



## China's Walmart workers: Creating an opportunity for genuine trade unionism

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Cover Photograph: Zhang Liya (left) with fellow Walmart activists outside the Shenzhen Federation of Trade Unions, May 2016.

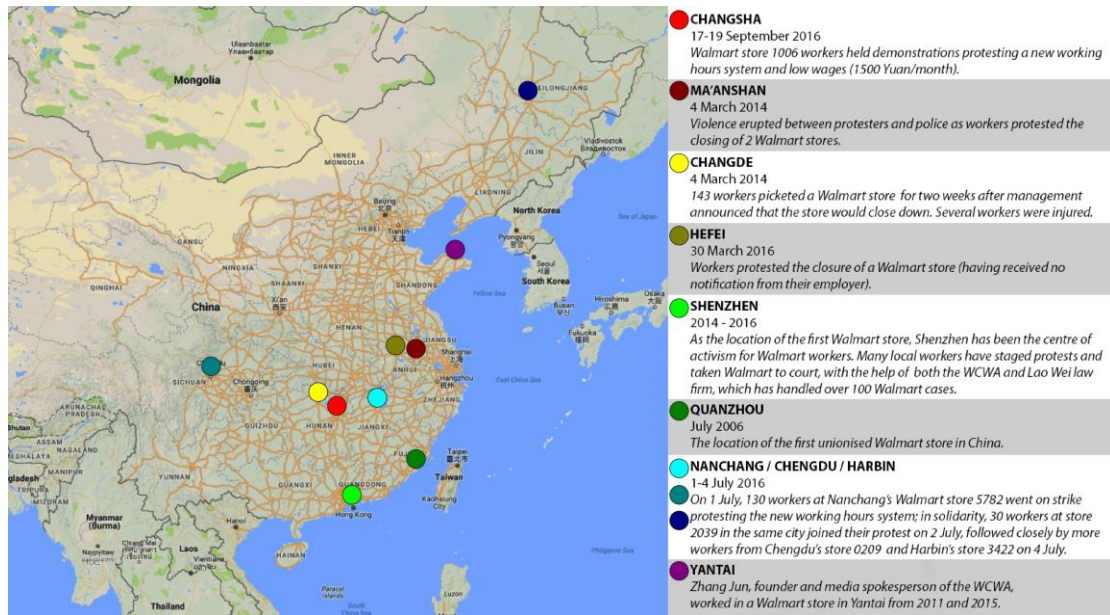
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## List of acronyms

- ACFTU – All-China Federation of Trade Unions
- CWHS - Comprehensive Working Hours System
- CPC – Communist Party of China
- FMCG - Fast-moving consumer goods
- GDFTU – Guangdong Federation of Trade Unions
- WCWA - Walmart Chinese Workers Association
- WWA(C) - - Walmart Workers Association (China)
- WWDG - Walmart Workers Rights Defence Coordination Group

## Locations of Walmart stores mentioned in this report



## Introduction

In the spring of 2016, global retail giant Walmart told its 100,000 employees in China that they would no longer be working eight hours a day, five days a week. Henceforth they would be subject to a new flexible working hours regime called the Comprehensive Working Hours System (CWHS) (综合工时制度). Veteran workers who had already seen wages fall and benefits reduced in real terms over the last decade were rightly alarmed by the prospect of even lower wages and the increased power of management to dictate their work schedule.

The workers' response was impressive. There were at least four strikes in just four days at the beginning of July, which brought international media attention to the long struggle of Walmart workers in China. In addition, thousands of Walmart workers from all over China flooded into online platforms such as the Walmart Chinese Workers Association (WCWA) (沃尔玛中国员工联谊会). Workers shared information about the strike action and the situation in their own stores. They discussed the implications for ordinary workers and their families of flexible working hours and the best way to resist management's implementation of the CWHS. These online platforms helped mitigate the sense of isolation felt by many workers struggling against a powerful employer and helped create a common identity where everyone was faced with the same problems and needed to find common solutions.

In most countries, it would be the trade union that leads the workers in their battle against a corporate giant like Walmart. But in China, where Walmart does actually allow unions to establish branches in its stores, the All-China Federation of Trade Unions (ACFTU) was conspicuous by its absence. Apart from some superficial gestures of support, the ACFTU failed to stand with Walmart's workers. For the most part, the ACFTU viewed the workers' online organizations with suspicion and prioritized social and economic stability over all else – even to the point of siding with management at the first sign of collective resistance.

In this research report we examine why the ACFTU was so passive in a dispute in which Walmart workers had numerous long-standing grievances against their employer, and ask what does the future hold for trade unionism at Walmart in China.

The first section looks at the pay and working conditions employees had to endure at Walmart over the last 20 years, and examines in detail management's over-zealous attempts to impose an unpopular and almost certainly illegal flexible working hours system across its more than 400 retail units in China. The second section analyses the ACFTU's anachronistic role as a self-proclaimed agent of economic and political stability and explains why the notoriously anti-union Walmart allowed the ACFTU to

set up unions inside its stores back in 2006. The third section looks at the different forms of resistance used by Walmart workers in China; legal action, strikes and collective protests, online action and organizing. In the final section, the report shows how these workers actions are putting pressure on the ACFTU to start acting like a real trade union and how this, combined with political pressure from the Chinese Communist Party, has potentially created the conditions for genuine union representation in China's retail industry.

The report argues that the key to empowering workers in global retail giants such as Walmart lies in bottom-up organizing. If ordinary workers get involved in and start running store trade unions as democratic institutions that can effectively represent their members in negotiations with management over pay and conditions, this could eventually result in a collective bargaining system for all Walmart stores and even the whole retail sector across China.

## Working conditions and labour relations at Walmart China

### A brief history of Walmart operations in China

Walmart opened its first store in China in the southern boomtown of Shenzhen in 1996. By the end of 2016, Walmart China had expanded to the point where it operated 439 retail units in 189 cities and employed around 100,000 workers or 'associates' to use the company's preferred term. The company claims that:

From 2015-2017, Walmart will increase investment across diverse business operations in China by opening up to 115 new facilities, including hypermarkets and Sam's Club formats, creating more than 30,000 job opportunities. Meanwhile, Walmart will continue to upgrade existing stores, invest in food safety and build on strong partnerships with our Chinese suppliers. Walmart hopes to become an integral part of China's economic development, creating jobs and economic stimulus and working hard to build on a position as a trusted corporate citizen in China.<sup>1</sup>

This bullish pronouncement obscures however the fact that Walmart has often struggled to adapt to the Chinese market:

- The concept of a weekly supermarket shopping trip took time to catch on and replace traditional shopping habits. Despite the spread of refrigerators in many urban homes and the growth of car-ownership, most Chinese still prefer to shop two or three times a week or even on a daily basis.<sup>2</sup>
- The wholesale transplantation of American suburban family values that underpinned Walmart's domination of the fast-moving consumer goods (FMCG) market in the United States has not worked in China, a country undergoing rapid demographic change driven by internal migration and population control policies.
- Consumers are profoundly concerned with food safety following a series of tainted food scandals including the notorious infant milk powder scandal.<sup>3</sup> As a consequence, the famous Walmart marketing slogan of 'everyday low prices' does not always resonate with a consumer demographic that is sceptical of the implementation of food safety regulations and consequently wary of discount food.

Walmart responded to these challenges by developing its own distribution centres in

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<sup>1</sup> [Walmart China Factsheet](#), Walmart China website.

<sup>2</sup> "[Wal-Mart needs to grow overseas, and China's the big prize](#)", *Chicago Tribune*, 1 June 2016.

<sup>3</sup> Tania Branigan, "[China executes two for tainted milk scandal](#)," *The Guardian*, 24 November 2009.

China that facilitate product traceability and reliability.<sup>4</sup> But highly localized FMCG markets driven by the sheer diversity of local cuisines along with the absence of a ‘technological and sophisticated infrastructure’ have slowed Walmart’s drive for standardization.<sup>5</sup> In China, the company has not been able to take advantage of a key asset – supply chain efficiency built around giant distribution centres such as those in the US where ‘200 boxes per minute are diverted by electronic arms from a main river of boxes down 100 chutes to container-sized trucks all the time.’<sup>6</sup>

Walmart has on many occasions expanded too rapidly in China, opening stores in smaller more remote cities where the corporation struggled with limited demand, immature regulatory environments and unstable rent. Although the company allocates significant resources to developing relationships with local governments and other state actors, sudden hikes in store rents caused by landlords’ taking advantage of China’s property boom have been a major headache and have often led to unprofitable stores being closed down.<sup>7</sup>

One of the biggest and most recent challenges facing Walmart China has been the explosive growth of online retailing in China, which has forced the company to re-evaluate its priorities and adapt to a rapidly changing retail landscape. Walmart’s first foray into e-commerce came in 2010 when its high-end retail unit Sam’s Club launched an online shopping delivery service. Two years later, Walmart took a majority share in online retailer Yihaodian, establishing full ownership of the e-commerce site in 2015. At the same time, Walmart launched an O2O (online to offline) platform *Walmart To Go*, designed to lure online shoppers back into physical stores with a wide-range of online payment options. Finally, in 2016, Walmart entered a strategic alliance with China’s largest e-commerce company JD.com.<sup>8</sup> However, online shopping continues to put huge pressure on traditional physical stores and many struggle to remain relevant and profitable.<sup>9</sup>

Inevitably, these pressures make their way down Walmart China’s chain of command from regional offices to store managers and ultimately to the workers who face redundancies, declining wages and above all demands for flexible working hours. These demands are implemented by an increasingly severe management ethos

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<sup>4</sup> Interview, Former Walmart Senior Manager, Hong Kong, 9 November 2011.

<sup>5</sup> Robert Salomon, “[Here’s Why Wal-Mart Stumbled on The Road to China](#)”, *Fortune*, 21 February 2016.

<sup>6</sup> See Pringle, T. Review of ‘*Walmart in China*’, edited by Anita Chan. Cornell University Press, Ithaca, NY, 2011 in *British Journal of Industrial Relations*, 2013, 51:1, p. 201.

<sup>7</sup> Interview, Former Walmart Senior Manager, Hong Kong, 9 November 2011.

<sup>8</sup> [Walmart China Factsheet](#), Walmart China website.

<sup>9</sup> According to one former expat senior manager of Walmart China, profit margins are as low as two percent in some stores.



which puts profits before people and targets individuals and groups of employees who resist.

### Wages and job security

When Walmart China opened its first stores in China in 1996, the company paid well above the minimum wage and there was a general sense of enthusiasm among store employees. According to one store activist, wages in Shenzhen during the first decade of the company's operations were up to three times the minimum wage. However, inflation and rising minimum wage levels wiped out these differentials over time.<sup>10</sup> In fact, after social insurance and housing fund contributions are taken into account, Walmart workers now often struggle to make even the minimum wage. As a blog post from the WCWA explained:

Forty percent of frontline workers do not make minimum wage in their first five years [with Walmart] after social insurance and the housing provident fund contributions have been deducted. These folks are under real pressure just to survive!<sup>11</sup>

During a strike from 17-19 September 2016 at Store 1006 in the city of Changsha, one worker captured the sense of disappointment with Walmart among employees in an interview posted on Walmart Workers Rights Defence Coordination Group (WWDG) (沃尔玛工人维权协调小组) blog:<sup>12</sup>

Here in Changsha, Walmart workers take home about 1,500 yuan a month. This is much less than people working at the other big supermarkets in Changsha like Carrefour or RT-Mart are making. Our wages are pretty much the same as the folks working in the smaller local supermarkets. Even though they are paying these rock bottom wages, Walmart is still looking for ways to cut costs and trying to make us work even harder. With things as they are, many workers, especially older workers who have been here a long time, have lost all faith in Walmart and see resistance as the only option.<sup>13</sup>

Walmart's over-aggressive expansion into unprofitable or unsustainable markets has

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<sup>10</sup> Labor Notes, "[In China, Walmart Retail Workers Walk Out Over Unfair Scheduling](#)", 1 July 2016.

<sup>11</sup> "[学习总书记五一讲话精神, 拥护沃尔玛诚信行事的企业文化, 拒绝黄色傀儡工会](#)" ("Let's have a genuine corporate culture – reject puppet trade unions") - Blog post released by the WCWA on 10 May 2015 (deleted, reposted on Sina Blog).

<sup>12</sup> The WWDG was formed on 23 July 2016 by 49 activists from across China. They elected veteran worker Wang Shishu as their leader. Wang stated the aim of the new online group was to: 'Equip workers with legal knowledge and bargaining skills. We will not allow Walmart to continue to trample on Chinese laws, ignore Chinese workers' rights, and illegally impose their comprehensive working hours system on us.'

<sup>13</sup> "[长沙 1006 店工人停工抵制沃尔玛强推综合工时制](#)" ("Workers at Store 1006 in Changsha stop work to protest the comprehensive hours system") - Blog post released by the WRDG on 19 September 2016.

led to dozens of store closures in which employees were given just a few weeks' notice with the option of relocating to another Walmart store (often a considerable distance from their home) or accepting what staff considered to be a substandard severance package. In 2014, Walmart sought to close five stores across China within the month of March alone.<sup>14</sup> In each case, the closure plans were announced without any consultation with the trade union or workers' representatives, as required by law,<sup>15</sup> and presented to the workers as a *fait accompli*. The planned closures led to protests in two stores in Ma'anshan in Anhui and the store in Changde, Hunan, which escalated into a month-long stand-off with Walmart management and the local authorities (see pp.23-25). Walmart has continued to close underperforming stores on a regular basis since 2014, leading to several protests such as the sit-in at its Hefei supermarket in March 2016 (see photo below).



<sup>14</sup> Zha Daokun, “[沃尔玛本月已关3家店 马鞍山两店也将月底关闭](#)” (“3 Walmart stores closed down – 2 more to close in Ma’anshan at the end of the month”), 每日经济新闻 (*National Business Daily*), 21 March 2014.

<sup>15</sup> Article 4 of the 2008 *Labour Contract Law* states:

An employer shall establish a sound system of employment rules so as to ensure that its employees enjoy their labour rights and perform the employment obligations.

Where an employer formulates, amends or decides rules or important events concerning the remuneration, working time, break, vacation, work safety and sanitation, insurance and welfare, training of employees, labour discipline, or management of production quota, which are directly related to the interests of the employees, such rules or important events shall be discussed at the meeting of employees' representatives or the general meeting of all employees, and the employer shall also put forward proposals and opinions to the employees and negotiate with the labour union or the employees' representatives on an equal basis to reach agreements on these rules or events. During the process of execution of a rule or decision about an important event, if the labour union or the employees deems it improper, they may require the employer to amend or improve it through negotiations.

The employer shall make an announcement of the rules and important events which are directly related to the interests of the employees or inform the employees of these rules or events.

Even Walmart's mid-level managers have been driven to protest occasionally at 'optimization' plans that look more like redundancy plans when the 'choices' on offer are held up to the light. In mid-April 2009, dozens of thirty-something managers gathered outside Walmart's headquarters in Shenzhen to protest an optimization scheme aimed at reducing the number of management grades across 146 stores. Employees were given three choices: demotion and a pay cut, transfer to another store, or resign. Most of the people protesting believed the only real option on the table was to leave the company as store transfers could mean anything from a three-hour daily commute to moving to a new town – possibly thousands of miles away. A company spokesperson's explanation at the time of the dispute exposed the duplicity at the heart of Walmart China's 'choice' when he explained that 'this is not about sacking people it's about optimization and adjustment. But of course, if people want to leave, we would respect that choice.'<sup>16</sup>

### Flexible working hours

'Choice' is a controversial issue for employees at Walmart. The company has argued that flexibility offers workers more choice over when they work and for how long. For many workers however, their 'choice' is merely what their manager tells them to do. Walmart China managers have used a variety of threats to force employees to accept their interpretation of 'choice' while ignoring 'company values' of 'respect for the individual' and 'integrity.'

Take, for example, the ordeal of ten year veteran and 'model worker' LYY when Walmart sought to impose the new comprehensive working hours system in Shenzhen. Management wanted employees to sign an appendix to their employment contract that would allow store managers to adjust work hours as they saw fit. LYY refused and six months after the CWHS was formally introduced in May 2016, she was still holding out. On 6 November, LYY posted a four-page statement on the WWDG blog detailing 12 meetings with store and regional managers. She describes one exchange that included a store manager referred to as DZ:

DZ said 'the CWHS is a sign of social progress just like WeChat and online shopping'. Well great. But if it really represents progress why are people being forced to sign changes to their contracts? Real social progress is achieved via harmony, free will and democracy and not via these horrible traps. I cannot go against my conscience and you are forcing me to react in this way.<sup>17</sup>

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<sup>16</sup> Jia Jingjing, "[沃尔玛'裁员'之惑](#)" ("Confusion at Walmart over Staff Reductions"), *中国企业报* (*China Enterprise Daily*), 24 April 2009.

<sup>17</sup> *Walmart Workers' Rights Watch & Support Group Blog*, "[12次约谈：一个沃尔玛女工的依法抗争](#)" ("Twelve meetings with management: a female Walmart worker's legal struggle"), 6 November 2016.

On another day, LYY was called to attend three separate meetings with managers that lasted a total of four hours:

The first meeting that day lasted more than two hours – a one-on-one meeting with a manager. Same for the second meeting but it only lasted 20 minutes. The third meeting was in the Human Resources office – six of them and me on my own. As soon as I sat down they informed me that I was being transferred to the position of customer greeter. No way! I then met a colleague who was in the same boat as me – facing management’s revenge for not signing the appendix to the contract. She told me she was trying to stop Human Resources from forcing her to change positions as well.<sup>18</sup>

Another veteran worker, You Tianyu accused managers of photographing female employees in the restroom in an effort to pressure them into signing the new contract. You wrote that ‘Walmart enforces the new work hour scheduling system by cheating, coercing, and restricting personal liberty.’<sup>19</sup> In another instance, many workers say they were barred from leaving meetings with Walmart management. ‘When changes to the working hours system were announced, employees were asked to sign an agreement on the spot, if they refused to sign, they would not be able to leave the meeting.’<sup>20</sup>

Zhang Jun, founder and media spokesperson of the WCWA, who worked in a Walmart store in the eastern coastal city of Yantai from 2011 and 2015, explained why there had been so many examples of management harassment over the CWHS:

Flexibility is important for Walmart as it allows them to bring down costs in a fierce [retail] market. But it is also about harassing activists in the stores. Anyone who refuses to sign up to the CWHS or takes a stand on labour rights can have their overtime reduced or increased, shifts shuffled around or work duties changed at the discretion of the manager.’<sup>21</sup>

Wang Shishu, a founding member of the WWDG, made the same point. Walmart ‘could force anyone to quit by shuffling their shifts around and making their lives harder, and they’d save huge sums of money in severance fees.’<sup>22</sup> Long-time Walmart employee Zhou Xianzhong agrees: ‘Many think that the management will

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<sup>18</sup> *Ibid.*

<sup>19</sup> You Tianyu, “[致美国沃尔玛总部的信](#)” (“A Letter to the Headquarters of Walmart”), via China Labor Watch, 10 August 2016.

<sup>20</sup> China Labor Watch, “[Employees at various Walmart stores in China undergo strike](#)”, 7 July 2016.

<sup>21</sup> Interview, Zhang Jun, Hong Kong, 23 November 2016.

<sup>22</sup> China Labour Bulletin, “[China’s Walmart workers organise online and get official union backing](#)”, 6 July 2016.

use it to punish worker activists.<sup>23</sup>

| <i>Flexible working at Walmart: Claims vs. Reality</i> <sup>24</sup>   |   |
|--|---|
| Walmart's Claims   | Workers' Reality  |
| <p><b>Flexibility and Autonomy</b></p> <p>Under the new comprehensive working hours system, workers will have a more active role in deciding their working hours. This gives them more flexibility and autonomy so that they can enjoy a better work-life balance.</p> | <p><b>Unstable working hours</b></p> <p>Instead of giving more flexibility and autonomy to workers, it is managers who will gain authority. As workers do not control their working timeslots, CWHS is more likely to disrupt employees' work-life balance.</p> |
| <p><b>An increase in income</b></p> <p>The total income of workers will be increased after the introduction of the new system. Workers may choose to work more frequently during peak seasons so as to increase their total income.</p>                                | <p><b>Actual income reduced</b></p> <p>Under the CWHS, Walmart incorporated benefits, like meal subsidies and full-attendance bonuses, into the basic monthly wage thereby reducing workers' earning potential.</p>   |
| <p><b>Voluntary</b></p> <p>Participation in the CWHS is voluntary. Workers can continue to follow the original standard working hours system if they wish.</p>   | <p><b>Mandatory</b></p> <p>Workers are forced to accept the CWHS through deception, coercion, threats and dismissal of worker activists.</p>  |
| <p><b>Support from 'associates'</b></p> <p>Scott Price, the CEO of Walmart Asia, stated that 95% of associates welcome the new system.</p>   | <p><b>Resistance from employees</b></p> <p>Strikes and mass participation in online forums reveal widespread dissatisfaction and resistance.</p>  |
| <p><b>A win-win situation</b></p> <p>The new system creates a win-win situation for Walmart and its employees allowing the latter to 'exercise self-determination' over their working hours and improve customer service.</p>  | <p><b>A win-lose situation</b></p> <p>Walmart will gain more control over workers. It may allocate fewer working hours to worker activists, indirectly pushing them to resign and thus avoid severance payments.</p>  |

In a November 2016 blog post, Zhang Jun stated that, 'Walmart is organizing the

<sup>23</sup> China Labour Bulletin, "[China's Walmart workers take the boss to court](#)", 24 August 2016.

<sup>24</sup> Sources for table:

You Suhang, "[沃尔玛在中国连年“做减法” 正式工变身“小时工”遭维权](#)" ("Throughout the years, Walmart in China has 'subtracted' official work to offer 'hourly jobs' – Workers' fight back"), *Xinhua*, 15 July 2016.

Le Yan, "[综合工时制引员工停工对抗！沃尔玛有话要说](#)" ("Working Hour System Met With Strikes! Walmart speaks its mind"), *Yicai*, 14 July 2016. "[沃尔玛说的“双赢”真的是员工想要的吗?](#)"

("Walmart: Is a 'win-win situation' truly what the workers want?"), *联商网 (Linkshop)* 25 July 2016.

systematic dismissal of labour rights activists who have refused to sign the appendix.’ He called on Walmart employees not to be cowed by management when they are called into the office for ‘guidance’ (指导) and stated that the WCWA would provide legal assistance to store workers in Shenzhen and Dongguan who came under pressure.<sup>25</sup>

Zhang Jun was dismissed by Walmart China in 2015 and other prominent Walmart activists such as trade union chair Huang Xingguo, Zhang Liya – a co-founder of the WCWA – and Wang Shishu have all been sacked by the company. Wang Shishu won re-instatement after he was dismissed in 2012 and then dismissed again in 2015 (see pp.20-21).

### Walmart’s Comprehensive Working Hours System: Is it legal?

China’s *Labour Contract Law* allows for three separate working hours systems: the standard working hours system, irregular working hours system and comprehensive working hours system. The most widely applied is the standard working hour system, which is based on a 40-hour week (eight hours per day, five days per week) with overtime capped at 36 hours per month. The irregular working hour system is generally applied to senior managers or staff employed as travelling sales representatives etc.

The CWHS allows for flexible working hours but only in specific industries. According to a spokesperson from the Guangdong Federation of Trade Unions (GDFTU), these industries are transport, railways, postal services, resource exploration, construction, and tourism.<sup>26</sup> A second category covers work where ‘employees are subject to seasonal and natural constraints such as salt production, sugar production and the travel industries’ and a further third category where ‘other employees are in positions suitable for the implementation of the comprehensive working hours system.’<sup>27</sup>

The CWHS allows working hours to be calculated over a specified period such as a week, a season or a month as long as they do not exceed 11 hours on a single day. In this scenario, a worker may be asked to work three hours in a quiet period and up to 11 hours in a busier period. However, overall working hours each month must be

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<sup>25</sup> WCWA Blog, “[沃尔玛开始有组织大规模的解聘维权积极分子](#)” (“Walmart begins organized large-scale dismissal of activists”), 8 November 2016.

<sup>26</sup> “[广东省总工会：反对沃尔玛全员实施综合工时制](#)” (“GDFTU: Oppose Walmart’s blanket imposition of the Comprehensive Hours System”), *Sina Finance*, 3 August 2016.

<sup>27</sup> *China Law Blog*, “[China’s Forty Hour Working Week Is Mandatory. Except When It’s Not. Part III.](#)”, 7 August 2014.

'basically the same' as the standard working hour system.<sup>28</sup> As labour scholar Kevin Lin explains:

Store managers will be permitted to allocate workers any number of hours per day or per week, as long as each worker's total adds up to 174 hours per month. This system will have immediate impacts on overtime pay, as workers scheduled for more than eight hours in a day may not get overtime pay, as long as they are given fewer hours in the rest of the month. But it will have even greater effects on those who depend on a second, part-time job to supplement their stagnant incomes. It will be hard to hold down a second job when your first job has an unstable schedule.<sup>29</sup>

Walmart China claims that the CWHS can be legally deployed in its stores but the vast majority of labour scholars and worker activists and even the Guangdong provincial trade union disagree. A carefully-worded statement from the GDFTU argues that; '[A]s a retail enterprise applying the CWHS to all its employees, Walmart is violating national and provincial regulations. As such we are clearly opposed to it.'<sup>30</sup> The GDFTU also argued that that '[T]he Walmart-style work hour system can only be used by workplaces that operate a special roster system. Retail stores are not eligible to apply, and using it is a violation of labour law.' Shen Jianfeng, an Associate Professor at the China Institute of Industrial Relations, concurred, bluntly asserting that, 'Walmart's full implementation of the CWHS does not meet the existing legal requirements.'<sup>31</sup>

According to the *Labour Law* and *Labour Contract Law*, employers such as Walmart must undergo two processes prior to introducing a flexible system such as the CWHS. First, an internal procedure involving specific permission from each employee designated to work under the system obtained through 'sufficient consultation with the employees,'<sup>32</sup> and second, an administrative approval process that is determined by the relevant regional labour bureau.<sup>33</sup> Worker activists have argued that Walmart's actions fall short on both counts. In an open letter to Walmart president and CEO Doug McMillon on 19 July 2016, former employee You Tianyu accused Walmart China of 'imposing' the new working hours system, and 'unilaterally

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<sup>28</sup> [“沃尔玛回应综合工时制引发罢工：好意被曲解”](#) (“Walmart responds to the strikes over hours: goodwill has been misinterpreted”), *第一财经日报 China Business News*, 14 July 2016. [via *Ebrun*]

<sup>29</sup> Labor Notes, [“In China, Walmart Retail Workers Walk Out Over Unfair Scheduling”](#), 1 July 2016.

<sup>30</sup> [“广东省总工会：反对沃尔玛全员实施综合工时制”](#) (“GDFTU: Oppose Walmart's blanket imposition of the Comprehensive Hours System”), *Sina Finance*, 3 August 2016.

<sup>31</sup> Wang Weiyan, [综合工时制能否说改就改？](#) “Comprehensive Working Hours: Can the system be changed at will?” *Worker's Daily*, 10 Aug 2016.

<sup>32</sup> Article 4, *Labour Contract Law*.

<sup>33</sup> Article 39, *Labour Law*.

amending' employees' contracts.<sup>34</sup> Long-time Walmart employee Zhou Xianzhong sued Walmart over the CWHS in August 2016 arguing that '[T]he company needs to put the system on the table for discussion by all the workers.'<sup>35</sup>

The GDFTU has also pointed out that Walmart management did not secure proper governmental approval for the new scheduling system. As such, it encouraged enterprise unions at Walmart stores across the province to make sure that their members' voices were heard with regard to the CWHS and called on them to 'collect the views of workers and safeguard their legitimate rights and interests.'<sup>36</sup>

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<sup>34</sup> You Tianyu, "[致美国沃尔玛总部的信](#)" ("A Letter to the Headquarters of Walmart"), via China Labor Watch, 10 August 2016.

<sup>35</sup> China Labour Bulletin, "[China's Walmart workers take the boss to court](#)," 24 August 2016

<sup>36</sup> [广东省总工会：反对沃尔玛全员实施综合工时制](#)" ("GDFTU: Oppose Walmart's blanket imposition of the Comprehensive Hours System"), *Sina Finance*, 3 August 2016.



## Walmart and the All-China Federation of Trade Unions

Trade unions in 'post socialist countries' such as Russia, Vietnam and China come from a very different tradition to those in developed capitalist countries.<sup>37</sup> The ACFTU is one of China's three mass organizations tasked with forming bridges between the ruling Party and specific social groups.<sup>38</sup> It is supposed to serve as a 'transmission belt' via which the views of workers are transmitted up to the CPC leadership and the policies of the latter come down to workers. Moreover, according to the preamble of its constitution, the ACFTU's responsibility actually extends beyond 'the entire working class' to the 'interests of all the people of China,'<sup>39</sup> as defined by the Party.<sup>40</sup>

Industrial unions do exist but they have little impact and are in any case subordinate to the ACFTU. Workers have the right to organize workplace unions, but they must affiliate to the ACFTU and follow all procedures and bureaucratic practice to the letter.

From a structural viewpoint, the union certainly lives up to its name as a mass organization. It has approximately 287 million members and also a massive labour bureaucracy with approximately one million full time officials. These officials traditionally spend a lot of time sending pieces of paper and emails between departments: organizing charity and sports events; model worker events; meeting top-down quotas relating collective agreements that simply duplicate minimum labour standards; or establishing union branches via top-down agreements with employers. In fact, trade union officials are qualified civil servants and it is not uncommon for officials to be transferred to work in the ACFTU even though they have no trade union experience. As the organization is essentially structured as a labour bureaucracy rather than a representative trade union, this apparent misplacing of officials does impact on its operations. Indeed, representing Chinese workers was not specifically stipulated in China's *Trade Union Law* until an amendment in 2002.

Party leadership is a double-edged sword for the ACFTU. One edge serves as a source of political power that can work in favour of labour at key junctures. During the drafting of the China's first national *Labour Law* (1995), the ACFTU was able to

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<sup>37</sup> For more on trade unions in post socialist countries see Pringle and Clarke (2011) *The Challenge of Transition: Trade Unions in Russia, China and Vietnam*. Basingstoke: Palgrave.

<sup>38</sup> The All-China Women's Federation and the Communist Youth League are the other two organizations.

<sup>39</sup> [ACFTU Constitution](#).

<sup>40</sup> See Pringle, T (2011) *Trade Unions in China: the challenge of labour unrest*. Abingdon: Routledge.

counter pressure from the then Ministry of Labour that was arguing for an even more employer-friendly law than the one eventually passed. Likewise in the dramatic nationwide debates that raged over labour standards during the drafting of the *Labour Contract Law* (2008), the ACFTU was able to ensure that specific measures were included to punish employers who refused to issue contracts to workers. At city- and district-level, the ACFTU is able to draw on the authority of local Party and government authorities to force employers to comply with regulations when workers bring attention to violations such as wage arrears via strikes and demonstrations.

However, Party leadership and the absence of competition from other trade unions can also translate into passivity and weakness at the enterprise level. Traditionally, there has been little reason for enterprise unions to challenge employers as their authority is derived from the higher-level trade union and its political connections, rather than from members in the workplace. State policy throughout most of the reform period has focused on creating an investor-friendly environment in order to attract foreign investment and as a consequence, there has been little attention paid to the representation of workers' rights and interests to date.

This has left workers in a difficult situation. Enterprises trade unions were subordinate to management and dependent on district- or city-level unions to do anything in support of the workers. Unrepresented, workers would generally petition the labour bureau or other local state agencies for intervention against an employer violating labour laws. When government officials failed to react, workers were often left with only one option – to cause a disturbance in order to force a response. Such tactics invariably led to organizers being detained by the authorities and/or dismissed by employers. Meanwhile enterprise unions continued to act as 'flower vases' – institutional decorations to a labour relations system that rested on violence and coercion: frequent violent dispersal of desperate protests or petitions by police; and the occasional coercion of recalcitrant employers by local state authorities which, if necessary, would provide financial assistance to settle wage arrears or even injury compensation to ensure social and economic stability.

It was within this unique context that the ACFTU was able to establish trade unions in the notoriously anti-union Walmart.

During its first ten years of operating in China, Walmart steadfastly refused to allow ACFTU officials into its stores, in effect treating China's unions as it did unions everywhere else in the world. However, China's *Trade Union Law* stipulates that if 25 employees sign a letter demanding union representation in a given enterprise the boss cannot refuse. In July 2006, Ke Yulong, a 29-year old meat packer and two colleagues employed in the Quanzhou store in Fujian, approached the local district

union about setting up a union. The ACFTU saw its chance.<sup>41</sup>

To the surprise of many, the ACFTU helped workers meet, prepare signed letters to Walmart China and even organized clandestine committees and that would form the legal basis for store-level union committees. This organizing drive was repeated across 17 stores in July and August 2006. Within six weeks, Walmart had backed down. However, it soon became apparent that this was not a victory for Walmart workers but rather a political victory for the ACFTU, won with promises to Walmart not to rock the boat in any of its growing number of stores in China. The ACFTU was not really concerned with whether or not Walmart's workers would benefit from unionization, it simply wanted the domestic and international acclaim that came with organizing one of the world's most anti-union companies.

Asked why Walmart had agreed to allow trade unions into its China stores in 2006 while it strongly resisted unionization in other countries, Jonathan Dong, a spokesman for Walmart China said: 'The union in China is fundamentally different from unions in the West...The union has made it clear that its goal is to work with employers not promote confrontation.'<sup>42</sup> Joe Hatfield, the president of Walmart Asia, added that: 'I fully anticipate working collaboratively with the leadership of the ACFTU and union organisations at all levels to create a model working relationship.'<sup>43</sup>

Following the 19<sup>th</sup> Party Congress in October 2017, however, the CPC is now more focused on improving the livelihoods of ordinary people than high-speed economic growth<sup>44</sup> and this could eventually bring sufficient pressure to bear on the ACFTU, forcing it to become more assertive and pro-worker in its dealings with enterprise management.

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<sup>41</sup> Anita Chan, "[Organizing Wal-Mart: The Chinese Trade Union at a Crossroads](#)", *The Asia-Pacific Journal*, 4 September 2006.

<sup>42</sup> "[Wal-Mart to allow workers to join unions in China](#)," *Reuters via China Daily*, 11 August 2006.

<sup>43</sup> Jonathan Watts, "[Wal-Mart backs down and allows Chinese workers to join union](#)," *The Guardian*, 11 August 2006.

<sup>44</sup> "[China Tells Global Companies to Start Taking Care of Workers](#)," *Bloomberg*, 26 October 2017.

## Walmart workers take action

The seeming inability or lack of desire of the ACFTU to stand up for the rights and interests of Walmart employees during its first decade at the company in China left aggrieved workers with little option but to take action themselves.

The response of Walmart workers to management abuses, in particular the implementation of the CWHS in 2016, can be divided into three types; legal action, strikes and other collective protests, plus online organizing. These actions are of course not exclusive or independent from each other: rather, they all play a role in the overall objective of improving pay and working conditions at Walmart and in establishing an effective trade union presence that can protect workers' rights and interests on a long-term basis through collective bargaining with management.

### Legal action against Walmart

In Shenzhen and the neighbouring city of Dongguan in particular, Walmart workers have been taking their grievances against their employer through the formal framework of labour dispute resolution, which involves filing a case with the local labour dispute arbitration committee and then, if unsuccessful, the civil courts.

The Lao Wei Law Firm, based in Shenzhen, has taken the lead in this campaign with more than 100 Walmart-related arbitration and court cases under its belt. The Shenzhen-based Chunfeng Labour Dispute Service Centre has also supported workers' legal cases, and many other workers have benefitted from the support, legal advice and lawyers provided by the WCWA through its online Walmart social media groups.

There follows three case studies which illustrate not only the importance of legal action but also its limitations. These cases show that legal activism is not confined to the narrow use of the law to protect individual workers' rights. At its most effective, it is a tool for building awareness of collective interests and in strengthening collective action. In this context, individual legal actions can be seen as stepping stones to developing a long-term collective bargaining platform within Walmart China, store by store, city by city and eventually across China.

### ***Wang Shishu vs. Walmart Shenzhen***

Wang Shishu started out as a dishwasher at Walmart's first store in Shenzhen in 1996. By 2012, he was a veteran employee who acted as a *de facto* workers' representative at the store. It was in this capacity that he organized a petition against declining wage levels and unfair management practices when Walmart introduced a new wage scheme in July 2012. The petition was also presented to union officials with the demand that the union start negotiating with the company for a decent pay rise.

Walmart fired him within a month. A two-year legal battle followed during which Walmart challenged an initial labour arbitration committee's ruling in his favour. Wang was finally reinstated in April 2014, after rejecting offers of an out-of-court settlement.



Wang Shishu: Photograph by Rob Schmitz

This determination to get his job back bucked the trend of many workplace activists who tended to seek work elsewhere once dismissed by an employer. Following reinstatement, Wang continued to organize his colleagues to pressure the store management to improve pay and conditions and for the trade union to represent members' interests. Walmart fired him again.

Wang challenged this second sacking at the Futian District Labour Dispute Arbitration Committee. On 28 July, 2015, the Committee found that Walmart had violated its internal company policy by terminating Wang's employment contract, and ruled in favour of reinstatement. A battle through the courts followed and on 8 April 2016, the Shenzhen Municipal Intermediate People's Court reached a mediated settlement in which Wang Shishu was awarded fair and reasonable compensation.<sup>45</sup>

### ***Zhang Liya vs. Walmart Shenzhen***

Zhang Liya was another Walmart veteran employed at Shenzhen Store 1059. In September 2015, he announced that he would run for store trade union president in the upcoming union elections. He put together an election team that called for a transparent and democratic election and an end to management attempts at manipulation. In an online post Zhang wrote:

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<sup>45</sup> The court's civil mediation document (民事调解书) was confidential and as such the exact compensation amount cannot be stated.

We have a lot of evidence that Walmart is violating trade union laws in China by rigging union elections... The incumbent president and committee members here have been putting pressure on workers, asking them to only vote for candidates favoured by the company. They even directly ordered union members to leave online chat groups set up by my team. They also tried to get workers to sign an agreement saying they will not vote for me as president.<sup>46</sup>

Zhang Liya was co-founder of the WCWA and is now chief representative of the newly-formed Walmart Workers Association (China) (WWA(C)) - (沃尔玛(中国)员工联谊会). With a reputation for store-level activism and a determination to make the trade union more democratic, it is not surprising that the store management found opportunities to issue six disciplinary warnings to Zhang between April 2015 and May 2016 and eventually dismiss him on 6 May 2016. In its final warning, Walmart accused Zhang of slandering the company's image and inciting workers to make trouble by posting to a Walmart workers' social media platform. On 2 August 2016, the Futian District Labour Dispute Arbitration Committee found that Walmart's actions were consistent with Chinese labour law. Zhang has appealed the decision.

#### ***Allowances: Wage or Welfare?***

One of the side-effects of Walmart enforcing the CWHS was that it came with a change to how employees' basic wages and benefits such as meal subsidies were calculated. Meal subsidies had long been considered a separate employee benefit at Walmart but with the introduction of the CWHS, these subsidies were included in the employees' basic wage. In two separate arbitration cases brought by Walmart employees in Shenzhen, the plaintiffs argued that this resulted in a net loss for employees of about 19 yuan per month. Lawyers for the workers argued that the inclusion of the meal allowance into employee wages was illegal because Chinese labour law categorizes such subsidies as 'welfare' rather than 'wages.' The arbitration committee disagreed, referring to Article 4 of the *Labour Contract Law* that stipulates contractual changes 'involving the rights and interests of employees' must be made in consultation with the Staff and Workers' Congress or via discussion with the entire workforce. According to the Labour Arbitration Committee's puzzling ruling, this 'democratic procedure' was met via the existence of Walmart's Workers Manual.

It is important to note here that if the trade union had taken a stronger stand against the CWHS, it could have represented the workers in court, or even taken Walmart to court itself, and emphatically stated that the workers' manual was not the result of any democratic consultation with the workers but merely a company document

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<sup>46</sup> China Labour Bulletin, "[Walmart workers in China push for genuine trade union elections](#)", 28 October 2015.

unilaterally issued by Walmart.

Both worker plaintiffs are considering an appeal and this could create another opportunity to challenge the legality of using the CWHS in China's retail sector.

### **Strikes and collective protests**

Walmart workers have a long history of collective struggle in China. Collective action has not always been successful, largely because the workers did not have a strong organizational base or trade union support. However, the strikes and collective protests that have occurred at Walmart, usually in response to store closures and unilaterally imposed changes to pay levels and working conditions, have clearly shown that the vast majority of Walmart workers do have shared interests and that if they can organize more effectively, their voices will be heard.

#### ***Changde Walmart workers fight for compensation***

Probably the best known collective action by Walmart workers occurred in the spring of 2014 in the central city of Changde. This incident was remarkable for the fact that it was led by the store's trade union chairman, Huang Xingguo.

On 4 March 2014, following a sudden announcement that the store was to close, Huang Xingguo called a union meeting during which employees stated their demands, discussed strategies, and set up a negotiation team to bargain with management on the issue of compensation for laid-off workers.<sup>47</sup> The store union also notified the municipal trade union federation, local labour authorities and the police of Walmart's actions. Huang had previously taken part in a training session organized by the provincial trade union federation and knew his labour law.

There are very clear provisions in our employment contract that reflect provisions in the Labour Law, regarding termination of contract... For such layoffs, a meeting of employees has to be convened 30 days in advance, directly or through the union, and the corporate layoff proposal must be studied and reported to the labour authorities. There is a legal process to observe.<sup>48</sup>

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<sup>47</sup> China Labour Bulletin, "[Taking a stand: Trade union chairman fights back against Walmart](#)", 24 June 2014.

<sup>48</sup> *Ibid.*



Changde Walmart workers united in their demands for proper compensation, March 2014. Huang Xingguo is in the front row, fourth from the left.

With the full support from his union members, Huang initiated collective action at the store that included setting up pickets to prevent managers from clearing the store of merchandise. The store union organized a negotiating team so as to reduce Walmart's opportunities to bribe or intimidate individual members. These bodies were made up of a nine-member 'special rights team' and a three-member negotiating team. The store union's 15 demands focused on Walmart's lack of compliance with labour law. The company's failure to comply with several specific provisions of labour law, the workers' argued, entitled them to double compensation, as stipulated in Article 87 of the *Labour Contract Law*.<sup>49</sup>

In response to the workers' demands, management simply gave the staff two options: relocate to another Walmart store (the nearest of which was over 100 kilometres away) or accept a 'substandard severance package.' Management then hired temporary workers to remove merchandise from the store leading to clashes with the pickets.<sup>50</sup>

The Changde Municipal Federation of Trade Unions initially supported the store

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<sup>49</sup> Article 87 of the *Labour Contract Law* states: 'If an Employer revokes or terminates a labor contract in violation of this Law, it shall pay the employee double the amount of damages provided for in Article 47 of this law.'

<sup>50</sup> China Labour Bulletin, "[Walmart workers in China blockade store in protest at closure plan](#)", 20 March, 2014



union's struggle for fair compensation but soon changed its stance after the city government's commercial bureau warned of the potential damage to Changde's investment environment. Follow-up meetings with government officials were also unproductive. Huang told China Labour Bulletin Director Han Dongfang:

Two coordination meetings were convened... The government did not accept my viewpoint and claimed that the closure was lawful... At one meeting I told the leaders of the district and municipal labour authorities that the legal provisions on 30 days' notice were very clear, even a junior high school student could understand them... They said, 'if you are a high school student, we are university lecturers, and our conclusion is what counts.'<sup>51</sup>

The various municipal government departments involved in the dispute consistently sided with Walmart rather than with the store trade union. Huang told the *Financial Times* that 'there was no chance for us to express our views. The government acted like a judge. Walmart would always win and the union was always wrong.'<sup>52</sup>

The municipal government did however persuade Walmart to improve its original compensation offer by 3,000 yuan for each employee, and this combined with a relentless campaign of pressure and intimidation on the workers and their families led to most staff taking the offer.

Huang and a few other workers refused the offer and instead filed a case with Changde Labour Dispute Arbitration Committee. In June 2014, the arbitration committee ruled in favour of Walmart but that did not mean an end to the legal struggle as Huang pointed out in a June 2017 blog post:

We have been through collective bargaining, two rounds of arbitration and three court cases – from the district court, to the intermediate court, to the high court. We currently have an appeal at the Supreme Court. It is no longer about compensation – we won't get any. We want an apology from Walmart and we want our human dignity back... We hope to have news from the Supreme Court soon.<sup>53</sup>

Huang had kept a relatively low profile after the initial court ruling but in mid-2017 he was elected Media Officer for the WWA(C) and this may herald a new stage in his work as a labour organiser.

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<sup>51</sup> China Labour Bulletin, "[Taking a stand: Trade union chairman fights back against Walmart](#)", 24 June 2014.

<sup>52</sup> Tom Mitchell, "[Union star rises from Walmart labour dispute](#)", *Financial Times*, 7 April 2014 (pay walled).

<sup>53</sup> WWA(C) Blog, "[黄兴国在沃尔玛（中国）员工联谊会选举群的演讲](#)" ("Huang Xingguo's speech at the WWA(C) Election Committee"), 5 June 2017.

### ***The July 2016 Strikes***

On 1 July 2016, about 70 staff at Walmart Store 5782 in Nanchang went out on strike. The next day they were joined by 30 staff at Store 2039, also in Nanchang, and on 4 July about 60 workers at Store 0209 in Chengdu and staff at Store 3422 in Harbin also went out on strike. The strikers all had the same demands, namely that Walmart abandon the unilaterally imposed CWHS, revoke the inclusion of the meal subsidy and attendance bonuses in the basic monthly wage, pay wages separately in accordance with best practice, and stop manipulating trade union elections.

Workers at both Nanchang stores went back to work after management promised on 3 July they would reply to the workers' demands within seven days.<sup>54</sup> The workers in the Chengdu strike meanwhile sought support from American Walmart workers and in turn supported their fight for a US\$15 hourly wage.<sup>55</sup> The workers from the two countries even discussed strike strategies using Skype.

Some labour scholars in China dubbed the Walmart strikes an unprecedented example of cross-workplace organizing. And the international media were certainly keen to promote them as a new stage in worker militancy. The *Financial Times* for example reported that the strikes had 'realised the Communist party's "fear of coordinated cross-country labour unrest."'”<sup>56</sup>

The reality however was less dramatic: None of the stores were actually forced to close during the strikes and they did not immediately stop the implementation of the CWHS. While Walmart in China certainly provides the material conditions for cross-store solidarity via the corporation's pursuit of flexibility and standardization, there is no direct evidence that the July strikes were an example of this. WCWA co-founder Zhang Jun explained that there was obviously awareness that the CWHS was being rolled out across stores all over China and that workers were discussing the issue online in great numbers. But he stressed this did not necessarily equate to coordinated strike action.<sup>57</sup>

Zhang Zhiru, director of the Shenzhen-based Chunfeng Labour Dispute Service Centre, suggested that one factor for the timing of the strikes was that the CWHS was introduced in May and as a result the wages issued at the end of June were lower due to a reduction in overtime and concomitant changes in meal subsidies and the

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<sup>54</sup> China Labour Bulletin, "[Strikes at Walmart stores in China begin to spread](#)", 4 July 2016.

<sup>55</sup> WCWA Blog, "沃尔玛中国员工联谊会新闻发布之 25," ("WCWA News Issue 25"), 4 July 2016, published as part of WCWA news compilation [沃尔玛中国员工联谊会最新消息分享!](#) posted on 21 August 2016.

<sup>56</sup> Yuan Yang, "[Walmart workers launch wildcat strikes across China](#)", *Financial Times*, 7 July, 2016 (pay walled).

<sup>57</sup> Interview, Zhang Jun, Hong Kong, 23 November 2016.

attendance bonus discussed above.<sup>58</sup> This sparked strikes that appeared to be coordinated but were in fact the responses of separate groups of workers to the same issue, lower wages and restrictive management practices.

Although the strikes may not have been particularly effective or dramatic, their symbolic impact was – and remains – important. They demonstrated to the thousands of Walmart workers who had joined the WCWA chatrooms and other social media platforms that it was possible to act collectively and that resistance could spread beyond the virtual realm and into the workplace itself.

### Online Organizing

The WCWA started out as a relatively low profile online forum that provided advice and legal assistance to Walmart employees suffering from violations of their labour rights. However, worker participation increased dramatically when the company announced the introduction of the CWHS in May 2016. Some reports put participation at more than 20,000 workers using online forums to discuss and criticize Walmart's new policy. For WCWA co-founder Zhang Jun, this was further proof that social media platforms are now a fundamental and essential tool that can facilitate communication between workers and overcome censorship and the unwillingness of mainstream media to report workers' voices. CLB Director Han Dongfang agreed, pointing out that:

No matter if you are in a store in Harbin or Chengdu, thousands of miles away, Walmart managers are playing the same game and exploiting workers in the same ways. If a Walmart worker has been forced to sign up to the CWHS in Shenzhen, then Walmart workers in Nanchang need to know about it. And through social media, they can.<sup>59</sup>

The WCWA has been responsible for establishing probably the most successful labour-related cluster of social media platforms in China's short history of social media. Zhang Jun argues that it has functioned as an authentic workers' voice. But he also points to the limits of social media:

It has brought us together. For example, without social media, I may not have met Zhang Liya or [director of the Lao Wei Law Firm] Duan Yi. Yes, it is our voice and we use it to increase pressure on capital – in this case Walmart. But it is not a panacea either. It is one more tool of organizing that can increase the chances of success. This is not the same as saying success is impossible without social

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<sup>58</sup> Interview, Zhang Zhiru, December 2016.

<sup>59</sup> Interview, Han Dongfang, Hong Kong, 3 December 2016.

media.<sup>60</sup>

There are of course some negative aspects to using social media to build a labour movement. The relationship between the WCWA, the WWDG, and now the Walmart Workers' Association (China), is far from united and has been marked by bitter online arguments that at times have degenerated into personalized abuse. Sometimes, this has been encouraged by online trolls using fake reports and posts to destroy solidarity. At other times, anonymously-generated viruses can have a particularly devastating impact on workers' blogs. Zhang Jun explained:

The WeChat groups disrupted by viruses are relatively easy to rebuild using a new account name. But blogs are more serious as they contain longer posts and opinions posted by workers and activists that are hard to re-post online once a blog is disrupted by a virus.<sup>61</sup>

Despite their differences, a key target and a shared focus for the online groups has been improving worker representation in store trade unions, and reforming the union from the grassroots up. The WCWA has focused on publicizing and promoting workers' views on the trade union and providing online and legal assistance to individual Walmart workers in dispute with management. The WWDG has placed more emphasis on face-to-face contact with workers whenever possible with a distinct aim of training and preparation for using collective bargaining as an industrial relations instrument to improve representation, pay and conditions. Neither tactic is necessarily exclusive of the other.

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<sup>60</sup> Interview Zhang Jun, Hong Kong, 23 November 2016.

<sup>61</sup> *Ibid.*

## Walmart workers and the All-China Federation of Trade Unions

A fundamental aim of Walmart worker activists in China, both online and offline, has been to improve workplace representation. In this they have focused on two issues: First, lobbying the Party-led local unions to provide support and leadership to store unions. Second, preventing Walmart from manipulating store union elections and firing trade union members who dare to speak out or act against the wishes of their employers.

On 27 May 2015, Wang Shishu and small group of other activists interrupted a ceremony in Shenzhen to mark the launch of the O2O platform *Walmart To Go*. The activists handed out a leaflet written by Wang that has since become a rallying call for genuine trade unionism in China. In it Wang asks:

Where was union when Walmart was laying off people in 2013 and 2014? Over 15 per cent of Walmart China's frontline workers are getting older but their workloads are not reduced and their wages are effectively capped. Why isn't the union speaking out for these people?<sup>62</sup>

The leaflet criticized also the ACFTU's anachronistic model of collective consultation (集体协商), the process through which the overwhelming majority of collective contracts between employers the trade unions in China are concluded. The ACFTU model represents a non-adversarial approach to collective negotiations that assumes a level playing field and shared interests between employers and employees. The failure of collective consultation – and the ACFTU's promotion of it – to keep up with Walmart workers' aspirations for a decent wage and working conditions was explicitly criticized in Wang Shishu's leaflet:

Employees will recall that, prior to the trade union being established at Walmart, annual wage increases were between 10 and 12 percent – the highest was 14 percent. But since 2007 when ACFTU central negotiators stepped in the annual wage rate increase has gone down each year: from no increase in the first year, to eight percent in the second year, seven percent the next year, then five percent and now four percent this year!<sup>63</sup>

Wang denounced the ACFTU's national collective consultation representatives Ai Ronggang and Wang Ying as 'management-controlled puppets' who 'represent the

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<sup>62</sup> Wang Shishu, “[诚信行事的企业文化，拒绝黄色傀儡工会](#)” (“Toward a working culture of good faith: we reject the yellow puppet trade union”), 10 May 2015.

<sup>63</sup> *Ibid.*

interests of capital and ignore the legitimate rights and interests of workers.<sup>64</sup>

It is important to note here that, by 2015, workers in hundreds of enterprises across China had responded to the failure of the ACFTU to represent them by planting the seeds of real collective bargaining during disputes with management. CLB has catalogued numerous examples of successful enterprise collective bargaining over the last decade<sup>65</sup> in which the workers themselves organized to defend their rights and interests without the assistance of the trade union. Workers elected their own bargaining representatives, formulated clear demands, discussed bargaining strategies and voted on management proposals. These examples of collective bargaining, however, have tended to be isolated cases in which workers responded to management attacks with collective action. Since there was no formal bargaining structure in place, workers had to rely on their own resources and initiative. Moreover, the impressive solidarity built up during many of these disputes tended to dissipate once the conflict was resolved.

During this period, workers often asked civil society labour groups, especially well-established organizations based in Guangdong, for help in organizing, electing representatives and framing their bargaining strategy. Following the 2015 crackdown on civil society, however these groups are no longer in a position to provide as much concrete help and collective bargaining expertise as they once did. As such it has become incumbent on the trade union to take over the work started by civil society and really stand with the workers in negotiations with management. Indeed, civil society activists are now openly suggesting to workers that they seek out the trade union for help in resolving their collective disputes with management.

The next step, as identified by CLB Director Han Dongfang, is to get workers involved in the union at the enterprise level so that a real and sustainable collective bargaining system can be established: And not just in individual enterprises but eventually across corporations and entire industrial and service sectors in China. The key however is to ensure that workers are the most important element in the process:

Enterprise-level trade union representation and collective bargaining is something we need to build brick-by-brick. But we are not just building a house; we need to put people – workers – in it. We need workers to own this house [of collective bargaining].<sup>66</sup>

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<sup>64</sup> [“沃尔玛中国员工联名致信中华全国总工会的请愿书”](#) (“Open Petition to the ACFTU from Walmart Workers”) – Blog post by the WCWA, deleted and reposted via [Jianjiaobuluo.com](#)

<sup>65</sup> See the [Worker Activism and Collective Bargaining](#) section on CLB’s website.

<sup>66</sup> Interview, Han Dongfang, Hong Kong, 3 December 2016.

One encouraging sign in this regard is the increasing awareness among ordinary workers of the importance of trade union representation and the re-emergence in the online platforms of the phrase ‘trade union activist’ (工会积极分子), a term not seen in the Chinese labour movement since early 1950s.

While all the Walmart workers groups have at times expressed frustration with the ACFTU’s inability to go beyond limited and *pro forma* declarations of support for workers, there have been a few indications that the union realizes it could do more to help. In May 2016, the out-spoken vice-chair of the Shenzhen Federation of Trade Unions, Wang Tongxin reportedly chided union representatives at Walmart stores for their inaction over the rollout of the CWHS: ‘What does the ACFTU stand for?’ he asked. ‘As representatives you should listen to the workers’ demands and bring them to ACFTU, not coerce workers into signing the new contracts.’ Wang reportedly said the representatives were ‘heading in the wrong direction’ and he instructed them to ‘strictly observe developments in your respective Walmart branches.’<sup>67</sup>

### Positive signs

On 4 September 2017, the Walmart Workers’ Association (China) announced that Walmart was quietly shelving the comprehensive working hours system in some of its stores and reverting to the standard working hours system in which employees work eight hours a day, five days a week.<sup>68</sup>

Three stores in eastern China, Stores 3417, 3420 and 0603, had reportedly already cancelled the CWHS. An employee at Store 3417 confirmed that the standard working hours system had been restored on 22 July. ‘I have not seen the relevant documents myself, I guess they are in HR, but the store really has reverted to the five days, eight hours system.’<sup>69</sup>

The decision of some Walmart stores to revert back to the standard working hours system can be seen as a victory for worker activism, online organizing and support from legal scholars and to some extent the ACFTU in putting pressure on local governments to reassess their position on Walmart’s use of the CWHS. In most cities, the local labour department has to examine and approve a company’s use of the CWHS on an annual basis and so, given the timing of about one year after Walmart first sought to implement the CWHS, it is possible that the local labour departments responsible for the three stores mentioned above did in fact rescind their approval. If

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<sup>67</sup> China Labour Bulletin “[China’s Walmart workers organise online and get official union backing](#),” 7 June 2016.

<sup>68</sup> WWA(C), “[沃尔玛违法强推综合工时制已成强弩之末](#)” (“Has Walmart pushed its illegal working hours system as far as it could?”), 4 September 2017.

<sup>69</sup> *Ibid*

workers continue to put pressure on other local labour departments and emphasize the illegality of Walmart's use of the CWHS, there is a chance that the retail giant will eventually have to reconsider its flexible working programs across China.

However, simply getting rid of the CWHS and reverting to the traditional standard working hours system will not solve all the problems at Walmart China:

- Even under a standard working hours system, Walmart can still find ways to erode employee's salaries and benefits.
- Job security will not be improved. Walmart can still close stores or reassign employees arbitrarily and without consultation with worker representatives.
- Walmart can still find ways to dismiss employees it deems to be trouble-makers.
- Hundreds of employees have been harassed and intimidated by Walmart managers in their zeal to fully implement the CWHS. Will those employees receive an apology or compensation from Walmart for their mistreatment?
- Numerous legal challenges to the use of the CWHS are still in the courts. Will employees be compensated for legal costs if Walmart unilaterally decides to revert to a standard working hours system?

Important as these issues are, they are still secondary however to the fundamental issue of worker representation and the role of the trade union in Walmart stores.

### **An opportunity for genuine trade unionism**

As noted above, there are now clear signs that Walmart workers increasingly recognize that without democratic representation by the store trade union, there is little chance that worker grievances over pay, benefits, working conditions and management abuses can be effectively addressed.

Workers can of course demand that Walmart live up to its stated corporate philosophy of 'respect for the individual' in which: 'Every associate's opinion is respected' and 'Managers are considered "servant leaders" who help new associates realize their potential through training, praise and constructive feedback.'<sup>70</sup>

However, this is highly unlikely to happen unless there is a strong trade union presence in place to rein in over-zealous managers and protect workers from abuse and intimidation.

Workers can also demand that the local government and courts create fair and just administrative and legal environment for both workers and management but, as we

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<sup>70</sup> ["The Wal-Mart Culture"](#), Walmart China Website.



have seen from the battle of Walmart workers in Changde for fair and just compensation, this is unlikely to happen as long as huge corporations with virtually unlimited resources can put pressure on local governments and courts to rule in their favour. Workers need all the help they can get when faced with corporate giants like Walmart, and it is absolutely essential that the trade union stands firmly on the side of the workers if they are to make any progress.



*Walmart worker activists make their point: 'Implement the spirit of General Secretary Xi Jinping's speech, Walmart workers stand up, Oppose puppet trade union elections.'*

While some provincial and municipal trade union federations have voiced support for Walmart workers in their campaign against the CWHS, the ACFTU as a national organization remains largely inert. There is however some reason for optimism in this regard too. The pressure on the ACFTU to reform is not just coming from workers. In 2015, China's President and Party Secretary Xi Jinping ordered the ACFTU to come up with a plan to improve workplace representation. The ACFTU has so far managed to procrastinate and simply issue more platitudes pledging its allegiance to the Party and to Xi Jinping in particular, but the pressure on the ACFTU to get its act together and really serve the interests of China's workers is not going away.

Xi Jinping's anti-corruption drive won him considerable support among China's workers but he cannot afford to sacrifice that support. Indeed, in his landmark speech to the 19<sup>th</sup> Party Congress in Beijing on 18 October, Xi pledged to continue the war on corruption while at the same time focusing more on improving people's livelihoods, creating more and better jobs and ensuring everyone has proper pension and medical coverage. Specifically Xi called on all parties to:

Consolidate the tripartite system of government, trade union and enterprise negotiations so as to build harmonious labour relations and ensure that workers get a fair and decent income for their endeavours.<sup>71</sup>

China's workers are well aware of Xi Jinping's demands on the ACFTU and will continue to apply pressure from the grassroots in order to match the pressure from above. A conference organized by the WWA(C) in at Hengshan, Hunan, on 30-31 July 2017 was dominated by discussion of Xi Jinping's trade union reform initiative. The meeting of Walmart worker representatives such as Zhang Liya and Huang Xingguo, civil society labour groups, lawyers and scholars debated the aims and objectives of the WWA(C) and called on workers to make sure their trade union representatives fulfil their legal duty to safeguard workers' rights and interests through collective bargaining with management.<sup>72</sup>

Achieving genuine trade unionism and collective bargaining in China will be a long and probably tortuous process. It will meet resistance from ACFTU officials determined to defend their own vested interests and from corporations determined not to allow a real trade union movement to develop in China. At some point however, the sheer weight of pressure, from workers below and the Party above, will begin to tell, and at that point Walmart will have to respond. It may continue with its well-established union bashing practices or it may finally recognize the importance of engaging with workers as equals in constructive negotiations on pay and working conditions that benefit all parties involved.

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<sup>71</sup> [习近平十九大报告全文（实录）](#) (Complete transcript of Xi Jinping's report to the 19<sup>th</sup> Party Congress), *Xinhua News Agency*, 18 October 2017.

<sup>72</sup> [【公告3】沃尔玛（中国）员工联谊会衡山聚会简讯](#) (Notice No.3. WWA(C) Hengshan meeting bulletin), 2 August 2017.

## Afterword by Han Dongfang

Walmart may at times get away with its arrogant treatment of workers in the United States but it will not succeed in China. For as long as the Chinese Communist Party is in place and for as long as the Party cares about its own legitimacy in the eyes of workers, Walmart will have to back down and respect China's labour law.

Walmart workers today are very different, and the Chinese economy is very different, from 21 years ago when Walmart opened its first store in Shenzhen. Walmart workers across China are aware of their labour rights and are determined to defend them. At the same time, they have seen their relatively high incomes of the 1990s fall away while the incomes of factory workers and those in many other industries steadily increased. Today, Walmart workers in China are already near the bottom of the economic pile and they will not be pushed down any further. They are demanding the right to bargain collectively with their employer and for a strong trade union to represent them. This is an unstoppable force.

If Walmart continues to resist its workers' legitimate demands, the Chinese Communist Party, in order to maintain its own legitimacy, will have to stand with the workers and against Walmart.

Of course, Walmart could choose to leave China altogether but if it wants to stay then it will have to abide by China's labour laws and give its employees the decent pay and decent work they deserve.

*China Labour Bulletin Executive Director Han Dongfang*

*31 October 2017*