

Asia Pacific Labour Law Review

Asia Pacific Labour Law Review

Workers' Rights for the New Century

Asia Monitor Resource Centre

2003

Asia Monitor Resource Centre Ltd.

AMRC is an independent non-governmental organisation
that focuses on Asian and Pacific labour concerns.

The Center provides information, research, publishing, training, labour networking
and related services to trade unions, pro-labour groups, and other development NGOs.
AMRC's main goal is to support democratic and independent labour movements in Asia and the Pacific.
In order to achieve this goal, AMRC upholds the principles
of workers' empowerment and gender consciousness, and follows a participatory framework.

Published by

Asia Monitor Resource Centre Ltd (AMRC), 444 Nathan Road, 8-B, Kowloon, Hong Kong, China SAR
Tel: (852) 2332 1346 Fax: (852) 2385 5319 E-mail: admin@amrc.org.hk URL: www.amrc.org.hk
Copyright © Asia Monitor Resource Centre Ltd, 2003
ISBN 962-7145-18-1

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted
in any form without prior written permission.

Editorial Team

Stephen Frost, Omana George, and Ed Shepherd

Layout

Tom Fenton

Cover Design

Eugene Kuo

Acknowledgements

AMRC expresses sincere thanks to the following people and organisations for their gratefully received
contributions to this book.

Suchada Boonchoo (Pun) is co-ordinator for the Asian Network for the Rights of Occupational Accident
Victims. We thank her for all the help in organising our conference of authors in Bangkok.

Thanks to the American Center for International Labor Solidarity, Bangkok, Thailand for a financial con-
tribution towards printing the book.

We are indebted to Oxfam Hong Kong for their financial contribution towards the production costs.

Thanks to the International Labour Organisation for allowing us to use photographs from their library free
of charge.

Eugene Kuo, a freelance photographer and designer, a big thank you for contributing photographs and de-
signing the cover free of charge. Look at www.226-design.com for some of Eugene's stunning work and
ideas.

To Tom Fenton, co-founder (with Mary Heffron) of AMRC – thanks a lot for advice, maps, and all the time
devoted to the layout of the book, free of charge. E-mail: tfenton@igc.org.

Finally, we would like to thank the International Centre for Human Rights and Democratic Development,
Canada, for an extremely generous contribution that covered much of the publishing costs of this book.
Without their last-minute financial assistance, it is possible that this book would never have proceeded be-
yond the editing stage. E-mail: ichrdd@ichrdd.ca; URL: www.ichrdd.ca.

Labour Law in Japan in the Era of Neo-liberal Reforms

Hirokuni Tabata

Contemporary snapshot

New legislation on dismissal has become one of the most important issues of labour law reform in Japan. A policy document of the government in June 2001 identified it as a pillar of labour policy, which itself is a part of an encompassing economic policy of the Koizumi Cabinet.

The Japanese economy has experienced an economic recession since the beginning of the 1990s. Employment in the industrial sector has contracted constantly and the overall unemployment rate has reached five percent, which is the highest after World War II. During this period, employment security has degraded conspicuously. The ratio of part-time workers and temporary workers in the active population has grown rapidly. The myth of 'life-time employment' has been exposed and many workers feel insecurity in employment. 'Karoshi' (death from overwork), a famous symptom of Japanese employment relations, has ceded its place to a new phenomena



'Risutora Jisatsu' (suicides from restructuring of firms) in the public opinion.

The proposed new legislation intends to mitigate legal restraints on dismissal. Law on dismissal in Japan is essentially an evolution of case law in the courts. Japanese courts have ruled that the employer cannot arbitrarily dismiss employees and that a socially rational cause is required for legitimate dismissal, while the Labour Standards Law demands only 30 days notice or payment in lieu of this period. Case law has restrained employers' power so far. Particularly, the courts demand four conditions for collective redundancies to be legitimate (see later discussion).

Discussion on the new legislation began in business circles. The theory of neo-liberal economists justified it: rigidity of labour markets impedes job creation whereas flexibility enhances the rate of employment. The government is to set up a 'reasonable' procedural framework making redundancies easier. Trade unions oppose this idea, demanding on the contrary more protective legislation on dismissal because case law is, generally speaking, more fragile than statutory rules.

Japanese labour law has experienced many reforms since the mid-1980s.

A new law on temporary work businesses was enacted in 1985, legally permitting temporary businesses that were prohibited by the Employment Stability (placement) Law of 1947. Also in 1985, legislation on women's employment welfare was revised and became virtually a new law on equal opportunity in employment between men and women (the Equal Employment Opportunity Law). The Labour Standards Law's section on working hours was revised in 1986 to introduce a step-by-step reduction in working hours and at the same time flexible measures on working time.

In 1997, the Equal Employment Opportunity Law was fundamentally modified and strengthened, but at the same time protective measures for women in the Labour Standards Law were abolished. A law on parental leave was enacted in 1991 and it was extended to the Parental and Family Care Leave Law in 1995. As to the measure for flexibilisation of the labour market, the Temporary Work Law was revised many times (1990, 1994, 1996) and the 1999 amendment led to a general permission of temporary businesses in different occupations. And the stipulations on flexible working hours, including the

presumed hours scheme or discretionary work scheme (certain hours are presumed to be worked irrespective of the actual hours for certain categories of employees) were extended in its scope of application by the 1998 amendment of the Labour Standards Law. Lastly, private placement services were liberalised in 1999 by the amendment of the Employment Security (placement) Law.

Labour law reforms in favour of flexibilisation of the labour market have been a dominant feature of the government labour policy of the decade. The last bastion of labour law concerns the restriction of dismissals. The labour law system as a whole is being weakened and flexibilised through legal reforms.

Trade unions

Trade union centres

Rengo (Japanese Trade Union Confederation): the largest union umbrella organisation with over 70 industrial federations and around eight million members.

Zenroren (National Confederation of Trade Unions): the second largest national organisation that has about 25 industrial federations and around 860,000 members.

Zenrokyo (National Trade Union Council): leftist ex-Sohyo faction with about 40 affiliates and 280,000 members.

Major new union formation

Most unions affiliated to the labour centres above are enterprise-based unions, but new types of unions have emerged since the 1980s, still small in size and weak financially, but attract much more public concern than their mere size suggests. There are various types of new unions: community unions organised locally; managers' unions for professionals; and women's unions. These unions are generally organised outside the companies and therefore their organising practices and union behaviour are different from those of traditional Japanese enterprise unions.

Major labour legislation

Workers' welfare

Labour Standards Law 1947: stipulates the minimum standards of working hours, paid leave, work rules

and other regulations in the contract of employment. Normal working hours are now 40 hours a week, eight hours a day.

Minimum Wage Law 1959 (separated from the Labour Standards Law)

Law on Securing Wage Payment 1976: deals with the procedure of wage payment in case of bankruptcy.

Collective labour rights

The 1946 Japanese Constitution declares workers' fundamental rights to organise, to negotiate collectively, and to go to strike (Article 28); the Trade Union Law 1946 and 1949 defines collective labour rights more precisely.

Trade union rights

Trade Union Law 1949: every worker has a right to organise and to affiliate to a trade union freely without interference by the employer. The trade union has a right to collective bargaining under the auspices of the unfair labour practices scheme of the same law. The right to strike is guaranteed by immunity from civil and penal sanctions for legitimate strikes. The trade union can make a legally enforceable collective agreement with the employer.

Occupational health and safety

Occupational Health and Safety Law 1972 (separated from the Labour Standards Law): is a comprehensive

law on occupational health and safety including a system to regulate dangerous equipment, harmful materials, and the system of workplace controlled through the committee on health and safety etc.

Gender-related legislation

Equal Employment Opportunity Law (virtually new legislation in 1985, revised in 1997): prohibits discriminating practices in recruitment, assignment, promotion, training, corporate welfare, retirement, and dismissal. However, the sanction against violation is only to publicise the name of offenders. On the other hand, case law has played an important role in gender equality. The Japanese courts have fairly strictly applied the anti-discrimination principle Article 14 of the Constitution and Sections 3 and 4 of the Labour Standards Law covering 'public order', which regulates private contractual relationships. More recently, the Basic Law for Gender Free Society 1999, a programmatic law, was enacted to promote gender equality in society as a whole.

Employment discrimination

The Labour Standards Law has a general principle for equal treatment of workers in employment relations. Section 3 of the Law states 'The employer cannot treat his/her employees discriminatorily concerning wages, working hours, and other working conditions because of nationality, [political and religious] belief, or social status'. There is no specific independent legislation on discrimination in general, but discriminatory practices are considered illegal under this stipulation.

Unfair dismissal

In law, the term 'unfair dismissal' covers two kinds of illegal dismissal. One is dismissal for union activities, which is prohibited as an unfair labour practice by the Trade Union Law. The other is more general, and concerns dismissal without just cause. This essay focuses on the latter.

Civil law provides quite liberal rules concerning dismissal. A worker on a contract of employment without a specified term can be dismissed at any time with two weeks' notice without any reason. A worker employed on a fixed-term contract is dismissed automatically by the expiry of the contract term. This modified by the Labour Standards Law,



Strike against Kansai University which has violated the labour laws for decades. (Credit: Neo Yamashita, Education Workers and Amalgamated Union Osaka)

which requires the employer to give 30 days' notice or to pay the 30 days' wages in lieu of notice (Section 20). 30 days notice is required to dismiss employees on indefinite-term contracts and employees on fixed-term contracts whose term exceeds two months. This protection does not apply to workers employed on daily contracts, fixed-term contracts shorter than two months, or seasonal contracts shorter than four months (Section 21).

The Labour Standards Law provides protective measures for dismissal. Employees cannot be dismissed during a period of absence due to occupational accident or disease and 30 days after that absence. Women cannot be dismissed during maternity leave and the 30 days thereafter.

The following reasons for dismissal are prohibited by the law: worker's nationality; political or religious belief; social status (Labour Standards Law Section 3); declaration to the Labour Inspection (Section 104 para 2); gender (Equal Employment Opportunity Law Section 8 para 1); declaration to the Equal Opportunity Commission (EEOL Sections 12 and 13); parental or care leave (Parental and Family Care Leave Law Sections 10 and 16); declaration of illegal practices concerning temporary work (Temporary Work Law Section 49-3 para 2); affiliation to a union; and union activity (Trade Union Law Section 7).

Thus the employer can dismiss workers in accordance with such procedure. However, dismissals are more difficult in practice. According to the case law of the Japanese courts, the employer has to prove a socially acceptable reason of dismissal. Courts regard a dismissal without such reason as 'abuse of the right to dismissal' by the employer and such dismissal is null and void. Of course, it is not always easy for workers to prove that abuse has occurred, but Japanese workers have enjoyed a fairly strong guarantee of employment under case law.

Individual dismissal

Absenteeism or violation of work rules are socially acceptable causes of dismissal. Dismissal is generally assumed to be legitimate when a worker cannot or does not work appropriately, and when a worker violates company rules. However there are various contentious cases and the courts have not been impartial in many cases. For example, a worker who refused to work over-

time for personal reasons was dismissed on the grounds of disobedience to the superior's order, which itself was a reason for disciplinary dismissal in company rules. In this case, the Supreme Court ruled that the dismissal was legitimate. Refusal to work one hour of overtime was considered a just cause for termination of life-long employment in this case; the actual reason for this dismissal was the worker's political belief. In another case, an employee had been ordered a transfer to a site which was very far from the plant he worked for. The employee refused the transfer because of his family situation, especially to care for his mother. The company dismissed him and the court approved the company's decision.

Collective dismissal or redundancy

The courts have identified four preconditions necessary for redundancies to be legitimate:

- economic necessity;
- no alternative measures to respond to the financial difficulties;
- reasonable criteria for the selection of employees to be dismissed; and
- prior consultation with union or employee representatives.

While those conditions are the result of case law, they are fairly effective in restraining arbitrary redundancies. This has led to recent criticism of case law from the employers' organisations, and some recent court decisions now ignore this traditional rule.

Dismissal of atypical workers

This is the most contentious issue regarding dismissal. Most part-time workers are employed under fixed-term contracts, usually for two or three month terms. A considerable number of workers are on fixed-term contract. When these workers are dismissed, employers indicate the expiry of the contracted term, asserting that the employment relationship ended not due to dismissal but to the expiry of the term, even if the contract has been renewed many times previously. The solution of this case law is that the employer cannot end the contract only by reason of the expiry of the term when the contract has been renewed several times and/or there is a situation where a worker can reasonably expect contract renewal. In such cases, the court examines the reason of dismissal like other normal dismissal cases.

Individual and collective dismissals are restricted by legislation and case law to some extent. Employment security is fairly well guaranteed legally as so-called lifetime employment has been regarded as an important feature of Japanese employment practice. However, there are shortcomings in present laws.

First, there is no explicit legal stipulation in current legislation except a very simple procedural requirement and a general principle of limitation of dismissal. Almost all things are left to case law even though Japan generally has no tradition of case law like Britain or the USA, so court decisions are generally unstable and unpredictable.

Second, there is no specialised tribunal for labour matters. All cases are filed at ordinary courts and hence the lawsuit uses considerable costs and takes a long time. Absence of a labour tribunal or labour court discourages workers from taking action even if it is necessary for them. Therefore, legal protection of employment is virtually ineffective in practice.

Third, many people believe that fixed-term contracts can easily be dissolved upon expiry of the term, despite the opposite interpretation by the case law judgement. Part-time and temporary employment is very unstable. The proportion of such atypical workers is about one quarter of the total workforce. Moreover, many workers of small and medium firms do not enjoy an employment security.

Developments of labour law

Collective labour law

Japanese labour law has undergone continuous changes since the mid-1980s, whereas it had experienced only marginal changes during the high economic growth era of the mid fifties to seventies.

Before the 1980s, the basic framework of Japanese labour law was constructed on three major laws: Trade Union Law 1945 and 1949; Labour Relations Adjustment Law 1946; and Labour Standards Law 1947. Those laws are the product of democratic reform in the post-war era, the basic idea being to establish an equal partnership between labour and management, and good working conditions through collective bargaining and legal regulation of minimum labour standards. The fundamental rights of workers were written into the 1946 Constitution.

During the period of high economic growth, collective bargaining was important in determining wage levels and other working conditions, although the enterprise level labour-management relations continued to be crucial. The legal system worked fairly well due to the fairly strong bargaining power of unions. National unions divided into three camps – the leftist organisation Sohyo was most influential while rightist Domei and moderate Churitsu Roren were runners-up. Several industrial organisations of unions like the Steel Industrial Federation, the Coal Industrial Federation, the National Railway Union, the Private Railways Federation backed Sohyo, while the Textile Industrial Federation of Domei and the Electric Industrial Federation of Churitsu Roren were powerful and obtained de facto collective bargaining at industry level whereas formal collective agreements were concluded at enterprise level. The idea of labour law promoting the collective determination of wages and conditions was fairly well implemented.

The philosophy of post war labour law was based on the equal bargaining positions of workers and employers. The labour movement of this period responded well to it. The status of interim or contingent workers was improved and they were often incorporated as regular workers under union pressure.

However union bargaining power weakened remarkably after the 1980s. Union density declined steadily and the number of strikes decreased rapidly. Meanwhile management power strengthened because of rising unemployment rates and the increasing influence of neo-liberal competition-oriented ideology. Downsizing, restructuring, and redundancies became common in many sectors. To downsize, companies adopted various policies such as reducing the number of regular employees, increasing part-time or temporary employment, relying on subcontracting workforce, and so on. Besides, individualised human resource management techniques such as the appraisal system for pay and promotion intensified competition between workers.

The situation did not correspond to legal principles and philosophy of labour law, but factual transformation of the power balance between labour and management now appeared to transcend the rule of law. In other words, even if the legal scheme itself was intact, the idea of labour law became obsolete in practice.

This is a very general perspective and possibly a little exaggerated. Japanese unions still have some functions within the company in particular, but their protective function for workers is considerably weakened.

In hard times for the labour movement, noteworthy new movements emerged. These are new style trade unions such as ‘community unions’, ‘part-time unions’, ‘managers’ unions’, and so on. These unions organise various sectors of workers, such as part-timers, women, and migrants on the basis of local community or profession. They are different from the mainstream unions in Japan in that they are organised outside of the firm and on a voluntary basis. Japanese enterprise unions usually have a closed-shop agreement, with compulsory union membership.

Here the Trade Union Law is important. According to stipulations of the Law, every union has a right to collective bargaining and the employer cannot refuse to bargain with a union which has members among his/her employees. The Law has no ‘bargaining unit’ system as USA law has, but it has ‘compulsory recognition’ for every union. If an employer refuses to negotiate with a union, the employer’s conduct is regarded as an ‘unfair labour practice’.

This means the new unions have the right to bargain collectively and the employer cannot refuse to negotiate with them, even if their membership is small. Through the Trade Union Law, new unions can be very effective.

The Kokuro (National Railway Workers’ Union) case is noteworthy. When the National Railway was privatised in 1986, a large number of employees were transferred and dismissed. Among those dismissed, a disproportionate number were Kokuro members. Kokuro complained to Local Labour Relations Commissions citing unfair labour practice where the employer discriminated intentionally against union members.

All the Local Labour Relations Commissions that dealt with union complaints regarded the dismissals as unfair labour practices prohibited by law and ordered the privatised Japan Railway Companies to reemploy the dismissed Kokuro workers. The Central Labour Relations Commission, in a harsh political focus outside the Commission, gave orders in the same line. However, the Court of Appeal of Tokyo nullified the Central Commission’s order and stated that the old National Railway was dissolved and the employees were re-employed by the

new companies and that the new companies did not have any intention to discriminate against workers during re-employment. Kokuro sought a political solution to the conflict and the coalition government reached an agreement in 1995 that the companies would re-employ fired union members if Kokuro would abandon legal disputes.

This so-called ‘Four Parties Agreement’ was very problematic for the union. It would bring about some practical benefits to union members, but it also meant that the union had to abandon the legitimacy of its demand. Then the opinion of members split within the union. The congress of Kokuro decided to accept the Agreement by majority, but the minority group, which fought through legal action, continues to criticise that compromise. The fundamental problem is that the government had purposefully divided and weakened the railway union through privatisation and the court legally supported the manoeuvre, whereas the Labour Relations Commissions criticised it. In the end, the government ignored the spirit of the labour law and the court distorted its application. Kokuro criticised discriminative dismissals as ‘unfair labour practice by the state’.

Law on contract of employment

Recent laws on contracts of employment have the common implication that employment relations should be more flexible to cope with the globalising economic environment. Policy makers argue that the Japanese economy must become more attractive for capital investment, which moves round the world seeking higher profit. According to this argument flexibilisation of labour is a precondition to improving the economy. Of course this does not necessarily mean an improvement of working conditions and wages for workers. On the contrary, flexibility in the labour market brings about more unstable contingent employment, low-wage employment, and redundancy of regular workers.

The Labour Standards Law was untouched by the legislature for a long time, because the idea of ‘standard employment’ was taken for granted. Of course there were contingent or subcontracting workers whose working conditions were problematic, but regular employment was regarded as typical and normal.

However, in the last decade, social consensus about employment security has been eroded through succes-

sive new legislation and through changes in personnel management policy of the firm. Restructuring of the business organisation accompanied with redundancies and transfers of workers is regarded by managers not only an unavoidable measure but also favourable one for its competitiveness in the market. The so-called 'Japanese employment practices' are at present criticised as inefficient and even as a cause of stagnant or grudging behaviour of the Japanese economy. Hiraiwa Commission of the government (Study Group on Economic Reform headed by Mr. Hiraiwa Gaishi) weighted in favour of business leaders in its composition published its report in 1993, which proposed massive deregulation of social and economic institutions. Recommendation of 1995 by the Administrative Reform Commission underlined the necessity of deregulation of labour laws including the liberalisation of temporary work businesses. 'Deregulation' and 'structural reform' became henceforth key words of economic and social policy of the government. A report of 1998 published by the Economic Council of the Economic Planning Agency argued that the Japanese economic system based on the coordination between different economic actors had to be reformed. Here the notion of the economic coordination included the long-term employment practice and the seniority wage system in the field of labour. As stated by Nikkeiren (Japan Federation of Employers Associations) in 1995, the three types of employment were considered in this document as main pillars of a future Japanese employment system: core workforce with employment security, fluid workforce with special skills, and flexible workforce of different occupations. The concept that a regular permanent employment with job security should be a rule was abandoned through these policy papers of the government and of the employers associations.

The transformation of the basic concept on employment has promoted deregulation and liberalisation of labour laws relating to the labour market in the latter half of the 1990s, in particular. The Temporary Work Law enacted in 1985 has been successively revised in 1990, 1994, 1996, and 1999. Temporary work business initially prohibited by the Employment Stability (Placement) Law of 1947 was partially legalised by the 1985 law for specific skilled jobs and became liberalised by the 1999 Law for all jobs except some categories of jobs.

Legal restriction of the fixed-term contract was eased by the 1998 revision of the Labour Standards Law. Whereas the LSL had permitted the fixed-term contract only within one year and the contract over that period was regarded as permanent employment, the 1998 reform extended it up to three years for specialists in research and development, specialists in firm's restructuring, and aged people older than sixty years. Government policy panels assert yet more flexibility such as three years or five years term for every occupation. It is evident that longer fixed-term contract and its generalisation would make it easier to replace permanent regular workers with fixed-term workers. Reformers are aiming at a more fluid labour market, which is believed to be more efficient and they asserted that a fluid labour market needs better function of placement agencies. The amendment of the Employment Stability (Placement) Law in 1999 inaugurated a new era of job placement: private placement businesses are permitted to run freely in principle, under the condition of administrative regulation. However, business circles are demanding further liberalisation which would allow the agency to collect the fee from job seekers.

Restructuring of businesses and employment security

Under the pressure of long economic recession, the restructuring of business became a fashion of business management. The Division of Undertakings and the Contract of Employment Law of 2000 defined the rules for contractual relationships between the divided company and its employees. According to the law, the employees working at the sections transferred to a new company will be transferred to the new company and those working at the remaining sections will be employed continuously by the company. The scheme of law seems to guarantee the employment, however the law does not aim at the protection of employees itself but to promote restructuring of business by easing the conflict that might be caused.

The employment relationship in Japan has been regarded 'stable' as the well-known term of 'lifetime employment' suggests, but the reality of employment is more unstable and vulnerable for workers. Collective redundancies are legally controlled only by the case law as mentioned above and there are many ways that the com-

pany could evade the legal and practical restrictions of redundancies. One is subcontracting arrangements that enable redundancies through a cut of business contract. A parent company can easily manipulate its subcontracting firms in terms of labour costs and union activities, while it is usually difficult to prove its legal responsibility as an employer.

Division of undertakings can be a sophisticated way of redundancies. If a company has a department or a section whose business performance is not so good, it can 'divide' itself and separate its bad section into the new company. A newly created company will be an independent business with bad financial situation, while the principal firm will be liberated from business risks. The new company will presumably cutback its business and reduce personnel after a while. This time, the redundancies will be easily justified by the bad situation of business. The law of 2000 is supposed to function like this.

Flexibilisation of working time

Flexibility of working time is another major tool for 'numerical flexibility'. The Japanese labour law introduced for the first time in 1987 a modification of standard working time practices. The standard working time means here a fixed working time from 8 o'clock in the morning to 5 in the evening for example. Three types of flexibilisation were introduced at the time, that is so-called 'flex-time', 'variable working hours', and 'discretionary work scheme'.

The 'flex-time' system will not need so much explanation. Under this system workers can determine their time allocation of a week except the 'core time' defined as necessary attendance. The second measure of 'variable working hours' can be implemented through an agreement between management and a union organising the majority of employees or when it does not exist a representative of employees. According to this scheme revised in 1998, working hours can vary by day up to 10 hours and by week up to 52 hours under the condition that the averaged total working hours within a period does not exceed the statutory minimum standard of 40 hours a week. This system makes possible for the employer to reduce a slack of working hours and enhance the intensity of work.

The last measure of 'discretionary work scheme' is very peculiar to the Japanese labour law reform. This system intends to virtually dislocate the statutory regulation of working hours for white-collar employees and researchers. Reformers maintained that the traditional regulations had been designed for blue-collar workers working at the plant and that white-collar workers should have more flexible working hours. According to this scheme, highly qualified employees in research and development and in managerial planning are supposed to have worked certain hours, 40 hours a week for example, irrespective of their actual working hours. The reason of such assumption is that the way to perform the job and the time allocation of those workers are largely left to their 'discretion' (Articles 38-3 and 38-4 of the Labour Standards Law). To implement this scheme, the employer has to get a consent of the employee representative or the union that represent the majority of employees regarding the older scheme for the jobs that an ordinance of the Ministry decides, or a consent of a committee composed of an employer and employee representatives regarding the newer scheme for the jobs of managerial planning and research. For the latter case, the individual consent of a concerned employee is required, too. The legal scheme as a whole is very complicated because of the resistance of trade unions in the process of legislation.

Finally, we have to touch upon the regulation of overtime work. The Labour Standards Law has a fairly restrictive provision about overtime work. That is, overtime work is permissible only when an employer has reached an agreement with the employee representative or union that represent the majority of employees, and the employer who ordered overtime work without an agreement is to be punished by Law. However, most unions and employee representatives are ready to give consent easily and the amount of overtime hours in Japan is large. In addition, there are widespread practices of 'service' overtime without pay, so that the actual overtime hours far exceed the official data. Although unions and academics are claiming a legal disposition that puts a ceiling for maximum overtime hours, the government does not accept such a proposal. This is a focal point of discussion of the labour side concerning labour law reform in terms of working hours.

Politics of labour law reform

As I noted earlier, current labour law reform has been carried out by the initiative of business circles and state bureaucrats as a part of the encompassing deregulation policy.

Generally speaking, ministerial bureaucracies play a dominant role in legislation in Japan, not the parliamentary members. The orthodox procedures of labour legislation were like this. At first, an advisory commission for the Minister of Labour specialised in a specific matter examines legal measures to resolve a problem and then the Minister proposes some necessary measures to a statutory tri-partite council for its examination and after the report of that council the Ministry makes a draft of a bill. And the bill will be submitted to the Diet by the government. In this procedure, the tri-partite councils such as the Central Labour Standards Council or the Central Employment Security Council have a considerably important role, because if the labour members oppose it to the end the final report of the council becomes impossible in practice.

Compared to this orthodox procedure, recent legislative process has two distinctive characteristics. First, a legislative initiative shifts to the top-level policy making organs such as the Administrative Reform Committee. The basic orientation of critical issues such as temporary businesses or ‘discretionary work scheme’ has been decided at this Committee. Second, the effective role of the tri-partite councils has been reduced proportionately. At the time of the amendment of the Labour Standards Law in 1998, the Ministry made a decision at the Central Labour Standards Law Council without a consensus in the Council. Labour opposed the extension of ‘discretionary work scheme’ and employer side claimed a generous application of this system at the Council, but the Ministry made its own position at the midway. A similar situation occurred when the Temporary Work Law was revised in 1999.

This means that the policy and law making process in Japan has changed in very recent years. A kind of consensus politics has been broken down and the voice of the labour side has been ignored by the state bureaucrats. This means again that the recent law reforms include measures that are against the labour’s interests and that the pressure of neo-liberalism or of the business side is so strong. However, labour resisted in the Diet through

Opposition parties, resulting in a complicated legal system of ‘discretionary work scheme’ as mentioned above. During these reform processes, some cooperation between different streams of labour movement, Renko, Zenroren and Zenrokyo has materialised.

Final remarks

Labour law is originally a legal measure of protection for workers in the labour market. If workers have sufficient independence and bargaining power in the market, we do not need it. Civil law will be sufficient for the legal coordination of the labour market.

The essential assertion of neo-liberal argument consists in a denial of the specific nature of workers’ position in the market and in the firm. They argue that a free market transaction without any constraint is most efficient and therefore most beneficial for the parties. According to this argument, labour law will lose its reason for being. It may be unbelievable, but law reformers in recent years really have a thought of such kind. The recent labour law reform is, in consequence, going to dismantle the edifice of labour law as a whole. Actual legislation is, of course, made with many considerations and as a product of power relations in politics and industrial relations, but the essential orientation and the basic idea of recent legislation are in line with this argument.

When the extension of the legal upper-limit of the period of fixed-term contract from one year to three years for certain workers was discussed, there were no theoretical basis for the limit of three years, nor for the categorization of concerned workers. Those conditions defined by law amendment were simply a result of compromise. Some policy makers including business circles claimed five years and general application to all jobs. Five years in this case is borrowed from a provision of the Civil Law that has no theoretical basis by itself. After all, they want to remove the legal restriction for fixed-term contracts, because they think that fixed-term contracts should be concluded freely according to the principle of the freedom of contract, which is an expression of the idea of free market on the level of law.

The case of the expansion of the ‘discretionary work scheme’ is the same. The complicated legal system was a product of compromise at the Diet and the true aim of the reformers consists in a total liberalization of white-

collar workers from legal regulation. They often talk about a 'white-collar exemption' concerning working hours regulation. That is, no regulation for white-collar workers in terms of working hours.

On the other hand, the concept of 'equal opportunity' is widely accepted by neo-liberal bureaucrats. When the Equal Employment Opportunity Law was revised and strengthened in 1997, protective provisions for women workers were removed as being contrary to the equality between men and women. The tendency towards 'equal opportunity' coincides, of course, with the logic of the free market where all actors are assumed as free and equal on the market. The most crucial point derived from that logic is to reward workers in proportion to

their merit or ability. This idea of ability-based pay becomes more and more popular in recent Japanese businesses. Nevertheless, structural pay differentials between male and female workers and full-time regular workers and female dominated part-time workers remain large and no effective measure has been taken by the government so far.

All those things suggest that Japanese workers have been more and more exposed to crude market forces without legal protection. Rengo and other labour organisations are unanimously criticising the current neo-liberal law reforms, however the power of the labour remains still weak and a new development of the labour movement is expected.