds to disrupt public order'—an accusation commonly used by local governments to quell labour and social unrest. While Wang and Ai were released, Fu remained in custody and was officially charged in early June 2017 (China Labour Bulletin 2017b). The agency workers continued their struggles for equal pay and for the release of Fu Tianbo from prison. In July and August 2017, they issued public letters to the Volkswagen Group and Volkswagen's work council in Germany, asking for their intervention in the legal violations in the Changchun plants and for the release of Fu. However, VW decided not to intervene (China Labour Bulletin 2017c). On 18 August 2017, the

workers wrote a jointly signed letter to the local Public Security Bureau demanding the unconditional release of Fu (Ruckus 2018).

At the same time, management and the local government took various measures to break up the protest: the workers' posts on social media were blocked and management cooperated with the police to criminalise the worker representatives. In addition, in April 2017 FAW-VW made a concession by announcing 2,400 new regular jobs for its agency workers who had worked at the company for more than ten years. However, only 500 positions were to be located in Changchun. Moreover, if the agency workers accepted the new contract, they would have to give up their demand for compensation for years of unequal pay. About 1,500 agency workers took the offer. Although not all of the workers who signed the new contract gave up their demands for back pay, they basically withdrew from the protest. On 21 December 2017, FAW-VW launched a second round of recruitment and offered all the remaining agency workers in the Changchun plant five-year regular contracts, on the condition that they give up their claims on all the remuneration issues. Workers who would not sign the new contracts would be terminated and sent back to the labour agencies. The workers were only given one day to accept the new offer. It was clearly a management strategy to quell the protest. Under this pressure, all but five agency workers eventually signed the contract. The five workers who did not give up were dismissed by FAW-VW at the end of 2017. They included worker representatives Fu Tianbo and Ai Zhenyu, who decried the contract as illegal and were determined to continue their struggle until justice was served (Xia 2018).

As of writing (June 2018), the agency workers have not achieved their demands for open-ended contracts and compensation for the unequal pay since 2008. It is fair to say, however, that the agency workers' tenacious struggle was one of the main reasons for the FAW-VW decision to stop using labour dispatch in the Changchun plant at the end

of 2017. It is also important to point out that the agency workers involved in the struggles at FAW-VW tend to have more workplace and marketplace bargaining power than in other sectors. For one, FAW-VW and other automakers have been rapidly expanding production capacity alongside the construction of new manufacturing facilities across China in recent years. These new plants require a large number of workers, especially skilled and well-trained ones like this group of temporary agency workers who already had ten years of experience working at the company (Xia 2018). Meanwhile, shortly after it stopped using agency workers, FAW-VW started using more outsourced workers on production lines to increase staff flexibility. Yet, it did not take long for the outsourced workers to begin their protest against unequal treatment as well. According to the interviews that I conducted at the FAW-VW Changchun plants in June 2018, over 400 outsourced workers have been involved in struggles against unequal pay and the illegal practice of ‘fake outsourcing, real dispatching’ at FAW-VW since early 2018.

As many employers resort to outsourced/subcontracted workers to evade the 10 percent limit on the use of dispatch labour, a growing number of these workers have joined agency workers to demand equal pay, the signing of regular contracts, and mandatory insurance payments and public housing funds in back pay. This has been demonstrated by the ongoing struggles at auto parts companies such as APAC and NHK in Guangzhou.

Shaping Labour Relations

On the one hand, agency workers have deep grievances after being subjected to years of unequal and substandard treatment, and they have become increasingly restive and emboldened by the stricter regulations on labour dispatch. They have demonstrated great determination, persistence, and unity in

their struggles for equal pay, regular contracts, and mandatory insurance payment and public housing funds required by the laws. On the other hand, it has proven extremely difficult for them to defend their legitimate rights through formal legal channels, given the power asymmetry between workers and employers, and the fact that local authorities often side disproportionately with employers in labour disputes.

Furthermore, the Chinese Communist Party under the new leadership of Xi Jinping has moved towards tightened political and ideological control, and an increasingly repressive approach to worker activism. Strikes are often treated as ‘social stability maintenance’ (*wei wen*) incidents, the police is frequently called in, and criminal charges are filed against striking workers, rights lawyers, and labour activists (Pringle 2016). In addition, central leaders have taken steps to curb increases in the minimum wage and cut social security burdens on companies. A recent government-led consultation on revising the Labour Contract Law to improve ‘labour market flexibility’ and to roll back some job-security protections for workers is widely seen as a harbinger of more business-friendly policies to keep companies afloat as China’s growth continues to slow (Wong 2016).

Thus, it is likely to become even harder for agency and outsourced workers to defend their rights through official legal channels. Still, recent battles partially won by the agency workers at NHK and other auto parts companies in Guangzhou suggest there is potential for this group of workers to successfully bargain for their rights. Considering the sheer scale and far-reaching consequences of labour dispatch for the employment terms and conditions of millions of Chinese workers, further research into the strategies and tactics of agency workers’ struggles in different industries and regions is essential to understanding the current and future trends of labour relations and worker activism in the era of Xi. ■

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