

The Hengbao Jewellery dispute

Background to the dispute

Hengbao Jewellery is a medium-sized enterprise located in the industrial district of Panyu, south of Guangzhou. It produces gold and silver jewellery, crafted ornaments and metal and plastic accessories. It has more than 500 employees, many of whom have worked at the company for more than ten years. The longest serving employee has worked there for 19 years, including the period before the company was formally incorporated as a foreign-invested company in 1999.

Until 2010, management did not provide any of its employees with social insurance as required by law. It was only in September 2010, two months after staff in the prototypes department sought payment of their social security contributions, that management started to make such payments. However, there was never any discussion about making retrospective contributions for periods of employment before September 2010.

On 25 May 2011, a written request was submitted by 38 workers to management that social security payments be made for all of them from the month they started work until August 2010. Management's verbal response was:

Responsibility for the lack of social security contributions is shared among the government, the management and the workers themselves. If the workers object to this situation, they can seek settlement through labour dispute resolution channels, and management will comply with whatever approach is proposed by government or court adjudicators.

On 10 June 2011, another 51 workers submitted similar demands, and four days later, on 14 June, they were joined by a further 28 workers but management's reply was the same.

In response, on 23 June, 135 employees went to the local district, municipal and provincial trade unions demanding that management pay their social security contributions including back contributions. They also raised issues relating to annual leave, the high-temperature allowance and their employment contracts. The trade union helped broker a compromise deal on these additional issues, but back payment of social security contributions remained a sticking point. Once more the workers were advised to "resolve the dispute directly through legal channels."

Subsequently, the number of workers demanding payment of social security contributions rose to 184. To ensure more effective negotiations with the management, the workers chose a dozen colleagues to serve as a team of representatives, headed by Cai Manji and Wu Shiyou. On 24 October 2011, the workers presented their list of representatives and a "Declaration" signed by all of them to management.

Management responded on 17 November 2011 by issuing a "Notice of long-term leave" for several employees on the grounds that:

There are temporarily no materials for employees in certain positions to work on; the company has just entered the production off-season, and so some of the workers have been put on leave. The next step will be to steadily arrange leave measures for other workers in light of volumes of orders received and demand projections.

According to the workers' calculations, some 84 percent of the 75 workers in the first group of workers to be put on leave had signed the "Declaration." In the period up to 28 November, all the 184 workers who had demanded payment of social security contributions were temporarily laid off for periods of between one and six months.

The workers challenged this "Notice," arguing that management was "taking retaliatory action." They made several petitions to management and government authorities to highlight the fact that:

The purchase of social security insurance is required under the laws of China. Government departments have an obligation to comply with the law in their administrative work, and management to implement such provisions.

In response to these requests, the local social security department instructed Hengbao's management to pay all outstanding social security contributions, including the historical arrears.

On 9 December 2011, management issued a "Notice regarding full payment of social security contributions, including arrears, on behalf of Gan Guoqun and 140 other workers." This statement expressed willingness to pay social security contributions for the workers from their first day with the company. It also demanded that workers should pay all of their individual contributions and complete all the necessary documentation before 31 December 2011 in order to qualify.

The personal contributions amounted to nearly 10,000 yuan (about half a year's wages) in some cases, a significant economic burden on the workers. But they dug deep and managed to meet management's targets. In total, the workers handed more than one million yuan to management in individual social security contributions.

The course of events leading to the detention of worker representatives

Three months after the workers paid their contributions, however, Hengbao management had still not lived up to its side of the bargain to pay the back-dated contributions it owed. On 2 April 2011, the workers finally lost patience with management's stonewalling and delay tactics. More than 130 workers gathered at 8:30 in the morning outside the entrance of the company Personnel Department, and demanded that the Department Manager He Zihui give a precise time for providing a written statement regarding the social security back payments. They stated that they would "not leave until they got an answer," but still they

could not get a straight answer out of Manger He. Moreover, the manager called the police five times during this period, claiming that he was the victim of “illegal confinement.” (非法拘禁)

After local police arrived and appraised the situation, they decided not to take any action. Likewise, the auxiliary police refused to get involved on the grounds that “it does not constitute illegal confinement.” A number of local labour officials also arrived that afternoon to investigate. There was no clash with the workers; instead the labour officials promised to help the workers get things sorted out. In the evening, a few journalists arrived to report on the event but they were prevented by security guards from entering the plant. The workers talked to them by the entrance. Around 10 o’clock that evening, the Personnel Manager tried to leave the plant but after encountering resistance from the workers, he remained in his office.

The workers recalled that they had always had friendly relations with the Personnel Manager. And that evening, they said, he “chatted with us the whole time, told us his life story, and this went on until three or four o’clock in the morning, when he went back into the office to sleep.” During the night, three or four security personnel kept guard at the door, and the workers outside the office took turns to go home and sleep.

On 3 April, early in the morning, the Personnel Manager woke up, jogged around the plant precincts, and called on the workers to join him in morning exercises. After starting his shift, the Manager even patrolled the plant premises and asked for melon seeds to eat with his workmates. “We did not so much as touch his mobile phone,” workers said, “he was able to use it the whole time. Five times he called the police and we did not stop him.” Workers also bought him a lunch-box, but he insisted he did not want it. He would only eat one of the lunch-boxes brought to him by company security staff.

At 5:00 in the afternoon on 3 April, management finally compromised and issued an official written statement. However, the statement was “full of loopholes,” and the workers demanded another statement that was more in accordance with their core demands. A second draft was issued at 7:00 in the evening but the workers were still not happy with the wording. The Manager refused to revise it further, and insisted on leaving the office. He was blocked by a group of female workers. The Manager suddenly grew very angry, and grabbed the hair of worker Xie Liuxian and pushed her over. He also struck another worker Xie Yumei with his hand. As a result, the workers called the police. At 7:20, the police took both the Manager and Xie Liuxian to the local police station. The workers also followed along, hoping to reach a compromise settlement. At 8:00, the police called in worker representative Cui Manji for questioning. At 8:20, the police also called in Xie Yumei.

At 2:30 in the morning on 4 April, Xie Liuxian and the Personnel Manager came out, but the police announced the detention on criminal grounds of Cui Manji and Xie Yumei, on suspicion of “inciting workers to acts of illegal confinement,” of the Personnel Manager. The two workers were held for 25 days.

The workers' response

Workers at the Hengbao plant were furious at the treatment meted out to them, and sent a "Petition" to the Panyu District Public Security office stating:

Throughout this dispute there have been more than 100 workers, plant security staff and government officials at the scene; auxiliary police have kept guard on the spot for two days and one night. We workers did not in any way restrict the personal liberty of Manager He. The police were there the whole time, and the government officials were also there. If their behaviour constituted illegal confinement, why didn't the police tell us so at the time? Furthermore, Manager He was able to go out of the main lobby and report to the police; the police clearly stated that this did not constitute illegal confinement. We simply demanded that Manager He provide a written answer together with an official seal. We did not restrict his liberty in any way; all we did was repeatedly ask when he would give us a written statement. Our demands are reasonable and lawful. The two workers in detention are innocent and should be released. They are merely our representatives.



The workers' petition bearing the red-ink fingerprints of 136 employees.

On 8 April, Cui Manji and Xie Yumei's families each received "sympathy" donations of 1,000 yuan raised by the workers. The workers also scratched together 6,000 yuan to pay the initial costs of legal representation for Cui Manji. The Laowei Law Firm took on Xie Yumei's case on a *pro bono* basis.

Cui Manji's lawyer conducted face-to-face interviews with several workers who all confirmed that Cui and Xie were innocent of the charges. One worker, Xie Liuxian said:

Cui didn't do anything; he was just sitting there chatting. Xie was responsible for providing workers with food and organising the shouting of slogans: "We want our social security payments made, we want our rights safeguarded." Cui Manji did not do anything in the lobby; he only went into the Manager's office to talk to him.

Another worker Meng An described how:

Cui Manji was waiting the whole time for the answer, along with the other workers, chatting with everybody. He did not participate in any blockade of the office of Manager He.

On 28 April, the Panyu branch of the Guangzhou Public Security Bureau issued a "Decision to grant bail." According to the Decision, there were "insufficient grounds for arresting" either Cui Manji or Xie Yumei, and they were accordingly to be released on bail pending legal proceedings.

By noon that day, more than 20 Hengbao workers gathered in front of the Panyu detention centre and prepared for the release of the pair. Up to a hundred more were waiting to join them if needed. At 8:00 in the evening, in stormy, wet weather, Cui Manji and Xie Yumei came out of the detention centre, to be welcomed by their colleagues outside. At ten o'clock, there was a reception for the pair with food stalls set up by over 40 workers. Workers said that they would give their full support to the representatives by protesting to the local authorities. Worker Xie Liuxian said: "If necessary, I and all the workers could go to the Public Security Bureau and explain the situation for you and clear your names."

But in another twist, Hengbao management had dismissed the pair during their detention on grounds of "continuous absenteeism for at least three days."

On 16 May, Duan Yi, the director of the Laowei Law firm issued a legal opinion which was presented to the Panyu branch office of the Guangzhou Public Security Bureau, in which he pointed out that:

The notice of release on bail requires that Xie Yumei appear at your office for a preliminary review at 8:30 in the morning on 2 July 2012. In other words, Public Security expects this matter to drag on until July 2012 before any settlement is reached. As the lawyer representing Xie Yumei, I hope to receive within these 65 days an answer as to whether or not this matter is still under investigation. I ask this question because this question affects the continued employment rights of Xie Yumei. In fact, the reason why Xie Yumei is unable to work is the criminal detention imposed by the Public Security. Clearly, the timing of the conclusion of this case has a direct bearing on whether or not she can remain at the plant as an employee, and on the sum of related compensation payments.

Moreover, Duan Yi pointed out, "We are preparing to file a complaint. If it is proved that these workers are innocent, we intend to also apply for state compensation."

On the afternoon of 8 June, Duan Yi went in person to the petitioning office of the Guangzhou Federation of Trade Unions to present the case of the detained workers. The following afternoon he was met by Federation Chairman Chen Weiguang, Deputy Chairman Liu Xiaogang, union facilitator Zheng Yiyao, legal affairs office director Zhang Ruizhou, and four lawyers. During the meeting, Duan Yi pointed out that providing protection to worker representatives was not only a legal issue but also touched on the work of the trade union.

In response, the federation president stated that there could indeed be no compromise over the legal obligation of companies to pay all due social security contributions. With regard to practical follow-up measures, Chen declared that unions would cooperate with the authorities through official channels, and urged the Public Security Bureau to settle the matter of the workers' detention appropriately and as quickly as possible. If no agreement could be reached, he said, then direct legal measures should be taken. "In this matter," Chen bluntly stated, "the unions must not take half-measures. They must take a clear stance."

Additional cases of worker representatives being subjected to harassment and retaliation

The detention of worker representatives at the Hengbao plant was certainly not an isolated incident. Below are brief summaries of some of the cases currently being handled by the Laowei Law Firm - updated as far as possible.

June 2011: A strike at the Citizen Watch factory in Chang'an, Dongguan was triggered by an overtime pay dispute. After more than ten days, management compromised and workers went back to their jobs. But later, a dozen workers who had played prominent roles in the protest were compelled to leave the plant following "efforts made" (i.e. pressure exerted) jointly by local authorities. The demands of the dismissed workers for compensation failed to win support in the arbitration committee or civil court. They are currently preparing to mount an appeal at the Guangdong Higher People's Court.

August 2011: Wang Yafang, a worker at a Shenzhen Walmart store and a former union women's committee member, was dismissed after participating in a worker training seminar and announcing that she would run again for the union women's committee post to fight for workers' interests at the retailing giant. Wang subsequently applied for labour arbitration, but lost. After accepting her case, the court of first instance ruled simply that "if an employer illegally dissolves an employment contract, it should pay double compensation."

November 2011: Metal-moulding workers at Ricoh (Shenzhen) Industrial Development Co. Ltd. who staged a sit-in strike for several days as they were dissatisfied with pay increases, were dismissed on grounds of "causing significant losses to the employer unit through absenteeism and strike action." The workers lost the arbitration case and the first two civil hearings and are now appealing to the higher court.

June 2012: Liu Ting, a worker at the Citizen Watch factory in Shenzhen filed for arbitration after being dismissed for "violating the labour disciplinary code." Probably not coincidentally,

Liu happened to be one of the worker representatives during strike action at the same plant in November 2011. Two hundred workers have already expressed their support for Liu in the dismissal dispute.

June 2012: Seven workers representatives at Shenzhen Hailiang Storage Device Co. Ltd. protesting the company's persistent failure to pay overtime were detained by the police and charged with "gathering a crowd to create a public disturbance." On 13 November the workers filed a lawsuit against the local public security bureau demanding it rescind its administrative punishment of the workers.