



Features of the Chinese Labor Law

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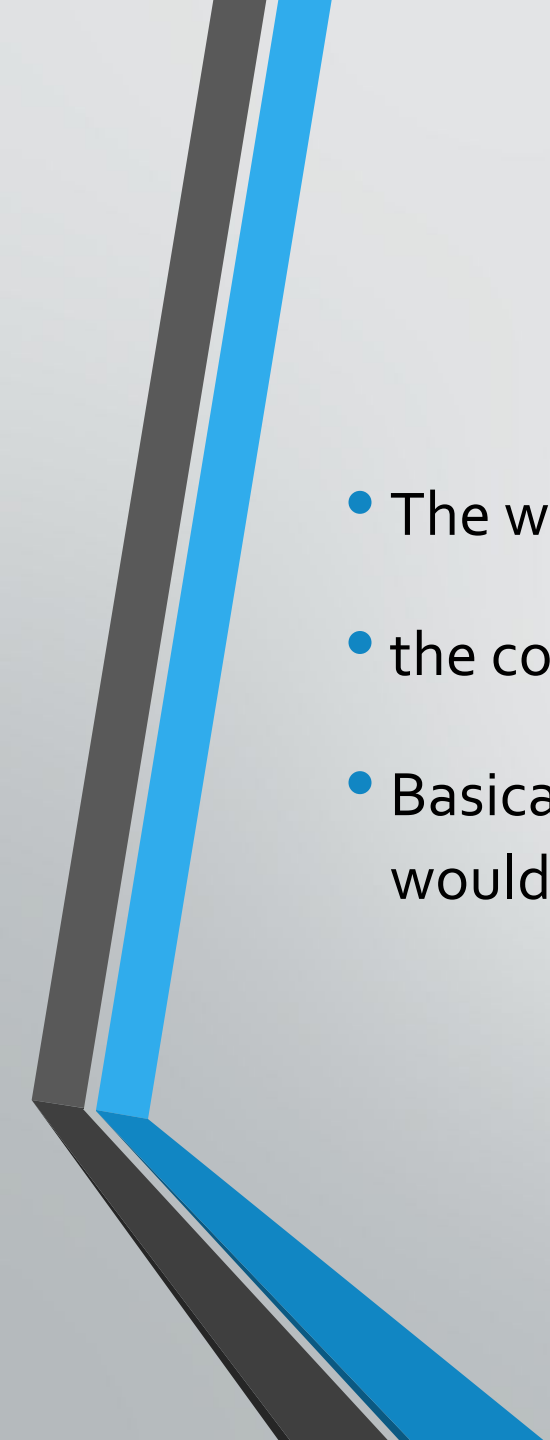
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Legislative History and Special Features of Chinese Labor Law

- Labor laws in Western countries derive from the need to protect workers.
 - Meanwhile, Chinese labor law was introduced in a top-down fashion to reflect the government's policy intentions.
- ⇒ introducing competition and mobility of labor force under the labor contract system
- Chinese labor law has taken some rights away from workers (lifetime employment, Distribution of work by the country etc.)

Features of Chinese labor laws

- The relationship between labor law and civil law is unclear
- in China, before the Chinese Labor Law was enacted, workers who had enjoyed lifetime employment did not find themselves in a disadvantageous situation subject to the civil law
- ⇒ doctrinal debates about why civil law should not be applied directly to parties in labor relationship/ the relationship between labor law and civil law
- In practice, labor issues are dealt with only by Labor Law, and quoting articles of the Civil Code will be assessed as an misapplication of law.

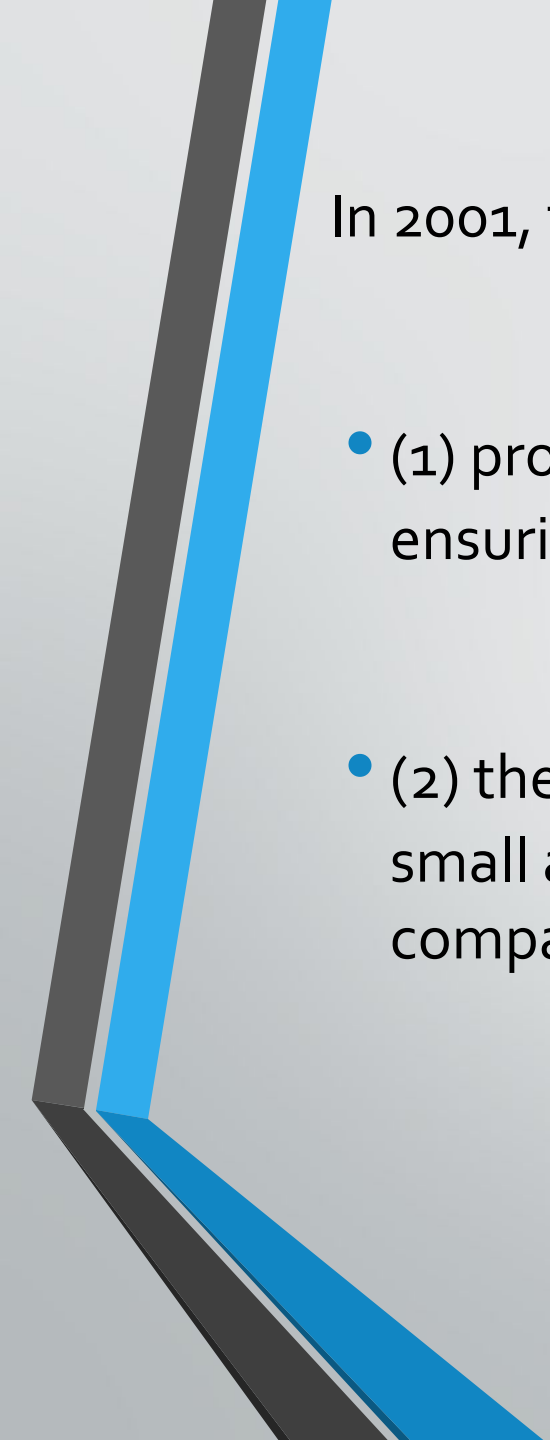
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- The worker concept is not defined by Labor Law
 - the concept of "workers" has political implication
 - Basically, if a contract was concluded in writing, the content of the contract would be respected

- "notice of relevant matters relating to the establishment of a labor relationship"
- if both parties have not entered into a labor contract in writing, all three of the following requirements must be in order to constitute a labor relationship.
- (1) The employing unit and the worker qualify as a subject defined by law and regulation.
- (2) The employing unit shall apply to the worker the respective work rule established by the employing unit in accordance with the law, and the worker shall be subject to the employer unit's labor management and engage in paid work prepared by the employer unit.
- (3) the work provided by the worker is part of the work of the employing unit.

The trade union in China

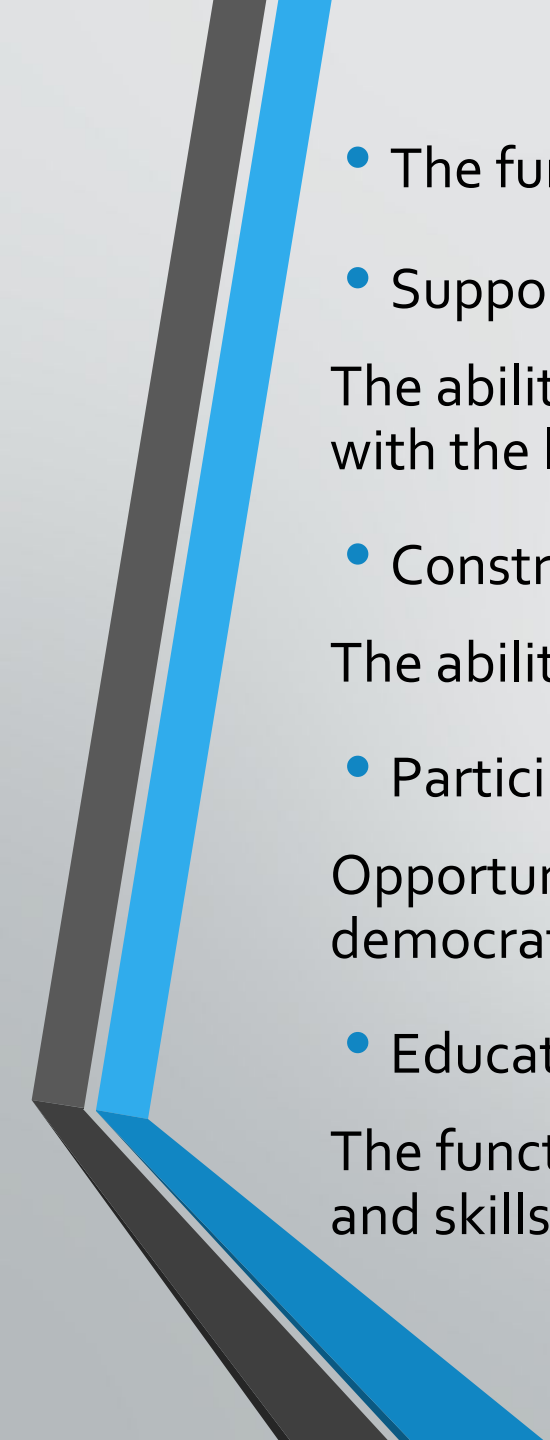
The Chinese Trade Union Law, which was enacted in 1992, stipulates

- (1) workers' rights to organize and participate in unions,
- (2) organization of unions,
- (3) rights and obligations of unions,
- (4) base unions in state-owned enterprises and collective enterprises, etc.,
- (5) expenses and assets of unions



In 2001, the law was amended, and stipulates

- (1) protection of workers' rights, such as ensuring working conditions, ensuring payment of wages, and preventing industrial accidents;
- (2) the establishment of unions on an enterprise or business basis, including small and medium-sized private enterprises and foreign-affiliated companies.

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- The functions of the union are provided for as follows.

- Support

The ability to defend the democratic and material rights of employees in accordance with the law

- Construction

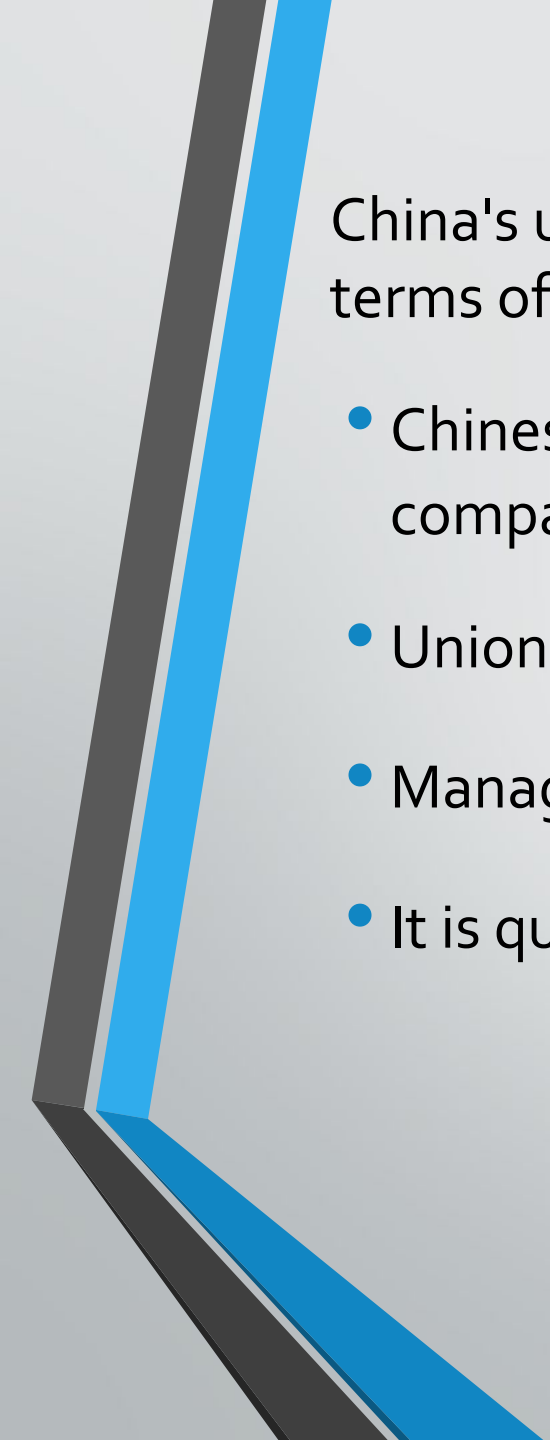
The ability to organize workers to participate in social construction

- Participation

Opportunities to participate in the management of the state and society and in the democratic management of enterprises

- Education

The function of educating the workers and enhancing their ideology, politics, culture and skills.



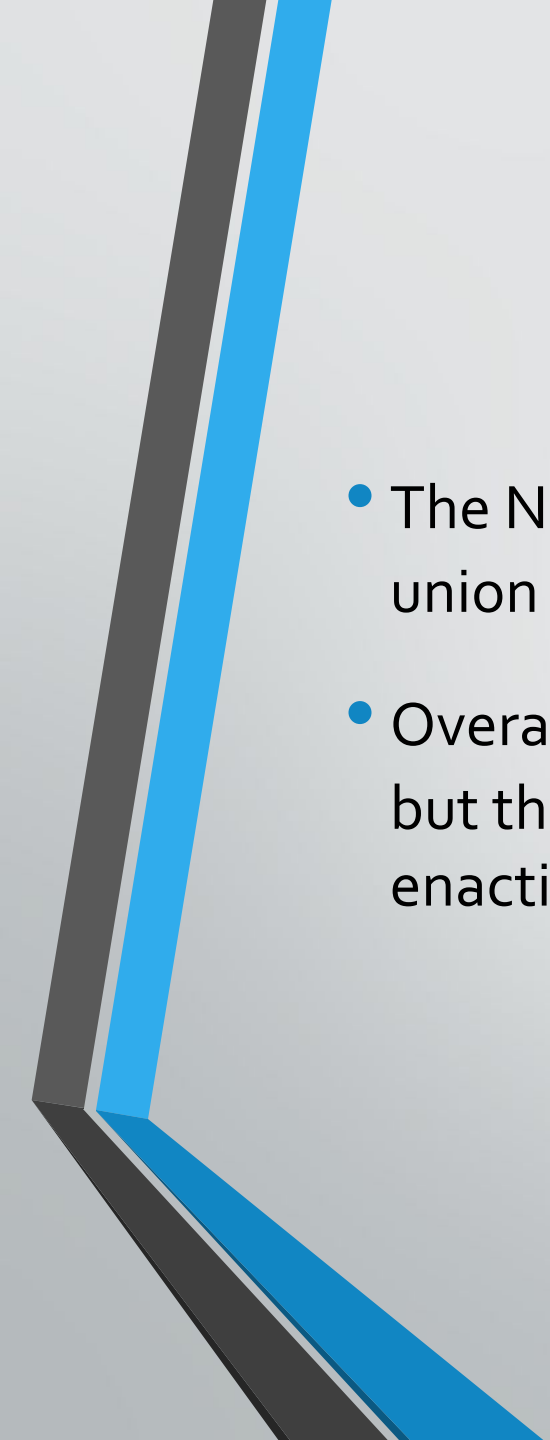
China's unions are fundamentally different from those in other countries in terms of the role they are required to play

- Chinese unions have multiple subordination (“National Trade Union” and company unions)
- Unions have played a part in the role of HR departments in companies
- Management and executives can also join this union
- It is questionable whether there is a right to strike in China



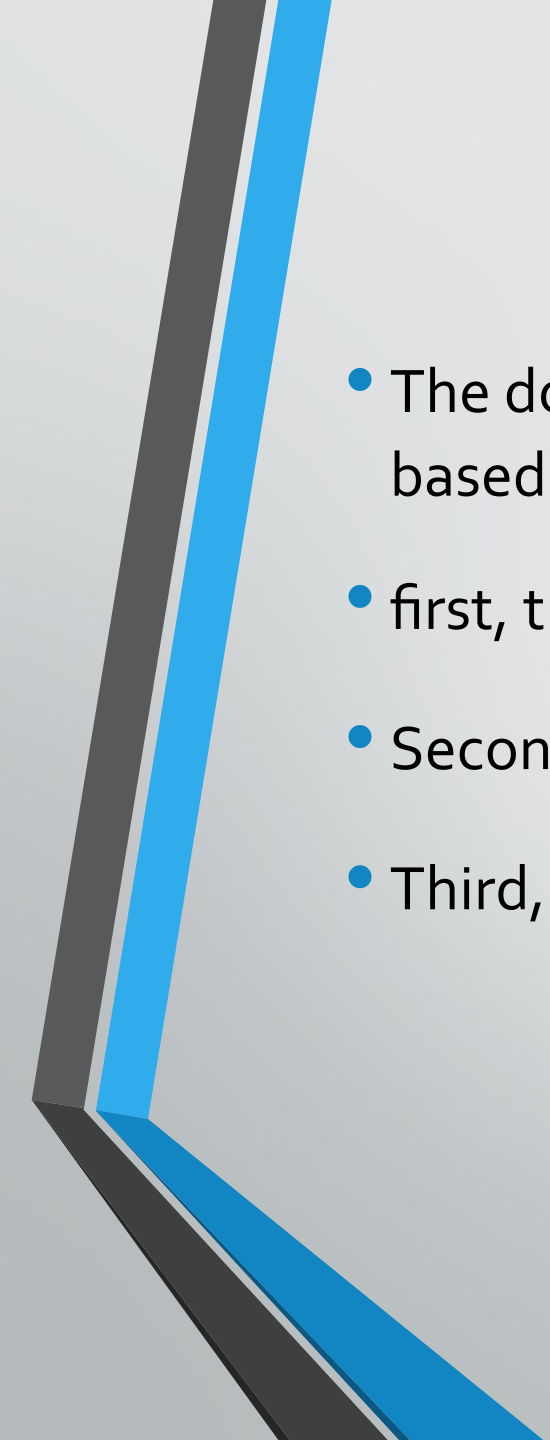
The problems with unions in practice are

- (1) the company need to apply to form a union, so even if a union is formed, it will be unrelated to the workers,
- (2) when unions at the company level enter into a collective agreement, the content of the agreement is often a straight copy of the rules of employment and the provisions of the labor law.
- (3) Company union leaders consider their status as workers to be important and do not want to negotiate with employers. And the industry-level unions fail to represent the interests of workers because they only set the minimum wage for the entire industry.

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- The National Trade Union headed by one of the top five leaders, and the union have a strong voice at the central level.
 - Overall, China's unions are less powerful and hollowed out at the local level, but they are stronger at the central level, acting as a voice for workers when enacting new laws and policies.

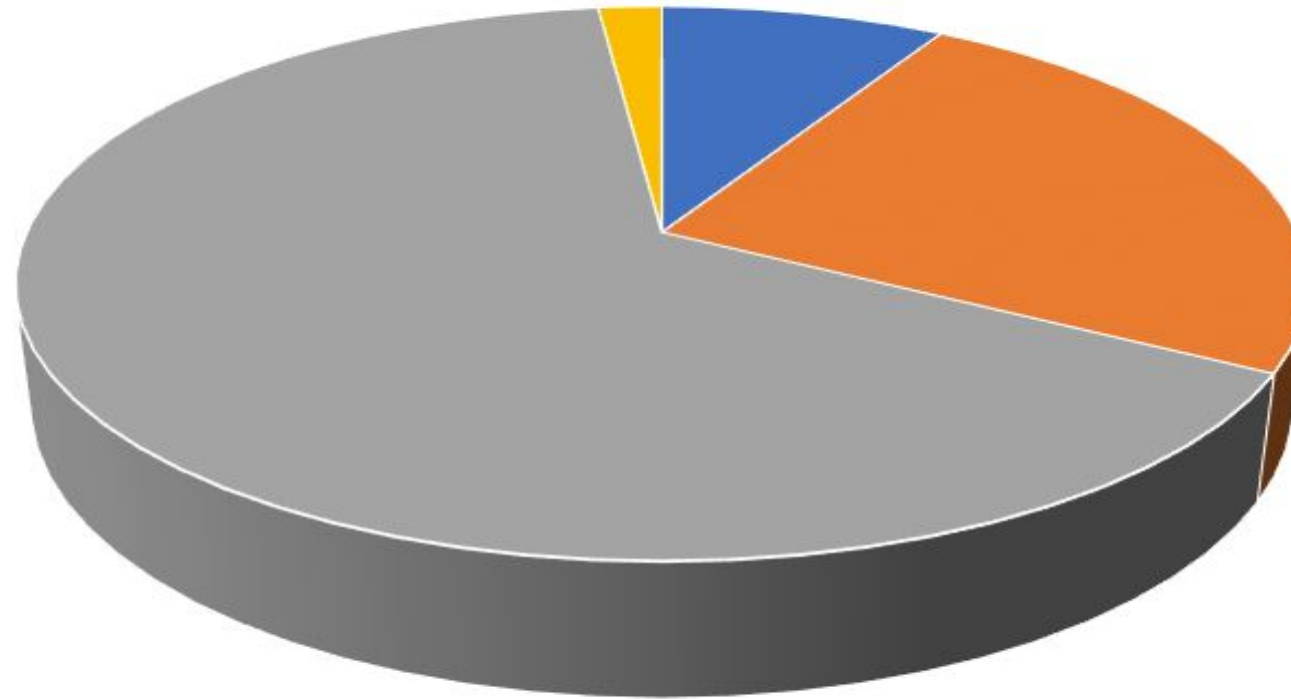
The Legality of Strikes in China

- the law neither explicitly "authorizes" nor explicitly "prohibits" strikes
- the government may encourage labor-management negotiations before a strike

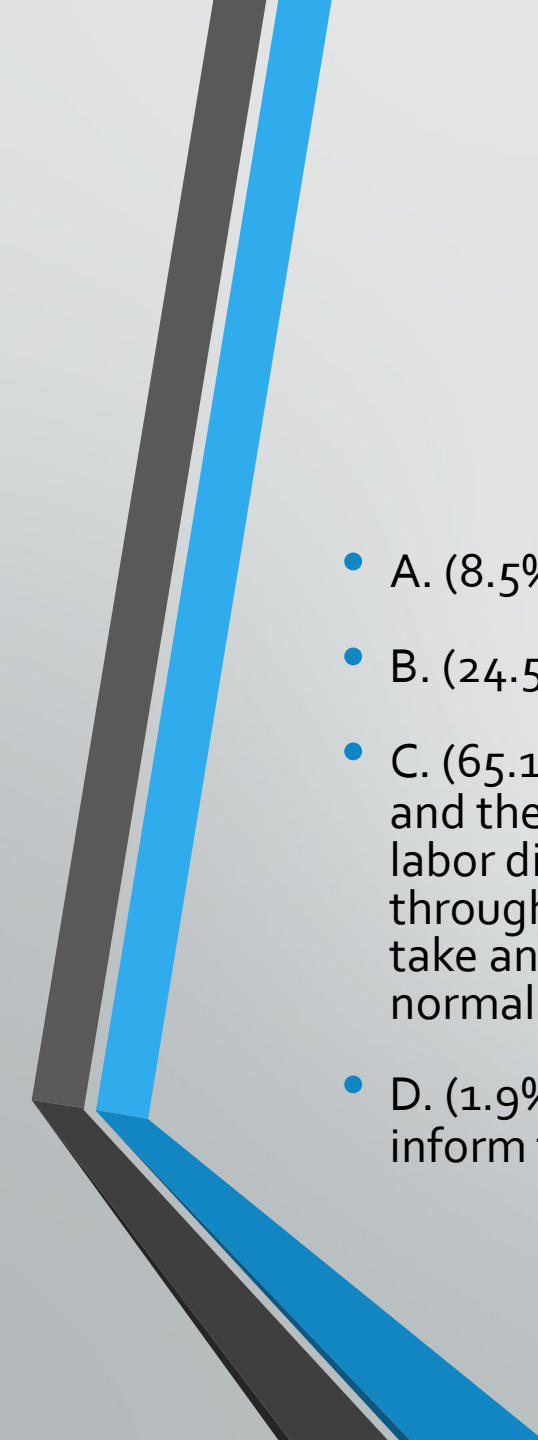
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- The dominant academic view that collective action by workers is "lawful" is based on three main arguments:
 - first, there is no law against it.
 - Second, the legal interpretation justifies the strike.
 - Third, collective action by workers is a self-reliance or contractual right.

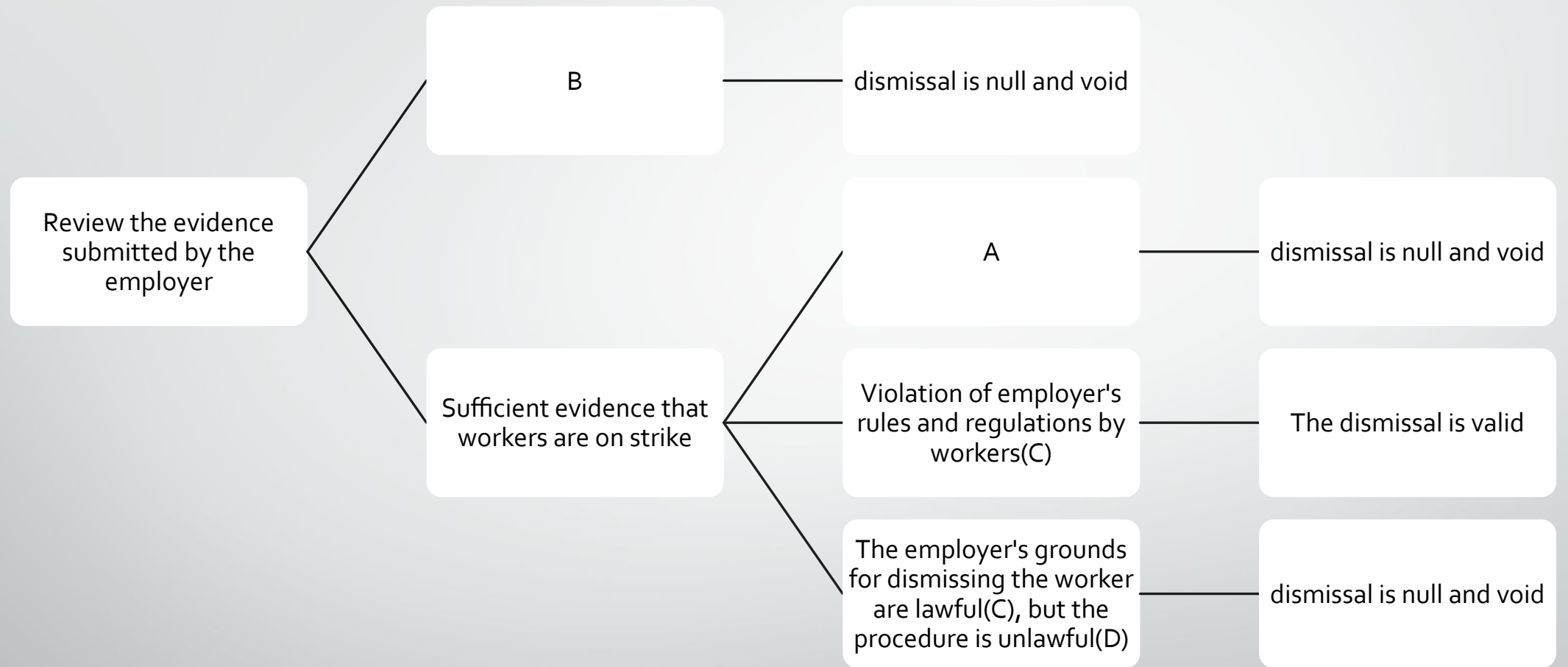
Process and basis of judicial proceedings in strike cases


The nature of the strike



■ A ■ B ■ C ■ D

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- A. (8.5%) the worker's act is an act of negotiation, not a slackening of work or a strike;
 - B. (24.5%) there is no sufficient evidence to prove that the worker has committed an act of strike;
 - C. (65.1%) the worker must comply with labor discipline and the employer's rules and regulations, and the employer has the right to punish the worker for violating the relevant regulations. If a labor dispute arises between a worker and an employer, the worker shall defend his or her rights through labor inspection, arbitration or legal proceedings in accordance with the law, and shall not take any excessive and inappropriate action, such as strike and slack work, that would disrupt the normal order of production and business;
 - D. (1.9%) If an employer dismisses a worker for a legitimate reason, but fails to notify the union or inform the worker of the rules and regulations in a procedural manner, the dismissal is still illegal.



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- Thank you very much for your attention.