

Chinese Staff Congress System: the Past, Present and Future

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1. Before the Reform and Opening-up (before 1978): Chinese Staff Democratic Management System and Relevant Representing System

1.1 The history review of Chinese staff representative system from the early days of national founding to the period of "Cultural Revolution"

1.1.1 The factory managing committee system and the staff representative meeting system during the "national economic recovery period" (1948-1953)

In 1948, the Communist Party of China ("the CPC") had gradually governed the northeast of China. At that time, the northeast district, which had been occupied by Japan and the Former Soviet, had obvious advantages in industry, especially in heavy industry compared with other parts of China, and lead in industries such as steel, coal, metallurgy and machinery manufacturing. Since the scale of those industries is relatively concentrated, enterprises in the northeast had relatively large scale. As the troops of CPC gradually captured the northeast from the Kuomintang Nationalist Party ("the Kuomintang"), all those enterprises had been nationalized. After the Kuomintang retreated from mainland in 1949, most enterprises in large cities of mainland had been regarded as bureaucratic capital or official enterprises, thus had been nationalized. At the same time, the CPC had practiced the "gradual transition policy" upon the national capitalists as well as the private enterprises.

In its party constitution, the CPC clearly states that it is the vanguard of the working class as well as the excellent representative of the working class. In other words, the CPC has stucked for decades to the typical "Labor Party" politics since its foundation. Its political aim is to eliminate exploitation and oppression among people in society, and its theory of "how social wealth increases" is that labor creates the world. Therefore, began from the northeast in 1948, public enterprises established the enterprise staff's democratic management system, of which the factory managing committee system and the staff representative meeting system were the main forms. According to the former leader Liu Shaoqi, the policy of managing factories should be to cooperate with workers by all means and to rely on workers' working enthusiasm. Also, workers should cooperate with the factory by all means. To run a factory well depends on everyone, giving full play to their initiative.¹ In 1948, the sixth National Labor Convention put forward the principles of transforming factories into enterprise and democratizing the management. The Convention

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¹ "Selections from Liu Shaoqi", People's Publishing House, 1981, p305.

also passed the “Resolution Concerning the Current Task of Chinese Staff Movement”. The Resolution pointed out that: “State-owned and public enterprises should effectively improve their operation and management, mainly implement the principles of transforming factories into enterprise and democratizing the management”, “In order to implement management democratization, we need to establish factory or enterprise managing committee under unified leadership in each factory, which is composed of the manager or director of the factory, engineers and other production principals, and representatives elected by the trade union through worker meetings (equivalent to the number of other committee members). The committee, of which the manager or director of the factory is the chairman, works as the unified leading body of the factory or enterprise, and is under the leadership of higher leading bodies of national enterprises. It discusses and decides various kinds of problems about the factory or enterprise’s management and production,” and “Besides, in a large factory that contains over five hundred people, the factory staff representative meeting composed of staff (apprentices included) of all department can be set up, which communicates and discusses the factory’s decision, the producing plan and the experience summary under the leadership of the factory managing committee, so that more advices and criticism from the masses could be absorbed.”² The Resolution acted as the labor law on the eve of national founding. In order to implement the spirit of the Resolution, in May 1949, a staff representative meeting was held in the North China Liberated Area. At that meeting, Liu Shaoqi said that “According to the sixth National Labor Convention, the staff representative meeting system can be established only in factories containing over 500 people, which sets an excessive number limit in my point of view. Factories containing over two hundred or three hundred people can set up the meeting.” According to the practice of the North China Liberated Area at that time, factory managing committee is made up of the factory director (manager), the vice factory director (vice manager), the chief engineer (or main engineers) and other production principals, and worker representatives (the number of them is more than the number of other committee members). The factory director, the vice factory director and the chief engineer are the rightful committee members, and the worker representatives are elected through meetings of all the staff or staff representatives called by the trade union. Factory managing committee has the power to discuss and decide all major issues on production and management. The staff representatives are elected from each production department. They are responsible to the staff they represent, and can be reelected and replaced by the staff. The main functions of the staff representative meeting are: to listen to and discuss managing committee’s report, to check management committee’s management and style of leadership towards the factory, and to put forward criticisms and suggestions accordingly.³

Till 1950, most state-owned enterprises had established factory managing committee and factory staff representatives meeting system. In February, the Finance Committee of Government Administration Council issued the “Instruction of Establishing Factory Managing Committees in State-owned Factories and Public Factories”. The Instruction points out that, since the war of liberation has been over in most areas of China, the central task of the country is to recover and develop production. To accomplish the great task, a series of step-by-step and programmatic reformations have to be carried out in state-owned

² All-China Federation of Trade Unions’ policy research office: “Historical Document of Chinese Enterprise Leadership System”, Economics and Management Publishing House, 1986, p120-p121.

³ Wang Chidong: “A Brief History of Chinese Enterprise Management”, China Workers Publishing House, 1992, p33-p34.

and public factories or enterprises, in order to reform all the unreasonable systems left over from the times of bureaucracy domination. The central part of the reformations is to set up the factory managing committee, and to democratize factory management, which will make workers really find themselves to be the owners of the enterprise, and change their attitudes towards working, thus play their importance and creativity in producing procedure. The Instruction also stipulates that factories or enterprises which have not set up factory management committees should seriously implement the “Enforcement Regulation of Establishing Factory Managing Committee and Staff Representative Meeting in State-owned and Public Enterprises” issued in 1949 by the North China People’s Government.

1.1.2 The “undivided authority system” mode in factory management and the deviation from staff representative meeting system (1953-1956)

From 1953 to 1956, some enterprises in the northeast, north and east China began to introduce the “undivided authority system”, also known as the “factory director responsibility system”, which is the enterprise leadership system learned from the Former Soviet Union. In May 1950, when the Changchun Railway of China was under combined management of China and the Former Soviet Union, the “undivided authority system” was executed, and such system had spread over throughout Chinese railway system later on. In September 1953, the Central Committee of the CPC issued the “Instructions for Party Committees at all Levels Concerning Strengthening the Planned Management and Improving the Responsibility System in State-owned Factories and Mines”, which puts forward to establish and improve the responsibility system, and highlighted to establish the factory director responsibility system and the production scheduling responsibility system. Also, the North China Bureau of the CPC issued the “Decision of Practicing Factory Director Responsibility System in State-owned Industrial and Mining Enterprises”. Learning from the Former Soviet Union the systems and methods in industrial management, and practicing factory director responsibility system in industrial enterprises do help deal with the problem that the management responsibility is not clear in an enterprise, because many people sharing responsibility actually means no one is responsible. However, studying from Former Soviet Union highly concentrated planned economic pattern, so its enterprise management system will inevitably affected by the mode of administrating. “Also, some leaders in the northeast area took a dogmatism attitude in learning from the Soviet Union, they mechanically copy foreign experience regardless of the national conditions and without analysis, and put one-sided emphasis on administrative order and to manage through administrative means instead of scientifically analysis and using the ‘undivided authority system’. So as some enterprises implemented the undivided authority system, authoritarianism, subjectivism and bureaucracy became increasingly popular.”⁴ In this period, the role of the staff representative system gradually eroded. “Due to a lack of institutional support, the content of staff’s democratic participation had some significant changes. The trade union as the organizer of staff’s democratic participation began to focus on advancing working competition and developing the “advanced producer movement”. The great majority of staff were guided to carry on working enthusiasm and to actively learn and master new technology of production. Among them, many heroes and model workers who are hard working or good technology

⁴ Liu Yuanwen: “The Theory and Practice of Worker Democratic Management”, China Labor and Social Security Publishing House, 2007, p96.

learners emerged. Those to some extent had made up for the regret that the system of staff's democratic participation was broken off.”⁵

1.1.3 Chinese staff representative system after the completion of transformation of capitalist industry and commerce (1956-1966)

In September 1956, the Eighth National Congress of the CPC made the decision to implement in all enterprises the system of collective leadership of the Party committee, that is to say, to implement the factory director or manager responsibility system and the staff congress system under the collective leadership of the Party committee. In 1957 the Central Committee of the CPC issued the “Notice of Several Important Points Concerning the Research of Working Class” which says that democracy in enterprise management must be expanded, and that staff masses’ supervisory function upon enterprise administration must be expanded as well. The Notice requires that the current staff representative meeting hosted by the trade union should turn into the staff congress (in smaller enterprises should turn into all staff’s conference) and the power of such congress or conference should be enlarged. Those enterprises established the staff congress system under the leadership of the Party committee, resumed the enterprise staff’s democratic participation, and more importantly established the staff congress as a form of democratic participation. Under the collective leadership of the Party committee, the staff congress system and the factory director responsibility system become two parallel system of enterprise management, and the enterprise administrative management began to separate from the staff democratic management in systematic aspect.

After 1958, since the whole country raised the “Great Leap Forward” movement and the “establishment of people’s commune” movement, left-leaning trend became dominant, and “the atmosphere of eliminating trade unions” blocked the channels of staff’s democratic participation. Actually, in many enterprises staff congress system had been abolished. In 1961, when adjusting and reorganizing national economy, Deng Xiaoping, by then the general secretary of the Central Committee of CPC, hosted to formulate the “Ordinance of State-owned Industrial Enterprise (draft)”, namely the “Seventy Articles of Industry”, which put forward again the policy of playing the role of the staff congress and the enterprise trade union. The Ordinance (draft) points out that in state-owned industrial enterprises, we should promote democracy; carry out the mass line; fully arouse the masses; give full play to enthusiasm and creativity of all the workers, technicians and other staff, and improve their sense of responsibility as owners of the enterprise; and combine centralized management and mass movement in a correct way. We should admit all the staff to participate in the management, and rely on the masses to run a successful enterprise. In an enterprise, staff congress and staff conference of all levels should discuss and solve important problems about enterprise management, and should discuss and solve problems the staff concern most. In July 1965, the Central Committee of the CPC supplemented and modified the “Seventy Articles of Industry”, forming the “Ordinance of State-owned Enterprise Work (Draft)”, which provides the nature of staff congress, namely “the staff congress is the organ of power where staff masses participate in management, supervision of cadres, and exercising three kinds of democratic rights”⁶; it also provides the authority of staff congress.

⁵ Liu Yuanwen: “The Theory and Practice of Worker Democratic Management”, China Labor and Social Security Publishing House, 2007, p97.

⁶ The “three kinds of democratic rights” means political democracy, economic democracy and military democracy.

1.1.4 The staff representative system and the situation of staff democratic management during the “Cultural Revolution” period

In 1966, China’s “Cultural Revolution” political movement happened, social order immediately fell into a state of chaos; factional struggles, even armed struggles happened in enterprises. Since there had been integration of the Party and the management⁷ in enterprises, the Revolutionary Committee was set up in each enterprise, which is generally composed of representatives of the military, the leading cadres and the representatives of the masses, and functioned as the supreme leading body in an enterprise because of the integration of the Party and the management. Due to the masses’ direct participation in the Revolutionary Committee, neither the staff democratic participation nor the staff democratic management system survived. The staff congress system established before the “cultural revolution” also halted because of the political storm.

1.2 Analysis and summary

From the founding of PRC to the end of 1970s, Chinese economy and society was running under a highly planned system. From the aspect of administrative management, the administrative management system was based on division of different industries, which made enterprises become totally appendages of administrative agencies. From the aspect of economy, the early effort the CPC had made to eliminate exploitation and oppression was totally based on the concept of public-owned property system. Under that concept, the “capital” of state-owned enterprises belongs to all the people, the related state departments merely manage and operate the capital for the people, and all the labors share the ownership of our nation. In such a political and economic background, during the 30 years, the barriers between “capital” and “labor” had almost been wiped out. Therefore, the staff representative system of the 30 years can be generalized as several characteristics as follows:

a) Enterprises and enterprise representative system are established under non-market background.

In the New Democracy period, or before 1956, Chinese society had a certain range of private economy, that is to say, small range of problems between labor and capital still existed. However, since the socialist transformation was accomplished in 1956, capitalist industry and commerce had been socialist transformed through foreclosure and other forms of merge. Factories and enterprises in the mainland of China all became public-owned enterprises, including most of the enterprises owned by the whole people and a few collectively-owned enterprises. There is a mixing of “labor and capital” in these public-owned enterprises, that is to say, there is no boundaries between so-called employers and employees, in turn, the employers and employees become “workers” and “cadres” which both belong to “national persons” and are covered by administrative color. Therefore, the representatives of the staff representative system could be either workers or cadres.

⁷ People generally call enterprise manager or director for “GANBU”, actually the enterprise management have some government function in daylife.

b) Staff representative system and the factory director responsibility system coexisted.

Staff representative system is involved in wide-ranging fields, including the field of staff welfare, as well as the field of staff representatives' participation in enterprise management. To some extent, staff representative system was built more to promote democracy, to meet the double considerations of restraining bureaucracy and mobilizing the enthusiasm of the staff masses. From the aspect of restraining bureaucracy, as the "capital" of enterprises belong to the state, managers are "national cadre" who are actually covered by very strong administrative person color. Such administrative management system would easily be infected with bureaucratic habits, so there need to be certain mechanism to restrict the cadres' abuse of power. From the aspect of mobilizing the enthusiasm of the staff masses, as the Constitution and relevant policy established the principle that the working class is the leading class, the workers are the masters of the enterprise, plus, mobilizing workers' enthusiasm should be reflected in the orientation of enterprise management, accordingly, it should be workers' instinct and responsibility to care about all aspects of the enterprise. In some extent, all those system and theory introduced from the Soviet Union are not completely unreasonable, however, such enterprises depart completely from the market and social need, and they only fit in the state administrative plan. Therefore, the staff representative system in this period was a system to balance the power of enterprise management.

c) During the 30 years' planning system, the staff representative system was relying on trade unions as its entity base, and was running independently without the system of collective bargaining.

Making a general observation of countries with continental legal system, typical staff representative system has close connection with collective bargaining system. First of all, the trade union is independent and is apart from the direct restriction and management of the enterprise, and how well the staff representatives functions rests on whether the trade union has enough power to organize them. Under the planning system, Chinese staff representative system was operated on the premise that neither confrontation between labor and capital nor the system of employment existed, that is to say, Chinese staff representative system is a category of enterprise democratic management and participation rather than the result of confrontation between labor and capital.

d) During the 30 years' planning system, the staff representative system, like relevant systems in other areas, is some kind of "policy" system which was formed on the premise that neither the "labor law" nor other relevant laws and regulations existed.

During the 30 years, basic civil and criminal legal system in China didn't have legislative achievements, that is to say, on the premise that China didn't have basic laws such as civil law, criminal law and procedure law, these basic social operation depended on relevant national policies. Such situation held true for labor legislation as well. Chinese operation of enterprise staff representative system relied on a large number of policy documents issued by the CPC and the government. For example, how to elect a staff representative, what a representative's duties and his or her working contents are, and what the relationship between the enterprise administrative leaders and the representatives is like, answering all the above questions depended on relevant policies. These policies themselves

do not have corresponding stability, so the modification of the system cannot be anticipated. Therefore, sometimes the staff representative system worked well while sometimes it worked badly.

During past 30 years, the violent political movements in Chinese society not only affected the domain of social political life, but also affected the domain of economic life. Chinese staff representative system was influenced by the political movements, accumulated some tentative experience, but also learnt a lot of lessons.

2. After the Reform and Opening-up (after 1978): Chinese Staff Democratic Management System and Staff Representative System

2.1 The reconstruction, recovery and development of Chinese enterprise staff representative system (1978-1992)

2.1.1 In April, 1978, the Central Committee of the CPC issued the “Resolution of Some Problems Concerning Speeding Up the Development of Industry (draft)”, which decides to restore the system of the factory director designated to undertake responsibility under the leadership of the communist Party committee among industrial enterprises, to restore the staff congress system or the staff conference system, and to establish the system where the workers can participate in management, and the leading cadres, workers, technicians are combined together. After 1978, the work of restoring of the staff representative system sped up in state-owned enterprise. In July 1981, the Central Committee of the CPC and the State Council transmitted the “Interim Regulations on Staff Representative Conference System in State-owned Industrial Enterprises”, which is the first statute about staff congress system since the founding of the PRC. The Interim Regulation points out that, the staff congress is the basic organizing form to improve staff masses’ responsibility as masters of enterprise, to arouse staff masses’ enthusiasm to be masters, and to operate good socialist enterprises. In the following year, accompanied with the promotion from Party organizations and trade unions, the staff congress system had been constructed and developed in a large area. On December 4, 1982, the Fifth Meeting of the Fifth National People’s Congress passed the Constitution of the People’s Republic of China (which is also called the “82” Constitution). The Constitution stipulates in Section 2, Article 16 that “State-owned enterprises practice democratic management through staff congress and other ways in accordance with the law”. That is the regulation about Chinese staff representative system with highest level of legal authority after the reform and opening-up. The stipulations about staff representative system in the Constitution directly influenced the development of Chinese staff representative system in the new period of Chinese history.

In general, from 1978 to 1984, although Chinese society was exercising the reform and opening-up policy, it remained to be a society of typical planned economy. To some extent, the restoration and the reconstruction of the staff congress system in this period is a rebound from the uncontrolled and disordered democratic life in the “Cultural Revolution”. That is to say, people were looking forward to getting enterprises out of bureaucracy, and to let staff participate in enterprise’s management through their own management methods, in order to reflect their master consciousness. Also, such a rebound formed the corresponding consistency with the political climate after the “Cultural Revolution”.

In October 1984, the Third Plenary Session of the Twelfth Central Committee of the CPC passed the “Decision about Reforming Economic System”. The Decision points out

that to invigorate enterprises, especially big or medium-sized enterprises owned by the whole people, is the central part of the reform which focuses on cities. After the economic system reform strategy of focusing on cities was determined, the leadership system of state-owned enterprises accelerated to develop. On September 15, 1986, the Central Committee of the CPC and the State Council issued the “Regulations of Directors of Industrial Enterprises Owned by the Whole People”, and the “Regulations of Staff Congress in Industrial Enterprises Owned by the Whole People”. These regulations are administrative regulations which have relatively high legal authority. They require that all enterprise should correctly deal with the relationship between government and enterprises, enterprises and staff, and administrative management and democratic management. The staff congress should give full play the functions in reviewing important decisions of enterprises, in supervising administrative leading cadres, and in maintaining staff’s legal rights and interests. By aid of the implementation of those administrative regulations, Chinese enterprise staff congress system had unprecedented development. By the end of 1987 in China, there had been 364,000 enterprises establishing staff congress system, and 6,110,000 motions proposed by staff representatives, of which 2,790,000 motions were about enterprises’ production and management, accounting for 45.6% of the total number. In enterprises where staff congress system had already been established, the number of those in which cadres were appraised through democratic discussions has reached 195,000, accounting for 53.6%.⁸ In April 1988, the First Meeting of the Seventh National People’s Congress passed the “Law of the People’s Republic of China on Industrial Enterprises Owned by the Whole People”, which implemented on August 1, 1988. That law generally recognized the system established in the “Regulations of Staff Congress in Industrial Enterprises Owned by the Whole People”, and made some modifications to meet the needs of reforming enterprises.

2.1.2 The main contents of “Regulations of Staff Congress in Industrial Enterprises Owned by the Whole People” issued by state council on September 5, 1986 are as follows. This administrative regulation has 7 chapters and 29 articles.

The first chapter provides general provisions. Industrial enterprises owned by the whole people should establish and improve staff congress system and other forms of democratic management at the same time when they are operating the factory director responsibility system. The staff congress is the organ of power by which the staff exercise their democratic management, and the enterprise’s trade union is the operation body of the staff congress which takes charge of the routine of the staff congress. The staff congress should actively support the factory director’s power of making management decisions and giving unified command upon productive activities. The staff congress practices democratic centralism.

The second chapter provides the authority of staff congress, including: firstly, to regularly listen to the working report of the factory director, and to regularly examine the enterprise’s management policies, the long-term and annual plans, the plans of major technical reform and technology importation, the plans of staff training, the budget and final accounts, and the plans of allocating and using the enterprise’s own funds; secondly, to examine the scheme of enterprise economic responsibility system proposed by the factory director, the wage adjustment plans, the bonus allocation scheme, the labor protection scheme, the scheme of punishments and rewards, and other important rules and regulations; thirdly, to review and decide the scheme of using staff’s welfare funds, the

⁸ Wang Chidong: “A Brief History of Chinese Enterprise Management”, China Workers Publishing House, 1992, p107.

scheme of distributing staff's housing, and other important matters about staff's welfare; fourthly, to appraise and supervise enterprise's leading cadres at all levels, and to put forward suggestions of rewards and punishment, appointment and dismissal; also, the competent authority must fully heed the opinions of the staff congress when appointing or dismissing the leaders of an enterprise. If the staff congress has different opinions with matters within the scope of factory director's authority, it can propose to the factory director. In the staff congress, the factory director on behalf of administration and the trade union chairman on behalf of staff can sign a collective contract or mutual agreement.

The third chapter is about the representatives of staff congress. Staff who has political rights according to law can be elected representative of staff. The staff representative should be directly elected by staff in unit of group or section. In large enterprises, staff representatives can also be elected by staff representatives of branches or workshops. Staff representatives shall have workers, technicians, management staff, leading cadres and other kinds of staff. Generally, administrative leading cadres of enterprises, workshops and offices should account for one fifth of all the staff representatives. Young staff representatives and female staff representatives shall account for a certain percentage. Staff representatives shall form teams in unit of branch, workshop, office and shall elect team leaders in each team. The fixed term system applies to staff representatives, who are re-elected every two years and can be re-elected consecutively. Staff representatives have the following rights: firstly, the right to vote and the right to be voted; secondly, the right to participate in the staff congress's checking work of making sure that its resolution is implemented by the staff and its proposal is carried out, and the right to inquire after the enterprise's leaders; thirdly, the right to enjoy the same treatment as the treatment for attending if one uses working time to participate in activities organized by the staff congress. Staff representatives has the following duties: firstly, to study hard the guiding principles, policies, laws and regulations of the Party and the country, to improve the political consciousness, technical level and ability to participate management; secondly, to tie with the masses, to represent the staff's lawful rights and interests; thirdly, to be a model to observe the law, regulations and enterprise's rules and labor discipline.

The fourth chapter provides the organizing system of staff congress. The staff congress elects its presidium to host the meetings. Members of the presidium should include workers, technicians, administrative staff and enterprise's leading cadres. More than half of the representatives should be workers, technicians and administrative staff. Staff congress should be held at least once every six months. Every meeting must have two-thirds of all the staff representatives to attend. In case of important issues, the factory director, enterprise's trade union or more than one third of the staff representatives can propose to hold a temporary meeting. The decisions the staff congress makes within its authority cannot be modified except the staff congress agrees to do so. The staff congress can set up certain temporary or regular panels to deal with relevant matters assigned by the congress when needed. When the staff congress is not in session, different panels should deal with matters needed to be decided in a short time according to the authorization of the staff congress. The panels are responsible for the staff congress. When the staff congress is not in session, to deal with important matters needed to be decided in a short time, enterprise's trade union committee should call the team leaders of staff representative teams and the responsible persons of panels to organize meetings, and to solve the matters through consultation, and the solutions shall be reported to the next staff congress to be confirmed.

The fifth chapter tells about staff congress and the trade union. The trade union committee as the working organ of the staff congress do the following work: firstly, to organize the election of staff representatives; secondly, to put forward suggestions about the issue of the staff congress, and to host the preparatory work and organizing work for the congress; thirdly, to host the joint meetings of team leaders of staff representative teams and responsible persons of panels; fourthly, to organize panels to do the research and put forward the proposal to the staff congress, to check and supervise the implementation of the resolution of the congress, and to arouse the start to implement the resolution of staff congress; fifthly, to propagandize and educate the staff about democratic management and to improve the quality of the staff representatives; sixthly, to accept and deal with appeals and suggestions from the staff representatives and to safeguard the lawful rights and interests of staff; seventh, to organize other work of democratic management of enterprise.

The sixth chapter tells about the democratic management of workshops and teams and groups. Workshops or branches of factory take the managing form of staff conference or staff congress, staff representative teams, which exercise the right to democratically manage within their authority. The branches of trade union take charge of the daily work of workshops and branches of factory.

The seventh chapter provides supplementary provisions. This regulation is applicable to enterprises of traffic transportation, post and telecommunications, geology, building construction, agriculture and forestry, water conservancy and other fields. The all-China federation of trade unions shall be responsible for the interpretation of this regulation. The regulation came into force on October 1, 1986.

2.1.3 Analysis and summary

After the year of 1978, many fields in China began to reform, and the reform of enterprises began in 1984. During the whole 1980s, the reform of Chinese enterprises is the most important issue all the time. In the 1990s, especially after the socialist market economy was established in 1992, Chinese staff representative system changed a lot, so the year of 1992 is the watershed. Before 1992, the Chinese staff representative system was based mainly on the above laws and regulations, especially the “Regulations of Staff Congress in Industrial Enterprises Owned by the Whole People”. According to the content of these regulations, we can find that the background of the establishment of Chinese staff congress system was still planned economy, and the nature of enterprises is industrial enterprises owned by the whole people. At that time, the relationship between labor and capital in state-owned enterprises had not yet turned into the conflicting and contradictory relations under the background of marketization, and the staff congress system to some extent reflected the problems of balancing of power in enterprises and the problems of enterprises’ management emerged during the process of the enterprise reform, or namely, the problems of organically integrating enterprises’ managing power and staff’s democratic rights. On the same day the “regulations of staff congress in industrial enterprises owned by the whole people” was issued, the Central Committee of the CCP and the State Council issued the “regulations of directors of industrial enterprises owned by the whole people”, that is to say, the two above regulations were jointly issued by the CCP and the State Council.⁹ The issue of the “regulations of staff congress in industrial enterprises owned by

⁹ After the 1990s, administrative regulations are usually issued by the State Council independently, or at most jointly issued by the State Council and the Central Military Commission when the administrative regulations concern the military.

the whole people” is the first time that enterprise staff congress system be established by form of administrative regulation alone, and to establish enterprise staff congress system by laws and regulations is initiative. That indicated that the system of staff congress gradually became ruled by law.

However, limited to the situation of that age, such a relatively complete administrative regulations about staff congress was after all issued in the age of planned economy. When enterprise reform come into the 1990s, as the relation between labor and capital in enterprises was changing radically, the “Regulations of Staff Congress in Industrial Enterprises Owned by the Whole People” still had no timely revision at all. People even feel the regulation out of date during the process of marketization. More importantly, the regulation was issued when most laws and regulations concerning labor has not yet been issued. In other words, in the time when the regulation was issued, some labor legislation has just started, for example, labor contract system was just built,¹⁰ and the systems of handling labor disputes such as mediation and arbitration have not been restored, which naturally lead to the result that this administrative regulation did not adapt to enterprises on the background of market economy. For example, although the administrative regulation mentioned that the trade union chairman on behalf of the staff and factory director on behalf of the enterprise administration sign a collective contract, however, nothing about the relationship between the collective contract and the staff congress was stipulated, neither do the connections between the staff congress system and the whole labor legal system. It is worth to say that since the administrative regulation applies to “industrial enterprises owned by the whole people”, the nature of applicable enterprise is limited and the applicable field is limited to industrial field; however, the regulation doesn’t provide not only the specific scope of the industrial field, but also the scale of industrial enterprises which can exercise the staff congress system. Therefore, after the socialist market economic system was established, the “regulations of staff congress in industrial enterprises owned by the whole people”, just as the “Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People” issued two years later, seemed to be forgotten. Only those who engaged in relevant specific work feel such the law and regulation effective.¹¹

Therefore, the administrative regulation need an urgent revision.(to analysis in detail in the third part)

2.2 The situation of Chinese staff representative system since the market economic system was established (since 1992)

The year of 1992 is a key year of Chinese society, when China established the system of market economy under socialism with Chinese characteristics after Deng Xiaoping made the famous speech during his inspection tour to the south of China. China has started a new round of large-scale reform activities concerning reforming economy system and social system, and has launched large-scale law creating work. Afterwards, a lot of important laws and regulations were promulgated one by one, which profoundly influence Chinese economy and society. China’s economic system, social system, and legal system

¹⁰ The “Interim Provision of Labor Contract System in State-owned Enterprises” was also issued in 1986.

¹¹ The Democratic Management Department in the All-China Federation of Trade Unions is responsible for the implement and promotion of enterprises’ democratic management system. In the recent years, the Department did a lot of research on theories and practice about not only the system of staff congress, but also the system of disclosure of factory affairs, which play a key role in constructing relevant system.

nowadays all have some connections with the year of 1992. After 1992, Chinese staff congress met new challenges.

2.2.1 A large number of relevant laws and regulations about staff representative system were promulgated, including “The Company Law of the People’s Republic of China”(“the Company Law”), “The Labor Law of the People’s Republic of China”(“the Labor Law”), “The Trade Union Law of the People’s Republic of China” (“the Trade Union Law”), as well as many local decrees.

a) Provisions about staff representative system in the Company Law

The Company Law promulgated on December 29, 1993 (the law had been revised in 1999,¹² 2005 and 2009) provides in Article 18: “The staffs of a company shall, according to the Trade Union Law of the People's Republic of China, organize a trade union, which shall carry out union activities and safeguard the lawful rights and interests of the staff. The company shall provide necessary conditions for its trade union to carry out activities. The trade union shall, on behalf of the staffs, sign collective contracts with the company with respect to the remuneration, working hours, welfare, insurance, work safety and sanitation, and other matters. In accordance with the Constitution and other relevant laws, a company shall adopt democratic management in the form of staff congress or any other ways. To make a decision on restructuring or any important issue relating to business operations, or to formulate any important bylaw, a company shall solicit the opinions of its trade union, and shall solicit the opinions and proposals of the staff through the staff congress or in any other way.” Paragraph 2 of Article 45 provides: “If a limited liability company established by 2 or more state-owned enterprises or other state-owned investors, the board of directors shall include representatives of the employee of the companies. The board of directors of any other limited liability company may also include representatives of the employee of the company concerned. The employee representatives who are to serve as board directors shall be democratically elected by the staff of the company through the staff congress, the staff conference of the company or in any other way.” Paragraph 2 of Article 52 provides: “The board of supervisors shall include shareholders’ representatives and representatives of the employee of the company at an appropriate ratio to be specifically at least 1/3 prescribed in the bylaw. The staff representatives who are to serve as members of the board of supervisors shall be democratically elected by the staff of the company through the staff congress, or staff conference or by any other means.” Article 68 provides: “A wholly state-owned company shall establish a board of directors, which shall exercise its functions according to Articles 47 and Article 67 of this Law. Each term of office of the directors shall not exceed 3 years. The board of directors shall include representatives of the staff. The members of the board of directors shall be appointed by the state-owned assets supervision and administration institution, but of whom the representatives of the staff shall be elected through the assembly of the representatives of the staff of the company.” Article 71 provides: “The board of supervisors of a wholly state-owned company shall be composed of at least 5 members, of whom the employee representatives shall account for no less than 1/3, the specific percentage shall be specified by the bylaw. The members of the board of supervisors shall be appointed by the state-owned assets supervision and administration institution, however, the staff

¹² After the company law promulgated in 1993, the situation of staff representation change into the situation of employee representation, at least, the factor of employee representation is increasing day by day. Therefore, I use the term ‘employee representation’ in the latter half of the paper even the staff congress system does not change so drastically.

representative members of the board of supervisors shall be elected by the staff congress of the company. The chairman of the board of supervisors shall be designated by the state-owned assets supervision and administration institution from the members of the board of supervisors.” Article 109 provides: “A joint stock limited company shall set up a board of directors, which shall be composed of 5-19 persons. The board of directors may include representatives of the company’s employees. The representatives of the employees who serve as board directors shall be democratically elected through the staff congress, the staff conference, or other methods.” Article 118 provides: “A joint stock limited company shall set up a board of supervisors, which shall be composed of at least 3 persons. The board of supervisors shall include representatives of shareholders and an appropriate percentage of representatives of the company's employees. The percentage of the representatives of employees shall account for no less than 1/3 of all the supervisors, but the concrete percentage shall be specified in the bylaw. The representatives of employees who serve as members of the board of supervisors shall be democratically elected through the staff congress, the shareholders’ assembly or by other means.” The Company Law provides many contents about the system of company’s staff congress after the marketization reform.

b) Provisions about staff representative system in the Trade Union Law

The Trade Union Law was passed on April 3, 1992, and was amended in 2001. Its provisions about the staff congress are as follows: Article 6 provides: “The basic function and duty of the trade unions is to safeguard the legal rights and interests of the employee. While upholding the overall rights and interests of the whole nation, trade unions shall, at the same time, represent and safeguard the rights and interests of employees. Trade unions shall coordinate the labor relations and safeguard the labor rights and interests of the enterprise employee through equal negotiation and collective contract system. Trade unions shall, in accordance with legal provisions, organize the staff to participate in the democratic decision-making, democratic management and democratic supervision of their respective units through the staff congress or other forms.” Article 19 provides: “If an enterprise or public institution violates the provisions of the staff congress system or other democratic management systems, the trade union shall have the right to request corrections and ensure that the employee exercise their rights to democratic management pursuant to the law. The enterprise or public institution shall handle pursuant to law the matters that shall be submitted to the staff conference or staff congress for deliberation, approval and decision provided for by laws and regulations.” Paragraph 2 of Article 20 provides: “A trade union shall represent staff in equal negotiation and signing a collective contract with an enterprise or a public institution managed as an enterprise. The draft of a collective contract shall be submitted to the staff representatives or the complete body of staff for discussion and adoption.” Article 35 provides: “The staff congress of a state-owned enterprise shall be the basic-level structure through which the enterprise executes democratic management as it is the body through which the staff may exercise their rights to democratic management in accordance with the legal provisions. The trade union committee of a state-owned enterprise shall be the working body of the staff congress and shall be responsible for the daily affairs of the staff congress and for inspecting and supervising the implementation of resolutions of the staff congress.”

c) Provisions about staff representative system in the Labor Law

On July 5, 1994, the Labor Law was promulgated, which opened the prelude of China's labor legislation. The law is the signal law in the field concerning relationship between labor and capital in China. Its promulgation makes Chinese labor legal system begin to meet the needs of the system of socialism market economy. Article 8 provides: "Laborers shall take part in democratic management through staff conference, staff congress, or any other forms in accordance with law, or consult with the employer on an equal footing about protection of the legitimate rights and interests of laborers." Paragraph 1 of Article 33 provides: "The staff of an enterprise as one party may conclude a collective contract with the enterprise as another party on labor remunerations, work hours, rests and leaves, labor safety and sanitation, insurance, welfare treatment, and other matters. The draft collective contract shall be submitted to the staff congress or all the staff for discussion and passage."

d) Local decrees about staff representative system

After the staff representative system was provided in the Company Law, the Labor Law, the Labor Law and other relevant laws, quite a number of local decrees provide the staff representative system in more detailed provisions. Such decrees are as follows: the "Ordinance of Enterprise Staff Congress in Hebei Province"(2003), the "Ordinance of Staff Congress in Xinjiang Uygur Autonomous Region"(2005), the "Ordinance of Enterprise Staff Congress in Shandong Province"(2005), the "Ordinance of Staff Congress in Jiangxi Province"(2006), the "Ordinance of Staff Congress in Yunnan Province"(2007), the "Ordinance of Enterprise and Institution Staff Congress in Heilongjiang Province"(2007), the "Ordinance of Enterprise Staff Congress in Hunan Province"(2007). In addition, there are some local decrees in the form of ordinance of staff's democratic management, such as the "Ordinance of Staff's Democratic Management in Inner Mongolia Autonomous Region"(2002), the "Ordinance of Enterprise's Democratic Management in Shanxi Province"(2005), the "Regulation of Securing Enterprise Staff's Right of Democratic Participation in Fujian Province"(2000), the "Ordinance of Enterprise's Democratic Management in Jiangsu Province"(2007), the "Ordinance of Enterprise Staff's Democratic Management in Tianjin Province" (2007), the "Ordinance of Securing Enterprise Staff's Democratic Rights in Henan Province"(2007), and the "Ordinance of Enterprise's Democratic Management in Hubei Province"(2007). At the same time, some provinces promulgated local decrees about the system of disclosure of factory affairs, which indirectly reflect the content of the staff congress system.

2.3 Summary and analysis of current system

2.3.1 The current staff congress system is the system of employee's democratic participation under the background of the modern enterprise system formed after the establishment of the socialist market economic system. After the year of 1992, the reform of Chinese state-owned enterprises sped up. Especially after the promulgation of the Company Law, the proportion of state-owned enterprises in different areas declined in different degrees, and the degree of marketization of state-owned enterprises generally increased. At the same time, enterprises of other ownership, such as foreign-funded enterprises, private enterprises grew up quickly. In enterprises under the background of marketization, the conflict between the labor and capital gradually turned from invisible to dominant. Great changes had taken place in the field of labor relations in China, under that

premise, exploration of the theories and practices of Chinese staff representative system was launched in a definitely new period.

2.3.2 The establishment of the current system of staff congress has gradually become law-based. On one hand, the Company Law, the Trade union Law and the Labor Law have provisions concerning the staff congress system in different aspects. On the other hand, local legislatures show the attitude to make staff congress system more standardized and legal-based, and they promulgated a lot of local decrees and regulations about staff congress. The legalization of Chinese staff congress system can be perceived by just looking at the existing provisions in laws and regulations, that is, both laws and regulations have gradually used the normative legal languages to construct the staff congress system.

2.3.3 The current staff congress system break through the past limit of “Industrial Enterprises Owned by the Whole People”, and began to spread to enterprises of different ownership and in non-industrial fields. According to the above laws and local decrees, the “enterprise” in the enterprise staff congress system is no longer constrained to “industrial enterprises owned by the whole people,” but all enterprises.

2.3.4 The current staff congress system is established in the process of establishing the system of Chinese labor laws. As the market economic system was established, it is inevitable to adjust the relationship between labor and capital by law. It is on that background that Chinese staff congress system began to reconstruct in its true sense.¹³ The system itself has become an important part of the system of labor laws.

2.3.5 The current staff congress system is facing the impact of the reforming of enterprises’ administrative organizations. After the promulgation of the Company Law, the shareholders’ meeting, the board of directors and the board of supervisors become the organs of authority in the company, which gradually replaced the past factory directors and managers. The past parallel pattern of constructing the enterprise director’s responsibility system or the system of enterprise’s management organizations and system of staff congress system in industrial enterprises owned by the whole people was broken. How to balance the relationship between the staff congress and the “new three organs” (the shareholders’ meeting, the board of directors, and the board of supervisors) becomes the topic to be discussed in the new age. In other words, how to coordinate the “old three organs” (the staff congress, the trade union, and the enterprise management committee) and the “new three organs” is a problem. According to the current legal system, though the relationship between the “old three organs” and the “new three organs” has been considered, there remain many unsolved problems.

2.3.6 Local decrees play a big role in promoting the implementation of the staff congress system. The staff congress as a system where staff democratically participate in enterprise’s management lasted for a few decades, has enough flexibility while lacks of stability, “to some extent, it could provide security and protection for the practice of staff’s democratic management. However, since the staff congress has not been brought into the country’s democratic legal system ever, the system of democratic management has been regularly changed as the political situation, especially the leaders of the nation changed, which reflects the color of rule of men and a biggish randomness.”¹⁴ The promulgation and implementation of the local decrees makes the past staff’s democratic management

¹³ I think the staff congress system should be changed into a new system of employee representation except for management participation.

¹⁴ Liu Yuanwen: “The Theory and Practice of Worker Democratic Management”, China Labor and Social Security Publishing House, 2007, p107.

system with poor operability gradually become relatively operable. For example, Article 14 of the “Ordinance of Enterprise Staff Congress in Hebei Province” provides: “Enterprises with less than one hundred persons shall set up the staff conference system or the staff congress system. Enterprises with more than one hundred persons shall set up the staff congress system. In enterprises with more than one hundred persons but less than two hundred persons, the number of staff representatives should not be less than thirty. In enterprises with more than two hundred persons but less than one thousand persons, the number of staff representatives should be determined as fifteen percent of the total number of staff, and usually not be more than one hundred. In enterprises with more than one thousand persons, the number of staff representatives should be determined as ten percent of the total number of staff, and usually not be more than four hundred. The exact number of representatives can be stipulated in the working regulations of the enterprise’s staff congress according to practical situation.” Local decrees do play an important role in promoting the practice of staff congress system, especially in responding to the reality that the relationship between labor and capital has changed in the new century.

2.3.7 The staff congress is a form of conference, according to the current relevant provisions, staff congress is usually held twice a year. At the same time, the staff congress is a kind of organization, it is the organization by which staff participate in the enterprise’s management and supervise the enterprise. Though its working organ, enterprise’s trade union committee, appears to be more concrete than the staff congress, it is the staff congress that represents the staff’s highest organization of authority rather than the enterprise’s trade union committee.

2.3.8 The staff congress system has started to link the labor legal system under the background of the market economy. For example, relevant laws and regulations provide that the signing of a collective contract shall be passed and approved by the staff congress; and according to the “Labor Contract Law of the People’s Republic of China”, the establishment of enterprise’s rules shall be discussed and approved by the staff congress.

3. Prospect of the Future of Chinese Staff Representative System

3.1 To meet the challenge of the “strong capital, weak labor pattern”, and to strive to make the enterprise staff representative system become the real system of democratic participation and democratic management in enterprises.

Looking around today’s world, the academic circle lead by the theories of neoclassicism and neoliberalism, always think that capital is the only thing that dominate the economy, and that labor is just one of the factors of the economy——there is even a problem of defining the laborers as “stakeholders”. As the regimes of former socialist countries collapsed, people even doubt about the existence of “socialism”, which is a system philosophy or value orientation formed in as early as the end of the 19th century. The major problem of socialism is the problem of interpreting the relationship between capital and labor, which has been debated for a long time. Karl Marx created the labor theory of value, holding that the creation of profits wholly comes from the labor value of labor force. However, in some persons perspective, capital brings everything in the contemporary social reality. As is known to all, an enterprise is just an organic integration of labor and capital, and an enterprise’s intangible assets such as technology and commercial credit are inseparable from the existence of both the capital and the laborers. In this world, there are no enterprises without capital but only labor, nor enterprises

without labor elements but only capital. To realize the organic integration of capital and labor is the best way to annotate the staff representative system in enterprises. The staff representative system is not the patent of industry-developed countries, not the invention of economically backward countries, nor the label of socialism enterprises. In my opinion, an existing enterprise always needs to balance the relationship between labor and capital, there are many legal ways to adjust such relationship, for example, to adjust and regulate by laws and regulations, to adjust and arrange by collective agreements, to stipulate the rights and obligations in individual labor contracts, and to discipline by the enterprise's rules and regulations. However, the staff representative system of enterprise is a superior system to adjust the relationship between labor and capital, as well as to promote the growth of enterprises. Operating the staff representative system can not only fully demonstrate the existence of enterprise's labor elements, enhance the employee's sense of belonging, arouse laborers to actively participate in enterprise management; but also promote economic democracy, create democratic gene and social political gene for enterprise's growth in micro economic field, and build the foundation stone for the society to realize democracy. Operating the staff congress system can not only guard the lawful rights and interests of employee, make the protections of employee's rights and interests more integrated and collective, but also restrain capital, prevent arrogance of capital, impel the enterprise's management to analyse deeply, to think rationally, and to listen to the masses' opinions.

As China's economy and society keep developing from the 1990s to the new century, all can observe the growth of Chinese enterprises, the economic development of China stands out from the economic development of the world. At the same time, the weakening of labor element and the strengthening of capital element in Chinese enterprises labor elements synchronize with the growing economy of China! In the history process of promoting Chinese labor legislation in a large scale, the protection of laborers' rights and interests has shown many blind spots and soft spots. In 1993, after the promulgation of the Company Law, the "new three organs" have formed, and it is not an exaggeration to say that the "new three organs" have corroded the status and authorities of the "old three organs". Even in the traditional state-owned enterprises, there has been a weakening trend of the role the staff representative system plays. After all, as the private economy and foreign economy has kept expanding since the 1990s in China, both practitioners and academicians feel confused about how to operate the staff representative system in those non state-owned enterprises. Some people even oppose the staff representative system in enterprises, and see the staff congress system as an obstacle of enterprise's development.

3.2 The problem of turning Chinese staff congress system from "nominal" to "substantial"

Chinese staff representative system has existed for several decades, especially after the socialist market economic system was established, this system was confirmed by laws such as the Company Law, the Trade Union Law, the Labor Law and regulated by local decrees concerning staff congress system. In a word, the legislation of Chinese staff congress is efficient, namely, we do not lack statutory regulations about this system. However, problems such as what the implementation of the staff congress system is like, how much can the system play functions in enterprise development, and how to reflect the voices of the employee when protecting their lawful rights and interests, remain to be resolved. The staff representative system is an important component of enterprise's

economic democratic system, and all the representative system and electoral system need democratic soil full of nutrition. For all the Chinese people, the feudal society had lasted for too long time, and the Revolution of 1911 which overthrew the Qing Dynasty happened only one hundred years ago. During the last one hundred years, generations of Chinese people struggle with great fortitude in order to achieve the goals of founding an independent country, rejuvenating the nation, and enriching the people. Also, in order to achieve political democracy, generations of Chinese people had sacrificed themselves. However, Chinese society which is born lacking democratic gene still has a long way to go to find out how to elect, and how to realize real democracy. In the final analysis, the staff congress system is a democratic system, but the scope of this kind of democracy is relatively narrow—it takes place only in business enterprises. However, this kind of democracy is the basic democracy and substantive democracy. If a business enterprise can balance the relationship between labor and capital, can absorb employee to participate in enterprise's management at the same time when it uses the intelligence of its professional managers, then the enterprise will inevitably take a dominant position in competition. If the professional managers who build connections with the enterprise by contracts can be conscientious in their work, meanwhile the staff representatives can participate in management with conscientiousness and courage to bear, there are not any difficulty to overcome.

Therefore, the key point of Chinese staff congress is not just to create relevant legal system through legislature, but to carry out the system. The most important problems to be solved are the basic ones such as how to make sure the staff representatives are really elected by the staff, so that they can become real exercisers of power and represent staff's interests and say for the staff. Other basic important problems include: how to nominate a candidate for staff representatives? What are the qualification and conditions of a candidate? What is the procedures and specific measures of election? The solution of those problems is the key point of turning Chinese staff congress system from "nominal" to "substantial", and we have a long way to go of turning the empty text in laws and regulations into the lively practice of staff representative system. The procedure system of staff congress is as important as its substantive system, and the system should be standardized, such as the procedure of electing representatives and deciding relevant. Also, we need to solve the problems concerning the remedies after disputes occur during the election. System without remedy system is at least an imperfect system. In the staff representative system, since the staff, the staff representatives and the staff congress are not the same thing, there must be conflicts and disputes among them. There remains a huge blank in current laws and regulations concerning the problems of how to deal with the above conflicts and disputes and how to give impaired rights remedies. Also, if any dispute occurs among the staff congress, the trade union and the enterprise's management, how can the laws provide remedies? And how to classify such dispute? These problems remain to be solved by relevant system or regulations in the future! In the transform process of Chinese enterprises to corporation, how to relieve the incompatibility between the staff congress and the shareholders' meeting, especially the board of directors and the board of supervisors set according to the Company Law? And how to classify the disputes between them? It also needs some future system to make arrangement to provide remedies for that kind of disputes.

3.3 The connections with the system of collective bargaining (it is called group negotiation in China) and the problems about the reform of Chinese trade union system

One of the essences of industrial democratic system is the formation of the system of labor participation and representation. Staff representative system intensively represents the result of gameplaying between labor and capital in enterprises, and reflects social progress. Just think that in the period of laissez-faire capitalism when capital had its supremacy, there would never be employee participation or industrial democracy. To really realize industrial democracy and the staff representative system, we must deeply understand the ins and outs of the cooperation and confrontation between labor and capital.

The trade union system (i.e. the labor organization system) and collective bargaining system (the collective bargaining system) are the results of the gameplaying between labor and capital. In the early time of industrial society, the capitalist repressed the labor organizations, the government regulations restrained the labor organizations, and the laws inclined the balance of legal protection to the capital. On that background, how would there be industrial democracy or employee representative system? After the continual endeavors of laborers and righteous people, and efforts, laborers won the freedom to organize at last, that is to say, laborers can form trade unions freely. Nowadays, the constitutions of all the countries protect laborers' behavior of forming an association freely, of founding trade unions to antagonize the bully, exploitation and oppression of capital. Finally, the result of forcing capital to make a concession was to establish the group negotiation system with legal reason, through which laborers can bargain with their employers and fight for improvement of labor conditions and treatment. The trade union originates from free association, that is to say, laborers become a member of the trade union through applications. In the bargaining process between the trade union on behalf of laborers and the employers, the former shows the power of collectivity. However, the trade union doesn't bargain with the employer gathering all its members, not all the members attend the bargaining. In the forming stage of trade union system, the necessity of representing mechanism had been shown; therefore, the representing mechanism is a necessary component of the negotiation process between the trade union and the employer. The formation of such representing mechanism foreshadowed the later industry democratic system and the staff representative system. The formations of the trade union system and the collective bargaining system aim at safeguarding laborers' interests. Generally, the two systems are constructed in the sense of confrontation between labor and capital, the formation of trade union system does not necessarily result in the formation of industrial democratic system or necessarily result in staff's participation in management. Therefore, compared with the staff representative system by which staff participate in management, the representing system in trade unions is a low level system of industrial democracy.

Chinese trade union system has distinct characteristics, and it is also called "unitary trade union system". The features of the system include: 1) There must be only one trade union in an enterprise. Though the trade union is the nominal association of staff, the system of "establish the trade union firstly, join the trade union secondly" objectively determines that the trade union is attached to the trade union at a higher level. 2) In an enterprise with trade union, a laborer "naturally" become the trade union member as soon as he gets the job, so that there is no division of trade union members and non trade union members because all the laborers are trade union members. 3) The automatic formation of trade unions results in the congenital defects of the representing mechanism, in other words,

since trade union has some of the bureaucratic nature, the representatives are selected rather than completely “elected”. So, the representing mechanism in trade union system has congenital malnutrition. As for the group negotiation system, it is called the collective consultation system in China, thus the initial platform for the confrontation between labor and capital becomes the stage for “cooperation and consultation” in China. The collective consultation system generally aims at increasing wages. Since the system lacks confrontation, it is also difficult to peek “cooperation”.

The history of the formation of Chinese staff congress system shows that such platform for cooperation of labor and capital is a representing system at a higher level. If the trade union representing system has not been established, how would there be staff representative system with industrial democracy (staff can participate in management)? In my opinion, if Chinese trade unions, especially those in private enterprises and foreign-funded enterprises after the marketization, fail to realize laborers’ organizing system and laborers’ representing system in safeguarding employee’s interests, then it is impossible for the employee to participate in management in those types of enterprises. Therefore, to improve representing mechanism in trade unions is the basic step, only if the labor representative system has been learnt in “confrontation” for safeguarding laborers’ lawful interests, can employee’s participation in management be realized in the “cooperation of labor and capital”. No confrontation, no cooperation. Also, mere cooperation is not lasting cooperation. Chinese staff congress system has lasted for quite a long time, while the implementation of the system is not that efficient as people have wished. We are looking forward to the continuous improvement of Chinese trade union system, looking forward to group negotiation system’s getting out of “consultation”, looking forward to Chinese trade union representing system’s laying a solid foundation for a “substantial” industrial democratic system.

3.4 To confirm and expand the scope of enterprises and relevant units which carry out the staff representative system

The “Regulations of Staff Congress in Industrial Enterprises Owned by the Whole People” is an administrative regulation issued in 1986 by the State Council. After such a long time, the regulation has been renewed by lots of local decrees issued in recent years this paper just mentioned, thus it is impossible to determine the effectiveness of this regulation. As is known to all, the German industrial democratic system is very characteristic. There is the “Business Council Law” issued in 1946, and the “Law of Joint Decision in Industries of Coal, Iron and Steel” issued in 1952. The former deals with the problem of cooperation of labor and capital in small and medium-sized enterprises, and the latter concerns the cooperation of labor and capital in large-scale enterprises or in industries involving the people’s livelihood and the nation’s development. In other words, the staff congress system mainly aims at large-scale enterprises such as China National Petroleum Corporation (CNPC), China Petroleum & Chemical Corporation (Sinopec), Industrial and Commercial Bank of China. Those kind of enterprises must implement the staff congress system, not only because its capital composition is almost entirely state-owned, but more importantly because those enterprises involve the people’s livelihood and the nation’s development. Meanwhile, it is necessary to consider what the capital nature of the enterprise is. Some distinctions should be made among solely state-owned enterprises, state holding enterprises, foreign enterprises, private enterprises, or other kinds of enterprises. The administrative regulation issued by the State Council in

1986 firstly defines the capital nature of “owned by the whole people”, which was not a mistake at that time. However, as the society develops, it is obvious that enterprises of other kinds of capital nature also need the staff congress system. In addition, it is not reasonable that only “industrial enterprises” need to set up the staff congress system, while the large number of enterprises in tertiary industries, such as financial insurance service enterprises and enterprises in business field, does it need not to set up the staff congress system? Obviously, the administrative regulation issued by the State Council is a little bit “old”. Laws after 1992, such as the Company Law, the Trade Union Law, and the Labor Law, establish the staff congress system which should be set up in all kinds of enterprises. Problem also exists that to include all enterprises into that industrial democracy system without any discrimination is suspicious to be too broadly.

The author thinks that a clear direction should be set for future staff congress system in China, we need to clarify enterprises of what scale and what nature need to set up staff congress system. We should avoid not only the too narrow limit of “industrial enterprises owned by the whole people” in the past, but also the too broad “promotion” without considering the scales and categories of enterprises. Only when we rationally determine the scope of enterprises which shall set up staff congress system, can the staff congress system exhibit its corresponding efficacy, namely, to promote industrial democracy in some enterprises through the implementation of staff congress system; to guarantee large-scale enterprises involving the people’s livelihood and the nation’s development to combine labor force and capital force in order to resist risk together, to go for prosperity together. We should avoid carrying up the staff congress system in too small enterprises, which will lead to capital lost.

3.5 To elevate the legislation level of the staff congress system

We can see from the “Business Council Law” in 1946, and the “Law of Joint Decision in Industries of Coal, Iron and Steel” in 1952 of Germany that, the legislation of industrial democracy system as an important economic system, political system as well as legal system should never be casual or easy. The law issued by central authority in China is the “Regulations of Staff Congress in Industrial Enterprises Owned by the Whole People”, which has not been amended yet since it was issued. Now the regulation has been obviously inconsistent with relevant laws and regulations.

Firstly, the inconsistency and mismatch with relevant legal system. Though the Company Law, the Trade Union Law, and the Labor Law all provide the staff congress system, none of the laws provide that the staff congress system shall only be established in “industrial enterprises owned by the whole people”. As the Company Law establishes the system of staff directors and staff supervisors, and it provides about establishing staff congress system in solely state-funded companies, the “Regulations of Staff Congress in Industrial Enterprises Owned by the Whole People” lasting for 26 years appears to be apparently out of date now.

Secondly, the inconsistency with the local decrees concerning staff representing. After the last century, great changes have taken place. Quite a lot of local legislatures (the standing committees of local People’s Congress) responded to the social development, and independently legislated since central legislatures had failed to follow the social changes. Those local legislatures met the changes of relationships between labor and capital, and issued new local regulations of staff congress. So, the old regulation issued by the State Council in 1986 also mismatches the date.

Therefore, the central legislature shall respond to the social changes, and enact the “Enterprise Staff Congress Law”, in order to lay the corresponding legal foundation for this industrial democratic system. When doing so, the following several factors should be considered:

Firstly, to determine a reasonable scope of enterprises where the staff congress system should be set up.

Secondly, to clarify the nature of staff congress and the orientation of the this organization.

Thirdly, to clarify the rights, obligations and responsibilities of staff congress.

Fourth, to clarify the organizing system of staff congress and the relationship between the staff congress and relevant organizations.

Fifthly, to provide the election and dismissal of staff representatives.

Sixthly, to provide procedures of dealing with relevant disputes and relief, etc.