

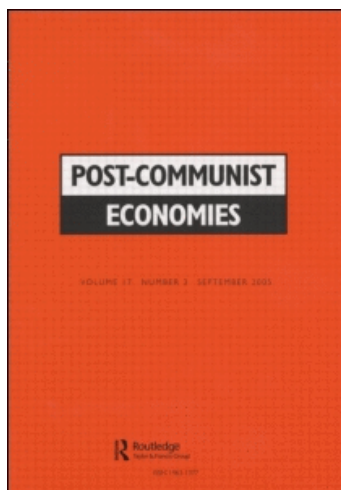
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The Changing Character of Strikes in Vietnam

SIMON CLARKE

Abstract

Vietnam introduced mechanisms for the resolution of collective disputes under the 1994 Labour Code, which provided for the use of the strike weapon as a last resort. Since then, Vietnam has seen around 100 reported strikes a year, not one of which has been called in accordance with the legal procedure, with a sharp increase in strike activity at the beginning of 2006. The character of strikes is also changing and the government is anxious to address the problem. Vietnamese discussion has focused on legislative reforms, but this is to ignore the fundamental substantive issue underlying the prevalence of wildcat strikes, which is the failure to develop a system of industrial relations within which the Vietnamese trade unions can effectively represent their members. This issue is coming to a head as a tight labour market encourages workers to press their interests beyond the rights embodied in the law.

The Labour Code introduced in Vietnam in 1994 provides a system for the resolution of individual and collective labour disputes through conciliation and arbitration and gives employees the right to strike in the case of a collective labour dispute once these procedures have been exhausted, provided the strike decision is made by the trade union and endorsed by a majority of employees. Employees in certain essential industries and enterprises are prohibited from striking and the Prime Minister can suspend or end a strike if it 'is considered to be detrimental to the national economy or public safety' (Article 175). Between 1995 and 2005 there were 978 officially reported strikes, although not one of these strikes has followed the prescribed legal procedure.¹

The Vietnamese authorities are not especially agitated about the problem of strikes, but do see them as a threat to social order and to the attractiveness of Vietnam to foreign investors. There has been an on-going discussion about how to reduce the incidence of wildcat strikes which has focused on the complexity of the legally prescribed strike procedures and the ignorance of those procedures on the part of employers and employees. A draft strike decree has been discussed very widely, with consultation meetings, at which the various parties freely express their views, held throughout the country and reported fully in the press. The decree was superseded by a more ambitious proposal to revise Chapter 14 of the Labour Code, on dispute

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resolution. The first draft of this revision was circulated in January 2006, with a view to being put before the National Assembly in June for adoption by October.

The long drawn-out discussion of new strike legislation has concentrated on the attempt to simplify the legal procedure for calling a strike. Under Article 163 of the 2002 revision of the Labour Code (Socialist Republic of Vietnam, 2002), all enterprises with a trade union are required to set up a conciliation council with an equal number of representatives of employer and employees (until 2002 this did not apply to foreign-owned enterprises or those with fewer than 10 employees). If agreement around a collective dispute cannot be reached in the conciliation council the dispute is referred upwards to the regional Arbitration Council. If the trade union is not satisfied with the result of arbitration it can refer the case to court or, with the support of a majority vote of the labour force, it can legally call a strike.²

In practice the prescribed methods of conflict resolution do not work. Many enterprises have not set up conciliation councils and, even where they do exist, very few individual or collective disputes are referred to them. All 10 enterprises that we visited had conciliation councils, but not one had ever heard a case. The Ho Chi Minh City (HCMC) Arbitration Council conducted a survey of conciliation at the enterprise and district level (covering 24 districts), which identified 84 collective cases and 1,118 individual cases which had been to conciliation since 1995, of which 823 had been successfully resolved. The conciliator in District One of HCMC provided conciliation in about 100 cases in 2003. However, many of these cases had not been referred directly by the complainant. As the HCMC Labour Department (DOLISA) representative explained to us, they do not wait for a request, they just go down to the enterprise as soon as they hear about a problem, usually when the HR Department or a foreman phones DOLISA and asks for help. This kind of fire fighting is not officially a function of DOLISA, but they have been asked to take it on by the local People's Committee — 'we don't call it "strike resolution", we call it "initial resolution to ensure social stability in the district"'.

Only about one case a year in the whole country reaches the stage of arbitration. The Hanoi Arbitration Council has had only two cases since it was set up in 1997, of which one was resolved and the other was sent to the Labour Court as individual cases. The HCMC Arbitration Council has had only one case since it was set up in 1998.

The main items being considered for revision, apart from the removal of ambiguities and inconsistencies in the legislation, have been a shortening of the period required for conciliation, which is at the moment a minimum of 17 days, the role of conciliation and arbitration in the processing of collective disputes, the role of the trade union and the requirement of support from a majority of the labour force to call a strike. The most contentious issue has been the role of the trade union in a strike. Nationally the Vietnam General Confederation of Labour (VGCL) has generally resisted the removal of the requirement that a strike be led by the enterprise trade union, but some of its provincial organisations have argued that this requirement leaves trade union officers vulnerable to victimisation if they lead a strike, while it prevents workers in non-union enterprises from striking. A compromise to allow workers in non-unionised enterprises to strike would be to give the regional trade union organisation a role through the possibility that 'the local Trade Union organisations shall appoint their representatives at enterprises to help labourers exercise their right to strike' (Interview with Mrs. Nguyen Thi Hoai Thu, chairwoman of the National Assembly Committee for Social Affairs, *Vietnam Law*, 29 October 2004), although this has not been incorporated into the January 2006 draft amendments to the Labour Code.

In practice, as noted above, strikes are nearly always resolved by the formation of an *ad hoc* task force of VGCL and DOLISA officials to visit the strike-affected enterprise in an effort to settle the conflict. HCMC, Binh Duong and Dong Nai People's Committees have recently formalised such regular strike task forces comprising DOLISA, VGCL and VCCI (Vietnam Chamber of Commerce and Industry, the employers' organisation) staff. This method of by-passing the ineffective legal strike settlement procedures is still controversial, but some officials have proposed that the revision of the Labour Code should provide a juridical foundation for such intervention in the resolution of a strike, which at the moment is a purely pragmatic response adopted at the request of local People's Committees, which has no legal foundation.

The problem of strikes in Vietnam is not so much that the legal procedures do not work as that the wildcat strike has proved to be the most effective means for workers to redress their grievances. This has been a result of the tolerance, and even support, shown by the authorities for workers who strike to achieve what are regarded as their legitimate interests, but also of the failure of the trade unions effectively to represent those interests, particularly in the foreign-owned and domestic private sectors. Conciliation councils are ineffective not because the procedures are complex but because trade unions do not take disputes to conciliation and workers do not have confidence in their neutrality — employee representatives are often managers and are unlikely to rule against the employer. Moreover, increasing labour shortage has led to a change in the character of strikes, which means that they present an increasing challenge to the industrial relations system in Vietnam.

The first section of this article will provide an analysis of the character of strikes in Vietnam since the introduction of the 1994 Labour Code, looking at available data on the incidence of strikes, the issues that provoke strikes, the process of resolution of strikes and the outcome. The second section will analyse the changing character of strikes in a context in which labour shortages have enabled workers not merely to protest against violations of the law but to press their interests against the employer, and even the government. The conclusion will draw out the implications of these changes for Vietnam's industrial relations system.

Strikes and their Resolution

There were reportedly about 100 strikes in Vietnam between 1989 and 1994, most in foreign-owned non-union enterprises in the South of the country (Chan & Nörlund, 1998, pp. 180–181). Since the passage of the Labour Code in 1994, which provided a legal framework for strikes, there had been 978 officially reported strikes up to the end of 2005 (Table 1), although not one of these strikes has followed the prescribed legal procedure. In addition, many disputes are snuffed out by the timely intervention of the enterprise union or a DOLISA conciliator before they reach the stage of a strike and VCCI and MOLISA informants acknowledge that there are probably many short work stoppages which are not reported because they are not considered to be strikes. As a senior official of the employers' VCCI told us, 'the employers want to cover up the strike because they are usually at fault'. There has been a small increase in the incidence of strikes since 2002, but in relation to the number of enterprises the incidence of strikes seems to have been fairly stable until the strike wave at the end of 2005, with 78 strikes in January 2006 alone.³ More than two-thirds of all strikes have been in FIEs, which account for only around 3% of the total number of enterprises, though 15% of enterprise employees, despite the fact that wages tend to be higher in

Table 1. Strikes per year by enterprise ownership, 1995–May 2005

	Number of strikes	SOE		FIE		Private	
		Number	%	Number	%	Number	%
1995	60	11	18	28	47	21	35
1996	52	6	12	32	62	14	29
1997	48	10	21	24	50	14	27
1998	62	11	18	30	48	21	34
1999	63	4	6	38	60	21	33
2000	71	15	21	39	55	17	24
2001	85	9	11	50	59	26	31
2002	88	5	6	54	61	29	33
2003	119	3	3	81	68	35	29
1–10/2004	96	1	1	40	73	25	26
11/2004–5/2005	135	2	2	89	66	14	10
Total	879	77	8.8	565	64.3	237	27.0

Source: 'Strikes and the Resolution of Strikes, Situation and Resolutions', VGCL internal document, 2004; 11/2004–5/2005 data: *Vietnam News*, 1 June 2005.

FIEs than in SOEs or DPEs (according to State Statistical Office data, average wages in FIEs in 2002 were double those in DPEs and almost 50% higher than those in SOEs, though a recent MOLISA survey in 2005 found pay to be higher in SOEs than in FIEs). Strikes in SOEs have become increasingly rare.⁴

A very high proportion of strikes are in HCMC (39 of the 96 strikes in the first 10 months of 2004) and the neighbouring provinces of Dong Nai and Binh Duong, which have the highest concentration of the FIEs that account for about two-thirds of all strikes. The vast majority of these strikes are in Korean and Taiwanese-owned companies.⁵ This is partly because Korea and Taiwan are the largest investors in Vietnam: these two countries accounted for 40% of the cumulative total and more than half the total number of foreign investment projects in Vietnam in 2003 (*Vietnam Economy*, 18 November 2003). Korean and Taiwanese investors have tended to use the authoritarian management methods inherited from the SMEs from which many of them have grown,⁶ but they are also working in very competitive, low-skilled, labour-intensive light industry where such management methods are common.

There has been a marked fall in the incidence of strikes in SOEs since 2000. Most of the strikes in SOEs were around the non-payment of wages and lay-offs and redundancy compensation, which were particularly acute problems in the 1990s but which have declined in significance since then. Moreover, the labour force in SOEs is more tightly monitored by the 'group of four' (Director, Communist Party cell, trade union and Youth League) than is the labour force in non-state enterprises, so that discontent is more easily identified and mollified or snuffed out. The trade union is also probably more effective at monitoring management observance of the labour law and worker discontent in SOEs.

The prevalence of strikes in foreign-invested enterprises in the mid-1990s was attributed to 'cultural differences' and some notorious strikes were provoked by such things as managers beating workers, but now strikes have a more straightforward economic foundation.⁷ The prevalence of strikes in FIEs is now explained by the fact that work is more intensive in foreign enterprises, that workers believe that foreign owners can afford to meet their demands and that they expect the state to support them against foreigners, an expectation that is not unfounded. It is normal practice, as soon

as a strike occurs, for the local labour department officials to try to persuade the employer to meet the workers' demands so as to get them back to work as soon as possible. Of the 71 strikes in which we have information about the outcome, the workers' key demands were met in 68 cases (in one case in 1997 the director forced the workers back to work with the threat of dismissal and in another case in 2002 the director agreed to cut working hours but claimed that he could not afford to raise wages).⁸ One foreign manager, who had been persuaded to meet the demands of his striking workers by a labour department official, complained to us that 'the government should be neutral but in fact they are a bit more on the workers' side'. The external affairs manager of Nike Vietnam was similarly quoted as complaining that when labourers go on strike unlawfully, 'officials often tend to support workers' (*Saigon Times Daily*, 20 December 2004, p. 1). Foreign managers also claim ignorance of the provisions of the labour law, although this is not very plausible.⁹

According to our informants in MOLISA, VGCL and even VCCI, the cause of the vast majority of strikes in Vietnam is legal violations by the employer: the failure to pay wages and overtime premia stipulated by law and the collective agreement, failing to pay agreed bonuses, forcing workers to work excessive hours, failing to pay social insurance contributions and refusing to pay termination bonuses to those laid off. According to HCMC DOLISA, more than half the strikes in HCMC are related to the failure of employers to meet their commitments with respect to wage and overtime premia and 20% are on social insurance issues. According to our data, just over a third of strikes in 2002–05 involved complaints of low wages (often failure to pay a promised increase), a quarter featured complaints of excessive working hours (often associated with underpayment for overtime working), one in five involved demands for the payment of bonuses (often failure to pay an agreed bonus),¹⁰ one in five involved demands for the payment of unpaid wages and one in seven complaints about the failure to pay for overtime. One in seven involved complaints that workers did not receive labour contracts, one in 12 that the employer did not pay social insurance contributions and one in 12 that the employer imposed (illegal) fines on workers. Every reported strike in 2006 involved a demand for a pay rise, often with a series of additional demands regarding such things as bonuses, working hours and the quality of food.

These findings are very similar to the causes of strikes enumerated by the report of a high-level task force on industrial relations in Taiwanese joint-venture enterprises in the South of Vietnam (Hop, 2004), which highlighted the poor conditions of workers in this sector. The task force found that only a minority of workers in the enterprises visited had written contracts.¹¹ This was explained in the report by the reluctance of workers to sign contracts, which prevent them from quitting their jobs freely, and the short tenure resulting from rapid growth, since contracts are usually only signed after two months probation. However, it is equally likely that employers refuse to sign contracts as a means of retaining discretion in the payment of wages and bonuses and avoiding social security contributions (e.g. the strike at Hue Phong, *Lao Dong*, 16 October 2000). Most companies were found to pay only the minimum wage and to pay little or no seniority bonus, while workers regularly worked from three to five hours overtime a day, though paid according to the law.

The Labour Code and, perhaps more significantly, Codes of Conduct imposed by contractors, place strict limits on the hours of overtime that can be worked, and all the employers we visited insisted that they kept within those limits, keeping accurate records of the hours of overtime worked by each individual employee.¹² Employers insisted that workers would like to work more overtime, to be able to earn more.

However, it is not uncommon for employers to set workers high daily production targets and require them to stay on until these targets are achieved. This effectively means that the workers are illegally forced to do unpaid overtime, and this is an issue raised by workers in many of the reports of strikes.

Although officials confidently enumerate the causes of strikes, and the picture painted by the published reports of the workers' demands is consistent with this, we should not draw hasty conclusions. Strikes in Vietnam are almost always wildcat strikes, in which one incident provokes a work stoppage which may lead to a walk-out of a section and then of the whole factory. The workers usually assemble in front of the factory, often blocking the entrance and the road outside,¹³ but it is very unlikely at this stage that they will have an articulated set of demands, as opposed to an accumulation of diverse grievances. A representative from the local labour department, usually accompanied by a trade union official,¹⁴ comes to the enterprise to investigate the dispute, having been alerted by a manager, a trade union officer in the enterprise, the local police or the local People's Committee. The priority of the authorities is to get the workers back to work to preserve social peace and public order and to prevent the strike from spreading to neighbouring enterprises (a frequent occurrence — it happened in all three of the strikes that we investigated). To this end they hold a meeting with the strikers to hear their grievances and put together a list of demands which they can then take to the management. It is rare for the strikers themselves to play any part in the resolution of the dispute: negotiations take place behind closed doors between the employer and Labour Department officials and it is the officials who present the demands and achieve a resolution of the dispute.

In the view of our labour department and trade union informants, strikes are usually led by a small number of informal leaders and most of the workers do not even know what their demands are (suggesting that solidarity and a diffused sense of grievance is the driving force for the majority). It is these leaders who express the strikers' demands at the workers' meeting (and their identification as ringleaders is sometimes confirmed by police reports).¹⁵ However, without directly observing a number of such meetings it is impossible to know how active a role the Labour Department and trade union officials play in articulating the workers' demands. They have a strong interest in filtering out what they regard as being 'legitimate' demands, which they can press the employer to satisfy, from 'unreasonable' demands which they cannot press. More detailed press reports of strikes, which include interviews with workers, suggest that grievances are much more diffuse than the legal violations identified by the officials, often concentrating on issues that arise from workers' interests rather than violation of their legal rights, such as low pay, holiday and seniority bonuses, overwork, short-time working, harmful working conditions, managerial abuse and poor-quality food.

'Legitimate' demands are those which involve the employer's violation of the Labour Code or the terms of the collective agreement. Demands which do not have such a juridical foundation are generally considered by MOLISA and VGCL representatives to be 'unreasonable'.¹⁶ The reported finding that most strikes are caused by the employer's violation of labour legislation may be a construct of the system that has developed for the management of strikes, which transforms the strike into a dispute over rights, in which the employer is at fault and can be pressed to settle, and tends to discard as 'unreasonable' grievances which arise from irreconcilable differences of interest.

Although Vietnamese strikes are wildcat strikes, they often seem to be well organised and disciplined, with workers displaying a high level of solidarity. The trade

union and senior managers rarely have any advance knowledge of the strike, which suggests the complicity, at least, of line managers in the strike. Although the strike may initially involve a small group of workers, typically the entire labour force will stop work and assemble at the entrance to the factory. Once the workers have aired their grievances, the outside officials will promise to take up the case with the employer and will try to persuade the strikers to go back to work. The workers will usually resume work together, if not immediately then within a few days. Meanwhile, the officials will investigate the case further and persuade the employer to meet what they judge to be the workers' legitimate demands, backed up by threats of administrative sanctions if the employer does not do so. If there is no trade union in the enterprise, DOLISA will encourage the employer to set one up, on the grounds that a trade union is the best insurance against strikes. In the longer term, VGCL and DOLISA may organise training in the labour law for the employer and employees.

The Changing Character of Strikes

The official view of strikes is that they are primarily provoked by legal violations by employers so that the more effective monitoring of the enforcement of the Labour Code and the implementation of collective agreements will remove the primary cause of strikes, while the simplification of the disputes procedure will ensure that workers are able peacefully to achieve their legitimate demands. However, strikes do not arise only because employers violate the law, but have increasingly arisen out of direct conflicts of interest between employers and employees. On the one hand, the tightening labour market means that workers are increasingly likely to strike with demands for higher wages, not merely for legally guaranteed terms and conditions. On the other hand, there have been some recent strikes in which workers' demands have not been for the enforcement of the law but for changes in the law.

Labour activism is always closely related to the labour market situation, which has been changing rapidly in Vietnam as growing labour shortages emerge,¹⁷ even in the North. The expansion of the foreign-invested sector has mopped up all of the available local workers in the cities around which the Industrial Zones and EPZs are located, so they are having to rely increasingly on migrant workers from more distant rural areas (according to DOLISA in Binh Duong and Dong Nai, 70–80% of workers there are non-resident (Hop, 2004, p. 1)). All of our informants noted that it was becoming increasingly difficult to attract rural workers to the cities because the high cost of living and low wages left them with little money to send back home, their main reason for coming to the city.¹⁸ Recruitment of rural migrant workers seems to be pretty haphazard, with specialised agencies playing a limited role. Some of the employers we interviewed advertised in the rural areas, offering to pay relocation expenses, and hired all those who came. One senior foreign manager went personally on long trips to the villages to try to find workers.

Labour turnover has increased, and in some cases reached very high levels, but this is not so much because workers move to better-paid jobs elsewhere as because they return to their home villages. Employers are reluctant to respond to labour market pressures by raising the wages of production workers, particularly when they are competing for export contracts, and generally try to pay the going rate, which in labour-intensive sectors is the legal minimum wage.¹⁹ This means that there are fewer opportunities for workers to pursue an exit strategy and that they are more likely to seek higher wages through collective action. Once one group of workers successfully strikes for higher wages, others are likely to follow their example. Low wages, rather

than unpaid wages, was an issue cited in one-third of reports of strikes in the period 2002–04. A report in *Vietnam Economic Times* recognised the implications:

‘Previously, workers only downed tools to claim what they were legally entitled to’, says Nguyen Van Khai, an official from the Ho Chi Minh City Labour Federation. ‘These days the situation has changed. They will also organise strikes to demand better meals, higher salary increases, reductions in working time, and other such conditions’. Last year these types of strikes made up about 20% of the city’s total, according to the *Labourer* newspaper.

Relevant authorities such as the federation have handled these strikes in the past by referring to labour regulations. If the demands are contained among the stipulations, they ask the employers to satisfy the strikers. If not, they ask the workers to return to work. This way of settlement, however, cannot be applied to the new kinds of strikes. (Tan, 2005)

Recent cases in which workers have struck for higher wages show the strains which the system of administrative intervention is undergoing. Workers at the Sumitomo Bakelite plant in Thang Long EPZ, Hanoi, petitioned their employer for a wage increase in October 2003. Getting no response, they demanded a 30% pay rise at the beginning of December, backed up by a threat to strike two days later. On 4 December all the Vietnamese workers walked out in a well-organised 24-hour strike. The Japanese manager called in the director of the Labour Department of the Zone Management Board, who is also head of the zone trade union organisation, who persuaded him to award a 7% pay rise and organise a trade union and dissuaded him from victimising any of the strike organisers. Hopes that this would be the end of the matter were soon dashed when the workers of the adjacent Canon plant walked out on 12 December with a mass of complaints, including a demand for the restoration of wages that had been reduced because of short-time working.²⁰ This was a much more bitter and hard-fought dispute in which the management initially refused to concede and threatened the workers with dismissal. On the third day of the strike, management entered into negotiation with six representatives of the strikers, the interim factory trade union organisation (which had refused to consider the workers’ written complaints before the strike), representatives of the labour department and higher trade union bodies, including the Hanoi City VGCL organisation. Management promised that matters would be resolved on the basis of the Labour Code. Two days later, Hanoi VGCL was reported as being of the opinion that ‘first and foremost, both sides need to negotiate with each other with the assistance of the municipal authorities; on the other hand, the workers should be self-restrained, not to over-react. The Labour Union should act as a bridge between the two sides to build up mutual understanding for the development of the Company, and for stability in the jobs and lives of the workforce’ (*Lao Dong*, 18 December 2003). The strikers were persuaded by the Hanoi VGCL official to stay outside and send representatives to the negotiations and the provisional standing committee of the recently formed factory trade union finally espoused most of the workers’ demands. After two further days of negotiations the General Director addressed the workers and promised a 10% interim pay increase, a Tet bonus, 12 days annual holiday and a promise of no victimisation. The Zone Management Board requested that this be put in writing and the statement distributed through the enterprise trade union, clearly to bolster the authority of the latter. The following day the written statement was provided and the strikers went back to work. In the written statement management also agreed not to dismiss workers

illegally, to pay for overtime working and to negotiate a collective agreement which would include, among other things, a 5–10% pay rise. Canon was not put off by this experience and a few months later announced a plan to double the size of their plant.

The week after the strike the Hanoi People's Committee organised a meeting of the relevant authorities to consider the lessons of the strike, the report of which shows the authorities struggling to force the strike back into their legalistic conceptual framework. According to Do Thi Xuan Phuong, Vice-Director of Hanoi DOLISA, some of the workers' demands, including their demand for a collective agreement, were legitimate.²¹ However, she noted that other demands (including those for bonuses) did not comply with the provisions of the Labour Code, illustrating the workers' weak understanding of the trade union role in the Company. The Vice-Chairman of the Hanoi People's Committee, Nguyen The Quang, emphasised that the Zone Management Board should propagandise legal issues amongst workers and guide workers in signing collective agreements, which would then provide a legal basis for the resolution of labour disputes. The Board should also organise training courses for workers on labour laws and trade union laws, which would help to avoid illegal and unorganised strikes based on unreasonable demands. 'The Board should select and appoint capable officers to cooperate with relevant bodies and security forces to promptly identify and resolve potential labour disputes and thereby prevent undesirable social consequences'. Finally, he noted that only two of 29 enterprises in Thang Long EPZ had trade unions and urged the City Union to strengthen its organisation in the zone so that it could receive and immediately resolve complaints from workers (*Hanoi Moi*, 24 December 2003).

Alongside the threat of an increase in the incidence of strikes focusing on demands for wage rises, there is also a fear that there will be an increase in the number of 'political' strikes (Phung, 2004). There have already been three such strikes in the South, at the notorious Korean-owned Nike subcontractor, Sam Yang, and its neighbour, Carimax, in Cu Chi District, HCMC. Sam Yang experienced a series of strikes during the mid-1990s over working conditions and management behaviour (including one case in which a woman line manager beat 15 workers with a shoe to get them to work faster) which made it a prime target for anti-Nike campaigners, but had generally been quiet until a strike in February 2003.

The strike arose when management told the workers that they would no longer be reimbursed their social insurance contributions when they quit their jobs, but would have to wait until they reached retirement age under government Decree No. 01/2003/ND-CP of 9 January 2003, implementing the revised Labour Code. The factory was experiencing high labour turnover and those who were planning to quit were afraid that they would not receive their expected allowances so they went on strike on 13 February. About half the 6,000 workers joined the strike, gathering at the factory gates, while the other half were laid off as a result. The company loudspeakers called for workers to return to work but, even when the general director and union leaders called them back to work, they refused. The local authority's chain of loudspeakers in the district could not persuade them to go back to work either. Instead, the neighbouring Korean-owned company, Carimax, joined the strike. DOLISA, VGCL and the Cu Chi District authorities held a meeting with the Sam Yang workers in the canteen and eventually persuaded them to go back to work.²² In the meantime the strike had reverberated as far as Hanoi and the Prime Minister signed the first ever decree banning a strike, using his powers under the Labour Code, although the strike finished after three days, before the decree came into force. Remarkably, Decree No.

01/2003/ND-CP was amended so that those quitting their jobs receive their severance allowance after six months.²³

There was a second 'political' strike at Sam Yang, again echoed by Carimax, in January 2004, again about the distribution of social insurance funds. The workers heard that Sam Yang had received four billion dong to pay health benefits but had paid out only a small amount of money to those on sick or maternity leave, so the workers suspected fraud. At other companies the social insurance money had been distributed equally to all the employees and the Sam Yang workers demanded the same. Again it was a spontaneous strike that took management and the trade union by surprise. When the workers stopped working the managers had no idea why, and nor, when they asked them, did many of the workers. The deputy director of the social insurance fund explained to the workers that the money was only for sickness benefits, maternity benefits and pensions and could not be paid to all workers, so it was the other companies that were violating the law in doing so. After three days the workers returned to work without receiving their social insurance hand-outs, but reassured that the Koreans were not cheating them.²⁴

Conclusion

In the 1990s strikes were regarded by the Vietnamese authorities as exceptional events, but more recently they have come to be taken for granted as a feature of industrial relations in a market economy. However, the authorities more recently have become concerned that strikes will discourage inward investment and their main current concern is to remove the causes of strikes and to provide a more satisfactory institutional framework for the peaceful resolution of industrial disputes.

Most Vietnamese respondents attribute the prevalence of strikes to misunderstandings resulting from poor communications, the complexity of the strike procedure and the ignorance of the law on the part of workers and employers. Employers claim not to know the law, a claim which is widely dismissed as implausible. Workers do not know the proper way to pursue their legitimate demands. The solution is seen as more systematic training in labour law for both sides. But this ignores three aspects of the problem.

First, strikes arise not because of the employers' ignorance of labour law but because of the ability of the employers systematically to violate the law with impunity. On the one hand, MOLISA does not have sufficient inspectors to monitor legal violations or powers to enforce respect for the law. This in itself may reflect the lack of will of the authorities to enforce the law, except when its violation gives rise to threats to public order, given the importance of low-wage export production in very competitive markets for Vietnam's economic growth. On the other hand, primary trade union organisations are much too close to management and do not actively represent their members' interests. As early as 1995 an article in the trade union's own newspaper acknowledged that the lack of understanding of labour laws was only one reason for strikes. 'The other reason is the loss of trust and confidence of workers in the official trade unions ... The role of organised trade unions in protecting workers' rights here is diminishing every day and is practically non-existent' (Lan, 1995). VGCL recognises the ineffectiveness of its primary organisations, but is doing little to address the issue, preferring to concentrate on expanding membership by bureaucratic means.²⁵

Second, workers ignore the procedures provided for the resolution of disputes not because of the workers' lack of understanding of labour laws but because strikes have

proved the most effective means for workers to address their grievances. Trade unions not only fail to monitor employers' violation of the rights and interests of their employees, they also fail to take up their members' grievances and advance them through collective bargaining and through the procedures for conciliation and arbitration. The simplification of the legal procedure is unlikely to have any impact while workers who strike almost invariably achieve their aims within a few days and continue to be paid for the days on strike.

The success of strikes is not because of the absence of legal sanctions against unlawful strikers. Although, according to Clause 5, Article 7 of Decree 41/CP of 6 July 1995, it is illegal to discipline those engaged in a legal strike, under Article 85.1.c of the Labour Code employers have the right to discipline or dismiss those who stop work for more than four days for reasons other than a strike. Moreover, Decree 113/2004/ND-CP of 16 April 2004 imposes serious sanctions on those who join, force or lead unlawful strikes, regardless of whether the strikers are in the right (Phung, 2004). However, such sanctions are almost never invoked, primarily because they would exacerbate the situation. In a number of reported cases the dismissal of strikers led to a renewed strike and their successful reinstatement. Provision for the punishment of illegal strikes is nullified by the fact that no strike has ever been before a court and so, technically, no strike has been declared illegal. This also implies that the employer has no right to withhold wages on the grounds of the illegality of a strike.²⁶ More prosaically, when we asked an employers' representative why employers continued to pay workers on strike the reply was that if they did not, the workers would simply go on strike again. Finally, a remarkable feature of strikes in Vietnam is that there have been no reports of police action against strikers or strike leaders, either during or after a strike, even when the strikers block the public highway (c.f. Chan & Nörlund, 1999, n. 44, p. 183), although there have been cases of employers hiring thugs to intimidate strikers and we were told that employers kept blacklists of strike leaders.

Finally, strikes do not arise because employers violate the law but because they infringe the interests of workers. However, interest conflicts in Vietnam are forced into a bureaucratic rights-based system which addresses issues only when they reach the stage of a strike and then filters out legitimate demands and blocks those considered unreasonable. This method of resolving disputes could be quite effective while workers' demands did not extend beyond the provisions of labour law, but the erosion of real wages by inflation has given workers the incentive and the tightening labour market has given them the leverage to press demands that go beyond the limits of the law. This makes it increasingly difficult for the authorities to resolve disputes within the existing *ad hoc* procedures. They are no longer able simply to remind the employer of his obligation to abide by the law to secure a return to work, but now have to persuade the employer to meet the workers' demands, bringing the contradictions of the 'socialist market economy' to a head.

The problems to which this gives rise were shown up in the wave of strikes that built up to a climax at the end of 2005. Over 8,000 workers went on strike at Changsin, a Korean-owned Nike subcontractor in Dong Nai Province, on 29 July, because they considered the wage increase proposed by the management to be inadequate. Representatives of the provincial authorities arrived and immediately persuaded the general director to make a more generous wage offer and to settle various other complaints. However, on this occasion hundreds of workers were not willing to accept the offer and two days later were still blockading the factory and preventing others from returning to work (*Nong Thon Ngay Nay*, 2 August 2005, p. 11). On 23

November 2005 more than 1,000 workers struck for higher wages and better working conditions at Rieker Vietnam, a new Hong Kong-owned footwear factory in Quang Nam, and were immediately dismissed by the director. The following day the regional authorities and trade union persuaded the director to revoke the dismissals and meet the workers' demands (*Vietnam News*, 25 November 2005).

These developments came to a head when 18,000 workers walked out at FreeTrend Indus, a Taiwanese footwear company in Linh Trung EPZ, Thu Duc District, HCMC, on 28 December 2005. There had been press reports since September that the government intended to raise the minimum wage for FIEs from the beginning of 2006, *Saigon Giai Phong* even reporting (falsely) on 25 September that MOLISA had called on FDI enterprises to increase the minimum wages they paid by around 40%. FreeTrend management had announced in November that it would increase pay by 30% from 1 January 2006, though it turned out that this rise was only for new employees, with no rise for over 800 core workers, while the company was proposing to cut some allowances. A few days before the strike, hundreds of leaflets were distributed denouncing the pay rise as insufficient to compensate for inflation and calling for a strike. As soon as the strike began officials from the Zone union arrived and persuaded management to restore the allowances, to pay an increase for the core employees and to pay wages for the day lost to the strike. FreeTrend's human resources manager was reported as saying that 'the current salary is a temporary measure to calm workers' minds while waiting for an official decision on minimum salary adjustments from the government' (*VietnamNet*, 5 January 2006). However, the following day workers at six neighbouring enterprises went on strike, demanding pay increases of 30–36%, and over the next two weeks there was a total of 69 recorded strikes, most at FIEs, with demands for higher pay, social and health insurance payments and shorter working hours, in many of which workers were reported to have broken windows and smashed up offices and equipment. Although some employers insisted that they would not raise wages until the government announced a decision on the minimum wage,²⁷ most employers met their workers' demands at once. On 6 January the Prime Minister issued Decree 03, which increased FDI minimum wages by about 40% from 1 February 2006, with an additional 7% premium for skilled workers, and the strikes stopped. However, as widely anticipated, the increase in the FDI minimum wage provoked a second wave of strikes as non-FDI workers walked out demanding wage increases, with about 20 such strikes in February. However, the government was reluctant to increase the minimum wage for domestic employers because this would not only increase the wage bill for one million public employees but also the payments to six million pensioners, veterans and other recipients of social benefits.

The strikes provoked an intense post mortem, which sharpened positions in the long-running debate about the causes of and appropriate response to wildcat strikes. Some VGCL officers insisted that the government was to blame for the strikes. The union had long been pressing for an increase in the legal minimum wage, a proposal which had been endorsed by MOLISA in September 2005, provoking many complaints from foreign investors (*Vietnam News*, 29 September 2005), but the government had prevaricated, first deciding to increase the FDI minimum wage from 1 January and then postponing the proposed increase to 1 April in response to an appeal from foreign investors to delay the increase until after the Tet holiday bonuses had been paid. According to VGCL officers it was this confusion that provoked the strikes. By contrast, on 5 January Pham Minh Huan, Director of MOLISA Wage and Salary Department, in an interview with *VnExpress*, stated that the conflict was not about

where the government had set the minimum wage but about the actual salary that companies were paying workers. He emphasised that it was the responsibility of the trade union to negotiate wage increases with employers and the government would respect their decision. He also warned that the minimum wage for FDI enterprises would in future rise more slowly than the lower minimum wage for domestic private enterprises because WTO entry would mean that Vietnam would have to phase out discrimination against foreign employers, reinforcing the argument that in future wage increases would have to be negotiated in the workplace.

Meanwhile, in January 2006 the government tabled its draft revisions to Chapter 14 of the Labour Code, on dispute settlement procedures, which introduce a distinction between rights-based disputes and interest-based disputes, each with a distinctive settlement procedure, with strikes being permitted only in the case of interest-based disputes. In parallel, MOLISA, VGCL, VCCI and VCA (the two employers' organisations) were planning to promulgate an 'inter-ministerial action plan on developing sound industrial relations' which proposes a shift of focus from fire fighting in response to strikes to the prevention of disputes by promoting collective bargaining and social dialogue at the workplace. The HCMC People's Committee requested VGCL within the next six months to strengthen the capacity of the union at enterprise and district levels and in the Zone. However, VGCL still sees the cause of strikes to lie primarily in employers' legal violations and the solution to lie in increased labour inspection and the greater involvement of regional trade union bodies in the enterprise, with proposals to regularise the activity of strike task forces, to build up teams of professional union negotiators at provincial level to support bargaining with employers and that provincial union organisations should be permitted to negotiate and organise industrial actions on behalf of workplace organisations. These proposals would be progressive if their aim were to bolster the independence of the enterprise trade union organisation from management and strengthen its ability to articulate the interests and aspirations of its members, but the indications are that VGCL sees these measures rather as a substitute for the development of effective workplace trade unionism.

The increase in the FDI minimum wage may have taken some of the heat out of the situation by providing for significant wage increases, but in the longer term, unless a more satisfactory framework of collective bargaining can be developed, the authorities are going increasingly to be faced with the dilemma of continuing to pursue a pragmatic conciliatory approach to strikes, so encouraging further strikes, or taking repressive measures in defence of the rights of the employers, which will only escalate conflict and provoke confrontations between the workers and the workers' state.²⁸ As the Taiwanese investors studied by Chan & Wang (2004) had discovered, Vietnamese workers will not meekly put up with the levels of exploitation that have (so far) been tolerated by their Chinese counterparts.

Notes

1. This article is based on published and Internet English-language sources, a two-week fieldwork trip to Vietnam in November 2004 with Chang-Hee Lee, senior industrial relations specialist in the ILO Asia Pacific Regional Office, and a report on the first stage of fieldwork in March 2006 for a project on 'Post-socialist trade unions, low pay and decent work', funded by the British ESRC under its Non-Governmental Public Action Programme (award RES-155-25-0071). On the 2004 trip Simon Clarke and Chang-Hee Lee spent one week in Hanoi and one week in Ho Chi Minh City, interviewing trade

union, employer and government representatives at national, city and district levels and spending half a day interviewing trade union and employer representatives in each of five enterprises in each city, covering the foreign-invested, domestic private and equitised-state sectors, all with trade union organisations. I am very grateful to Chang-Hee Lee and to Do Quynh Chi, who organised our fieldwork, interpreted and participated in our interviews and provided invaluable clarification of many points and who heads the research team on the ESRC-funded project. I am also very grateful to Jan Jung-Min Sunoo and Nguyen Binh of the ILO/Vietnam Industrial Relations Project, who provided us with their data on strikes and answered many questions, and to all our informants in Vietnam.

2. About 40% of the employed labour force are trade union members, with VGCL claiming densities of about 30% in domestic private enterprises (DPEs), 50% in foreign-invested enterprises (FIEs) and 90% in state-owned enterprises (SOEs).
3. An experienced local journalist, Le Thuy, reported that she had counted at least 150 strikes in Binh Duong and Dong Nai provinces alone in 2004, double her estimate for the previous year (Tan, 2005).
4. In addition to the views of our respondents on the strike situation and detailed information on three important recent strikes obtained through our interviews, we have gathered fragmentary information on a total of 143 strikes, which include about a quarter of all recorded strikes since 2002, from Internet news sources available in English, other published reports and data on recent strikes in 24 Korean-owned companies collected by Jan Jung-Min Sunoo, to whom we are very grateful. It is likely that our sample is biased towards larger and foreign-owned companies, whose strikes are more likely to be reported.
5. In HCMC between 1995 and September 2003, out of 128 strikes in foreign-owned companies 61 were in Korean-owned and 50 were in Taiwanese-owned companies.
6. Hop, 2004, p. 5, notes the influence of the low level of management culture in Korean and Taiwanese business communities. Chan & Wang, 2004, argue that Taiwanese companies pursue less repressive management methods in Vietnam than they do in mainland China because of more effective worker resistance and less government tolerance of such practices in Vietnam.
7. Almost half the strikes for which we have information before 2001 involved managerial violence or abuse. Since then the few reports of violence have all involved violence against strikers.
8. Of course there is no guarantee that the employer will stick to the agreement, although one would imagine that they would be more likely to have to do so where there is a trade union organisation. Some workers have had to strike repeatedly with the same demands. Employees of Konam Apparex, a Korean-owned clothing company in Tan Thoi Hiep industrial park in HCMC, were reported to have struck for the tenth time in October 2003 (*Lao Dong*, 25 October 2003, p. 2).
9. 'Most foreign bosses mistreating local workers claimed to be unaware of Vietnamese law owing to the language barrier, but in fact they intentionally ignored the country's labour laws', Nguyen Thi Thanh Mai, head of HCMC DOLISA overseas labour management division (*Vietnam Economy*, 8 September 2004), a conclusion also reached by Hop, 2004, p. 4.
10. January, when the Tet bonus is due, is the peak month for strikes.
11. Inspection of 34 domestic and foreign-invested private enterprises found, among numerous violations, that only seven out of 18 FIEs had signed contracts with their workers and only a minority of their employees had social insurance (*Vietnam News*, 1 June 2005). A survey conducted by MOLISA in 22 cities and provinces found that more than half the private businesses had violated overtime regulations, of which 77% were foreign-invested companies. Only 9% of those working overtime had signed an agreement to do so, as is required by the law (*Thanh Niên*, 5 February 2005). Another survey in October 2004 showed that state enterprises were little better at observing the labour law. More than 20% of employees did not have social or medical insurance, and

- non-payment of overtime and delayed payment of wages were rife (*Vietnam News*, 5 January 2005)
12. A study in 2002 interviewed a small number of workers in Taiwanese-owned factories in Vietnam and found that almost a third had at some time been paid below the minimum wage, all in factories which were not governed by codes of conduct, and all, with the exception of those working for Nike factories, had been forced to work illegal amounts of overtime and were subject to illegal fines. Those workers who had not joined the union explained that 'it is controlled by the management, and those Vietnamese union cadres are utilised by Taiwanese to dominate workers', all but one saying that they would join a 'free' union (Wang, 2002). The implication, though on the basis of limited evidence, is that without a code of conduct legal violations are rife, that Nike effectively enforces its code of conduct in its subcontractors, but other contractors and regulators do so less effectively.
 13. The inter-sector task force report noted that 'when there is strike, workers mainly gather outside the gate of enterprises causing regional security disorder and traffic in-safety (*sic*)', (Hop, 2004, p. 3). The employers do not demand police action but that a special area should be provided for strikers to assemble (VCCI Hanoi officer).
 14. Until it asked to participate in the resolution of the 2005–06 wave of strikes, the employers' representative, VCCI, was never involved, but it is now part of the strike task forces in HCMC, Binh Duong and Dong Nai provinces.
 15. A few of our official informants suggested that strikes were sometimes provoked by individuals with personal grievances or personality defects who misled or intimidated their fellow workers to stop work.
 16. This also applies to disputes within the enterprise: one of the more active trade union presidents reported that the only complaint that he had received in the previous year had been from a woman who had been dismissed when her one-year contract terminated. He did not take up the complaint because legally the employer had the right to dismiss the woman. The same conception underlies the notion of the party which is at fault in a dispute. According to Decree No. 58-CP of 31 May 1997, wages should be paid in full for the duration of a strike if the strike is declared by a court to be legal and the employer is judged to be at fault. Only if the strike is illegal and the employer is not at fault should no wages be paid.
 17. A job bazaar organised by the Dong Nai Youth League and local employers seeking 3,000 new staff recruited fewer than 150 workers (*Thanh Niên, ILO Office in Vietnam Press Review*, April 2004). In HCMC in 2004 the core sectors recruited only one-third of the number of new workers they needed (*Vietnam News*, 7 December 2004). The garment and footwear industries were reported to be missing contract deliveries and losing orders because of increasingly acute labour shortages in 2005, forcing employers to increase wages to recruit (*Vietnam News*, 18 October 2005). A national survey conducted by MOLISA confirmed an acute shortage, particularly of manual labour (*Vietnam News*, 21 April 2006). The Central Economic Committee recognised that the problem was not an absolute shortage of labour but low wages in the industrial sector (*Thanh Niên*, 5 November 2004). Wages increased by 8–10% over 2004–05, more rapidly in domestic than in foreign-owned companies (*Vietnam Economy*, 4 July 2005), but many FIE workers had had no increases for years.
 18. The cost of rented accommodation is a serious problem for migrant workers. Very few employers provide dormitories (c.f. Chan & Wang, 2004) and the local administrations are only just beginning to address the accommodation problem.
 19. Employers told us that they exchanged information about the wages they paid and discussed any proposed increases with their neighbours. No doubt the various foreign employers' associations play a role in suppressing active competition in the labour market. One employer, discussing this exchange of information about wages, stressed that 'this is not a conspiracy to hold down wages, just co-ordination'. In the recent strike wave at the end of 2005 there was no evidence of co-ordination among employers to resist raising wages; instead they fell like dominoes, one after the other.

20. The Labour Department of the Zone Management Board told us that the Sumitomo strike was provoked by that at Canon, but the director of Sumitomo was clear that it was his workers who struck first. This account of the Canon strike is based primarily on English translations of newspaper reports posted on the Asian Labour News website (*Pioneer*, 16 December 2003; *Hanoi Moi*, 15, 19 and 24 December 2003; *Lao Dong*, 18 and 20 December 2003: www.asianlabour.org).
21. The question of the 'legitimacy', of the demand for a wage increase raised the issue of the adequacy of the minimum wage, which Phuong recognised was 'low'. The legal minimum wage for foreign-invested enterprises in Hanoi was \$45 a month, but according to the relevant decree this was converted to Vietnamese dong at an outdated exchange rate so that it amounted to only 565,000 dong a month. Under the Labour Code, the minimum wage should be adjusted to allow for inflation so that its real value is not eroded, but this has never been done since the minimum wage was introduced in 1999. The wages paid by Canon conformed to the legal requirements, but were below a minimum calculated at the current exchange rate. Hanoi DOLISA told us that after the strike they proposed a change in the exchange rate calculation to MOLISA, but received no reply.
22. According to one of our informants, some of the workers had said in a meeting with DOLISA: 'It is a big company, maybe the government will listen if we strike'. Cu Chi enjoys a special status because of its role in the American War, and there is a sense that the government cannot touch the heroic people of Cu Chi.
23. Before Decree No. 01/2003/ND-CP a worker who left a company before retirement age received a one-off repayment of social insurance contributions and resumed payments when s/he found another job. Article 1.5 of the decree, which amends Art. 28 of the Labour Code, stated that:

'1. In the following cases, the contributor is eligible for one-off payment of social insurance and for every year of contribution s/he will receive 1 month's average salary:

- a) A worker who has stopped working at retirement age but has not got enough time of social insurance contribution to be eligible for monthly payment of pension.*
- b) Legal emigrants.*
- 2. A worker who has stopped working before retirement age with insufficient social insurance contribution will be given his social insurance book and his contribution will be reserved until he can continue contributing to the SI fund'.*

After the Samyang strike, Circular 07/2003 (12 March 2003) was issued, in which Art. 7 extends the above stipulation: *'For those who have stopped working, after 6 months if they cannot find jobs that allow them to continue contributing to the SI fund, they can apply to receive a one-off payment'* (I am grateful to Do Quynh Chi for providing me with this translation of the decree and circular).

24. A senior VGCL officer in HCMC alleged that many of the Sam Yang strikers had been intimidated into striking: on the second day 1800 workers had been persuaded to return to work but somebody had telephoned the workshops and threatened to raid the dormitories and rape all the women if they stayed at work, but nobody at Sam Yang mentioned this to us. The VGCL informant also told us that the strike only ended when the local People's Committee threatened that the strikers would be sacked for absenteeism and that after the strike 300 ringleaders left the factory voluntarily.
25. 'Strikes happen because trade unions are so weak at the workplace and they do not represent workers at the workplace. There has been no strike initiated by a trade union because workers do not trust trade unions at the workplace' (Senior VCCI official). Task force report: 'The role of the trade union steering committee is not strong and passive. Trade union leaders have not shown their capacity and responsibility in protecting rights and interests of workers as well as guiding and organising strikes as regulated in labour law' (Hop, 2004, p. 4).

26. Under the government's proposed revision of the Labour Code strikers lose the right to be paid while they are on strike even if the strike is legal, and become liable for damages if the strike is illegal (Chapter 14, article 174d).
27. Local officials pleaded urgently with the government to announce an increase in the minimum wage. Some reports suggested that employers were being encouraged by local officials to hold out until the government made a decision.
28. There were some ominous reports on the January 2006 strikes. The Taiwanese *United Daily News* reported that police had detained some 100 striking workers in two Taiwanese companies in Binh Duong Province. The Deputy Chairman of the HCMC People's Committee, Nguyen Thien Nhan, warned that 'the city administration is determined to punish those inciting workers to illegally strike and indulging in violence, affecting the investment environment' (*Vietnam News*, 6 January 2006). The British *Economist* also stuck its oar in, asking 'Why didn't Vietnam crush the illegal strikes?' (28 January 2006).

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