

How Social Dialogue Works to Protect Workers and Their Companies in Time of Restructuring in Japan

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Introduction: Nature and Main Points of This Paper

This paper aims to find hypothesis, using case studies, to shed light on the “role of labor unions in the process of business revitalization,” and in particular, the role of social dialogue¹ (dialogue between employers and workers).

The paper first presents the definition of “business revitalization” used here, and then gives an outline of the means resorted to in business revitalization in Japan. Among these, it will pay special attention to the presence of signs that “social dialogue” is being institutionalized within the framework of legislation related to revitalization of bankrupt companies.

Next, based on the findings of the case studies, this paper analyses the role of the labor unions in the process of business revitalization. From this, it presents a hypothesis that the unions will play a specific role in promoting business revitalization provided certain conditions are satisfied, such as “the competence of the labor unions (ability of union executives to assess business management, centripetal force for union members)” and “good faith of the business managers.”

1. What is Business Revitalization?

In this paper, “business revitalization” is definable as the recovery of competitiveness of a firm saddled with excessive debts by: placing competitive divisions at the center of the firm; reviewing its business strategies; and reorganizing business divisions. This differs from the conventional notion of “revitalization of bankrupted firms” in the sense that its strategy involves letting competitive divisions survive as independent

¹ ILO defines “social dialogues” as “all types of negotiation, consultation or simply exchange of information between, or among, representatives of governments, employers and workers, on issues of common interest relating to economic and social policy.”

companies by spinning them off from the main company.

It is only in the past several years that the term “business revitalization” has been frequently heard in Japan. With the economy in prolonged recession after the burst of the bubble boom, and having gotten rid of non-performing loans of financial institutions—the villains of the “lost decade”—the practice of revitalizing business divisions has gradually become established in Japan. That is, measures have been taken, with the help of development of various forms of legal infrastructure described later, to recover debts as much as possible by “reviving businesses,” rather than discarding borrowers with loans, which are highly likely to be unrecoverable.

From a broader point of view, business revitalization can be regarded as a series of steps, and not just for financial institutions to maximize the amount of debts recovered. These steps can also prevent entities (human capital, tangible assets, intangible assets, etc.) lumped together under the name “businesses” which can create socially useful value added, from disappearing or breaking up due to bankruptcy, and to remove factors that could hinder the demonstration of potentials for such value added. In this sense, business revitalization can be seen as not only a device to rescue stakeholders in bankrupted firms, but also as an act beneficial to the economy and society as a whole.

2. Activities of the Public and Private Sectors in Encouraging Business Revitalization

Business revitalization is a kind of a social involvement that has an impact beyond the personal interests of stakeholders directly related to the business in question. In light of this, the public and private sectors reached a consensus in the 1990s, when corporate performance deteriorated in the process of cleaning up bad loans, to cooperate in developing legal and various other systems to encourage business revitalization. As a result, the government, the private sector, or both in collaboration began to actively engage in the various measures outlined below.

2.1 Activities of Public and Private Sectors in Promoting Business Revitalization

Activities of the government and the private sector for the promotion of business revitalization extend over a wide range of fields. The following are the major activities:

(1) Development of a legal system relating to revitalizing-type bankruptcies

In April 2000, a Civil Rehabilitation Law was enacted in order to provide a legal framework enabling small and medium-sized enterprises to rehabilitate their businesses, and serve as a way of handling revitalizing-type bankruptcies that is fair and honest to creditors and other stakeholders, while also swift and functional. In the four years since its enactment, firms which have called for application of the law total 3,350, proving that the law has played a substantial role in prompting revitalization of firms with excessive debts.

At the same time, in order to allow large-scale, publicly traded companies to rehabilitate themselves swiftly and smoothly, the existing Corporate Reorganization Law was thoroughly revised and came into effect in April 2003.

(2) Establishment of the Industrial Revitalization Corporation Japan

In April 2003, the government and the private sector, cooperating in respect of human resources, funds, and expertise, established an Industrial Revitalization Corporation Japan (IRCJ). The corporation supervises firms in restoring their business competitiveness and profitability, providing them with financial assistance in purchase of debts from financial institutions, finance, and capital injection, and to reconstruct the management strategies and the organizations themselves by cutting to the heart of the business vision. The assistance is directed, among all firms categorized by financial institutions as firms with bad loans, to firms saddled with excessive debts despite having valuable management resources.

(3) Emergence of Investment Funds and Other Developments of Private Sector

Investment funds are a mechanism whereby funds provided by

investors are invested in firms, the profit accruing from business activities being distributed in turn to the investors. Of such funds, “business revitalization funds” are aimed at investing in ailing or failed firms, and seeking profits through turnaround management. In Japan, such funds were established for the first time in 1997, followed by various other kinds of funds thanks to the participation of domestic financial institutions, non-Japanese funds, governmental financial institutions, local municipalities, regional banks, etc.. Due to the practical difficulty of finding firms worth investing in, not all funds are necessarily being actively used. Yet, investment funds—in particular, a small number of leading funds, serve as crucial source of financial resources and expertise for business revitalization.

2.2 Future Prospect of Business Revitalization

In its fiscal 2005 Annual Report on the Japanese Economy and Public Finance, the government expressed its view that non-performing loans had been disposed of to a large extent, and that the problem of such loans affecting major banking institutions had been rectified, so that uncertainty about the financial system had been dispelled. The number of corporate bankruptcies, which had hovered at a high level, started to decline after peaking in 2002, with steady progress in writing-off of bad loans.

In future, however, it will still be necessary to incorporate business revitalization into the cycle of economic activities so as to make effective use of management resources even where the business environment is changing at an accelerating pace. To this end, it is likely that business revitalization will be promoted, while the focus shifts to preventative measures against bankruptcies of firms in rural areas, and of small and medium-sized enterprises.

3. Institutionalization of “Social Dialogue” in the Process of Business Revitalization

As seen above, various systems have been developed to boost business revitalization, among them the enactment of the Civil Rehabilitation Law, the revision of the Corporate Reorganization Law, and the establishment of

the Industrial Revitalization Corporation Japan (IRCJ). Noteworthy among them are the signs of institutionalizing “social dialogue” in the forms of the strengthening of the right of representatives of workers to express their opinions and the newly established obligation of employers to hold discussions with workers’ representatives.

3.1 Contents of Institutionalized Social Dialogue

(i) Reinforcement of workers’ involvement in the Civil Rehabilitation Law and the Corporate Reorganization Law

The Civil Rehabilitation Law requires judicial courts, as described below in details, to hear opinions from either labor union organized by a majority of the workers when such a labor union exists or a person representing a majority of the workers where no such labor union exists, as well as to notify them from time to time during the process of rehabilitation:

- Courts shall hear opinions from labor unions, etc. (unions representing a majority of the workers or a person representing a majority of the workers) concerning the authorization of transfer of operations and decisions on approval or otherwise of a rehabilitation plan;
- Courts shall notify labor unions of the date of creditors’ meetings;
- Labor unions, etc. may express their opinions at meetings to report on the asset position;
- Courts shall seek the opinions of the unions on proposed rehabilitation plans;
- Labor unions, etc. shall be notified of decisions concerning approval or otherwise of rehabilitation plans; and
- Creditors, etc. shall seek the opinions of labor unions when requesting a simplified rehabilitation procedure.

The foregoing regulations were incorporated in the Corporate Reorganization Law when it was revised in 2003. At the same time, another regulation was adopted that “opinions of labor unions and so on (unions representing a majority of workers or representatives of the majority of workers) shall be heard in decisions concerning whether the request for the rehabilitation procedure should be rejected, or whether the procedure should commence.”

Once the request for civil corporate reorganization procedure has been brought to court, the court or persons designated by the court (assignees, supervisors, or preservation administrators) assume responsibility for the business operations of the firm in question. Here, the assignees or other designated persons are under supervision of the court in executing the legal bankruptcy procedure, and may be dismissed by the court should there be any grave reason to do so. In this sense, the court is regarded as the counterpart of the labor union in labor-management relations during the process of legal bankruptcy; thus expressing of opinions by the union to the court can be counted as a function of social dialogue.

(ii) The Industrial Revitalization Corporation Japan (IRCJ)

On the grounds that business revitalization with the assistance of the IRCJ is likely to have a substantial impact on the employment and labor conditions of workers at the firm in question, employees' organizations made a strong request at the time when the law concerning the Industrial Revitalization Corporation was being drawn up. They requested that care be taken concerning the possible impact on employees during the process of revitalization and reorganization; and that discussion should be held with labor unions, etc.

Consequently, the Diet revised the legislation and passed resolutions accompanying enactment of the law, so that it became obligatory to give consideration to employment issues and to hold consultations with workers during the process of business revitalization. As for consultations with the workers, Clause 4, Article 22 of the Law concerning the Industrial Revitalization Corporation Japan stipulates that "the Corporation must, in deciding whether or not it should assist revitalization, pay attention to state of consultations with workers concerning the rehabilitation plan for the business which has made a request as laid down in Clause 1".

In response to the requirements of the said article, "criteria for decisions on assistance" were incorporated in "criteria for assistance by the Industrial Revitalization Corporation Japan" (Notification No. 1, Cabinet Office, Ministry of Finance and Ministry of Economy, Trade and Industry) which the IRCJ is supposed to comply with in deciding whether it should provide assistance. The criteria for decisions on assistance call on applicant

employers to hold, or plan to hold, consultations with the labor unions, etc. concerning the contents of the business rehabilitation plan. At the same time, “criteria for decisions on purchase” were laid down, stating that “in cases where the employer in question had not held consultations with the labor unions, etc. concerning the contents of the business rehabilitation plan by the time a decision was made concerning assistance, that the said consultations shall have been held since”. This guarantees that discussions with labor unions will, in fact, be held.

On top of these, prior to enactment of the legislation, an additional resolution was made in the Diet, in committees of both the Houses of Representatives and Councilors stating that “the wisdom of representatives of both employer and employees should be reflected in the operation of the Industrial Revitalization Committee.” Thus, the door is open for the unions to associate themselves with decisions made by companies under revitalization assistance.

3.2 Why Has Social Dialogue Been Institutionalized?

Why, in the course of development of the foregoing systems to encourage business revitalization, did social dialogue come to be embodied in the process?

Looking at the process whereby the Civil Rehabilitation Law was enacted, the essence of the law was in practice virtually determined by a council of the government (the Bankruptcy Law Subcommittee, the Legislative Council of the Ministry of Justice). The Council comprised representatives of employers, financial institutions and various other circles, as well as a member designated by Rengo as representatives of the unions. The proposed legislation drafted by the bureau in charge, which served as the starting point of discussions in the council, had already included a provision concerning the involvement of the unions, of which the committee members representing the unions stated their high appreciation². In discussions about revisions of the Corporate Reorganization Law in the council, too, the union representative expressed their approval for the

² See discussion concerning stipulations of the Civil Rehabilitation Law in the Bankruptcy Law Subcommittee of the Legislative Council of the Ministry of Justice.

arrangement whereby similar regulations to those of the Civil Rehabilitation Law had already been incorporated in the proposed legislation by the bureau in charge³. These background circumstances suggest that the provisions reinforcing the involvement of the unions were drafted by the administration and smoothly gained a favorable consensus in the Council before it was enacted in the Diet.

On the other hand, with the Law concerning the Industrial Revitalization Corporation Japan, the call to pay attention to the progress of discussions with the unions was incorporated via revision of the law and through Diet resolutions accompanying enactment of the law in such a manner that reflected the wishes of employees' organizations as described above.

What made it possible for the administrations and others concerned to reach consensus in the course of the enactment of laws related to business revitalization? This stemmed partly, of course, from demands from the employees' side, but at the same time, it seems that those involved in the legislation had shared the views outlined below concerning the desirable form of involvement of workers in the process of business revitalization.

These views are:(i) that it is difficult for businesses to continue their operations unless the unions and so on cooperate with the firms in revitalizing their businesses⁴; (ii) that care must be taken about possible disadvantages, such as downsizing and deterioration of labor conditions, which might arise as negative outcomes of business revitalization; (iii) that information from labor unions, etc. which are familiar with the internal situations in the firms would be of importance for the courts in making decisions⁵; and (iv) that the past involvement of labor unions in business revitalization has been of great value.

Since factors (i)-(iii) are cited by legislative sources and in the legislative intent and are also easily understandable, this paper will concentrate on consideration of factor (iv).

Factors (i)-(iii) necessarily derive from the relationship between workers and firms. It is not difficult to assume that the attitude of the

³ See the minutes of the fifth meeting on June 22, 2001 and the 14th meeting on June 14, 2002, of the Bankruptcy Law Subcommittee of the Legislative Council.

⁴ Miyama et al. [2003], p. 34.

⁵ Miyama et al. [2003], p. 34.

unions in past cases of bankruptcy was rightly taken into account when those concerned decided to create a mechanism to involve representatives of the workers in the process of business revitalization. Much here is attributable to the fact that, in recent years, labor unions have behaved in a cooperative way, rather than in a hostile way, so as to harmonize interests of labor and management and in achieving turnaround of bankrupted firms.

What is more, the new provisions concerning the procedures for involvement of labor unions in the revised legislation were incorporated as embodiment of the practices of courts to hear opinions from employees under the provision of the pre-revised Corporate Reorganization Law; it was something made newly obligatory by the revised legislation.

In other words, adoption of such provisions was a consequence of recognition by courts, based on experience of the effectiveness of social dialogue.

In a similar fashion, in the decision-making concerning the development of the regulations under the Law concerning the Industrial Revitalization Corporation Japan, it seems likely that accumulated observations of union behaviors were taken into account.

3.3 Effectiveness of the Social Dialogue System Adopted

The social dialogue system seen above would not be sufficient if it were a mere device for hearing opinions from the unions, which would produce calls for labor-management consultation to be made obligatory⁶.

On the other hand, the official involvement of the unions is a mere “hearing of opinions” under the regulation, but there is a view that the actual involvement of labor unions is embodied in the fact that judicial courts will reject a corporate or civil rehabilitation plan as unacceptable if it is opposed by the representatives of workers concerned as a whole⁷.

Some firms going bankrupt do not disclose any of the relevant information to their workers. Thus, the latest development of the legal system represents great progress in securing the involvement of workers from time to time in the process of bankruptcy procedures, and this

⁶ Kezuka [2003], etc.

⁷ See the minutes of the 11th meeting on May 21, 1999, of the Bankruptcy Law Subcommittee of the Legislative Council.

undoubtedly serves as underlying support for social dialogue. This view can be justified by Rengo's high opinion of the recent revision of the law.

However, both Corporate and Civil Rehabilitation Laws leave a substantial portion of their actual enforcement to the discretion of the court, and thus it is difficult to judge by looking at the wording of the law whether or not the system adopted is in fact effective. Future tasks will be to consider how the various provisions of the law are applied to actual situations; how effective the law is; and whether it is necessary to widen the scope of the involvement of workers' representatives.

In the meantime, concerning revitalization cases entrusted to the IRCJ, although regulations officially ensure the implementation of labor-management consultation, it is still necessary to conduct follow-up of individual cases to enable examination of the effectiveness of the regulations.

4. Role of Labor Unions in the Business Rehabilitation Process – Based on Case Studies

The previous section has been devoted to the legal system, but legal regulations in general present no more than the minimum rules. However, business revitalization as experienced in Japan suggests that the influence of social dialogue and the role of the unions as a driving power in business revitalization could become far greater than is assumed within the framework of the legal arrangement.

With this in mind, this section examines the actual participation of unions in the process of business revitalization on the basis of the findings of case studies.

4.1 Special Features of the Cases Surveyed

The survey was aimed at 10 firms which applied a legal bankruptcy procedure (either Corporate or Civil Rehabilitation Law) to reduce excessive debts, tackled rebuilding of the firms through, for example, increasing profitability, and had a certain prospect of succeeding in liquidation of debts followed by business revitalization⁸. One firm surveyed called for the

⁸ For the findings of the hearing survey aimed at affiliated company unions of UI Zensen Domei, see Honda [2005]. The findings of the survey aimed at JAM affiliated unions will be published as a report by the Japan Institute for Labor Policy and Training.

legal bankruptcy procedure in 1997 and the remaining nine firms from 2000 to 2003. The firms surveyed belong either to “distribution and services” or to “metals, machinery, parts manufacture”; firms in the former category had from 300 to over 10,000 employees (including part-time workers) and those in the latter from 50 to 150 employees.

Where their industrial relations are concerned, all the labor unions of the firms surveyed were affiliates of either UI Zensen Domei (the Japanese Federation of Textile, Chemical, Food, Commercial, Service and General Workers’ Unions) or JAM (the Japanese Association of Metal, Machinery, and Manufacturing Workers). Both of these are industry unions well known for their assistance to firms going bankrupt, so that the firms surveyed received considerable support from their affiliating industry unions in rehabilitating their businesses.

In light of these circumstances, the facts gathered in this survey do not project a typical outlook on business revitalization in Japan, but rather a group of successful cases in which company unions committed themselves to the revitalization with enthusiastic support from their superior organizations—the industry unions.

4.2 Role of Labor Unions as Observed in the Case-study Firms

(i) Promotion of Early Start of Business Revitalization

It is said that success in business revitalization requires action as soon as possible, before firms have plunged into excessive debt or seen their business value diminished. For this, it is essential to accelerate the disclosure of corporate information and construct a mechanism whereby as many signals as possible transmitted from outside the firms can be effectively passed on to the business managers. Many believe in taking advantage of external directors or auditors as a source of such signals, but the unions stand in a suitable position to “effectively pass on to business managers as many signals transmitted from outside as possible.” Some labor unions are themselves aware of their function in monitoring management, and industrial unions, in some cases, continuously provide their affiliated company unions with opportunities to acquire business analyses so as to reinforce their function in monitoring management.

Among the firms studied, a general trend is that, as their business

performances worsen before applying for legal bankruptcy, they initially proposed to the labor union rationalization plans including downsizing and downgrading of labor conditions for the sake of the improvement of balance sheet. The labor unions, judging from such proposals and various information coming in from business partners or other outside sources, then detected a likely managerial crisis.

In some cases surveyed the labor unions, which were more concerned than the management, urged the latter to draw up a rehabilitation plan, or made counteroffers to cut wages for the sake of overall cost reduction. The survey also found one labor union that warned the managers that it would go on strike to call for their resignation if they remained reluctant to carry out legal bankruptcy.

To take early action for business revitalization is in fact reasonable for the survival of business activities, but offers few motivations to managers who would be forced out of office if legal bankruptcy were called for. In particular, proprietor-managers have a strong inclination to avoid bankruptcy in any form because it will deprive them not only of the post of manager but also of most of their assets. Viewed in this light, it is not particularly surprising that labor unions, which are able to weigh the interests of the stakeholders objectively, trigger the legal bankruptcy at an early stage instead of the managers.

(ii) Commitment to Securing Sponsors

With the revitalization schemes surveyed, the larger firms revitalized their businesses strongly assisted by new sponsors, whereas the small and medium-sized firms do so by their own efforts without any sponsorship, because no potential sponsor wished to sponsor them

The firms surveyed can be classifiable into three types in terms of their labor unions' involvement in securing sponsors: "labor union not involved in selecting sponsors"; "labor unions posed to the assignees, etc. conditions for the selection of sponsors"; and "industry union cooperated in selecting sponsors."

The selection of sponsors is a delicate task for management in some ways, and it may not always be desirable to get the labor unions involved. Even so, since the revitalization strategy depends on who sponsors it most

strongly, thus affecting the interests of the employees, it seems rather necessary to provide labor unions with the opportunity to express their opinions concerning conditions for the selection.

On the other hand, industrial unions played decisive roles in getting sponsors in some of the cases surveyed. Such cases may be somewhat exceptional, but are not all that rare when one considers the large networks normally available to them.

(iii) Replacing or Complementing the Management Function

Confusion within the managing body following bankruptcy or the resignation of managers can often paralyze the command structure of the firm. It also frequently happens that business activities become chaotic before a new regime responsible for revitalization can be established, which has created irreparable obstacles to revitalization (deterioration of assets, loss of business partners, outflow of employees, defamation of corporate image, etc.).

It was observed in some cases that the union, taking advantage of its unique network spread across the firm, made up for the roles which the management should have played, organizing the workplaces instead of the management while the company was in a confused situation.

To take superstores as an example, one big question is how to keep business operations in individual branches in progress, amidst the confusion immediately following bankruptcy. Decisions made at this stage on how to hold on to customers and trade partners, and how to maintain the morale of employees, may well have a substantial impact on the possibility of rehabilitation in future. Among the cases surveyed, there were some labor unions which, with the full-scale help of their industry unions, responded by maintaining the supply of products, calling on business partners to continue the relationship, and giving explanations to customers. Since it is crucial to take immediate action in such cases, the presence of industry unions that had accumulated experience in handling bankruptcies in the same industrial sector proved to be of great importance.

In another case in the category of small and medium-sized enterprises in the manufacturing sector, the firm faced extreme funding difficulties due to a substantial drop in orders after the announcement of the bankruptcy. Its

company labor union then proposed from its side that wages should be cut by 20 percent to secure working capital; examined daily cash flow management based on the accounting documents provided by the company; and called on employees in charge of sales and production to collect accounts receivable and to observe the delivery deadlines strictly. Regional divisions of the industry union to which this union belongs are staffed with experts in business analysis, and it was the availability of the full-scale assistance of the industry union that made it possible for the company union to participate in management operations to such an extent.

Apart from these activities conducted on an everyday basis, another function carried out by labor unions in place of or to complement the activities of the management was to exert influence on financial institutions and other creditors, business partners, clients and customers, administrative agencies and others concerned. Where these are concerned, it seems that the commitment of the labor union has made it easier to obtain favorable responses, as they are representative of workers who are in a predicament because of the bankruptcy, rather than of the management that is responsible for bankruptcy. Moreover, the industrial unions took advantage of their various networks to cooperate with financial institutions and administrative organs.

(iv) Understanding Employees' Position and the Points Which They Can Count On

While a bold renovation of management strategies is essential for business revitalization, whether or not the planned strategy can be put into practice depends, after all, on the actual people working for the company in question. In many cases, in the course of a bankrupted firm's realizing revitalization, some workers are dismissed, while new workers are hired as strategically needed. Despite this, such personnel shuffling is only partial from the viewpoint of the company as a whole: a majority of employees continue working as before even after the bankruptcy. Put differently, the same body of employees as is responsible in part for the failure of the firm serves as a driving force for revitalization.

As for the state of mind of the employees involved, mixed feelings can be observed: negative feelings as members of a bankrupted company; a

determination to stay with the firm while many colleagues are giving it up as hopeless and leaving; the sense of crisis shared with other remaining colleagues in the face of the bankruptcy; a sense of guilt for the trouble the firm has caused business partners and clients; and hope for and worries about the new management regime. Although both firm and employees are theoretically obliged to tackle business revitalization, not all the employees are necessarily determined to do so proactively.

While the burden on employees increases in the quest for early improvement in corporate profitability, persons in managerial posts and the corporate manager themselves are preoccupied with business performance, and so often fail to pay the same attention to the psychology of employees as they normally do while business is on track. In this respect, too, labor unions might play an effective role insofar as: they act as a medium for communication between employees and the management; they examine the feasibility of the revitalization strategy from a viewpoint taking into account the mentality of employees; and they monitor the progress of the revitalization activities and changes in the morale of employees.

In the cases surveyed, the means of communication between labor unions and union members include meetings at workplaces, questionnaires to union members, thorough discussion, telephone counseling, and having union executives present in workplaces. By such means, labor unions actively pass on information from the management side to union members; absorb and dispel doubts, worries and concerns among members; persuade members not to quit the company; forge a consensus towards revitalization; heighten morale among members; gather various ideas for improvement in profitability; and so on.

(v) Coordination with Firms over the Settlement of Workers' Claims

In some firms surveyed, workers' claims arose due to the non-payment of wages and retirement allowances on the account of the bankruptcies, but most of them had already been settled. The bankruptcy law stipulates that such claims should be given priority in the settlement to other claims; and where the cases surveyed are concerned, the legal system to protect workers seems to have been effective to some extent.

However, views differ among law practitioners on priority in the

settlement of some claims (f.e. in-house savings deposits) as observed in one case where labor unions could play a role in persuading the court by giving an explanation of the background, nature and other elements of the claim.

On the other hand, in general, when a bankrupted firm is reluctant to settle workers' claims voluntarily, they may need to call for forcible execution of their rights. In such a case, essential corporate assets will be seized as sources for settlement of the workers' claim, so that the firm may face difficulty in continuing its business activities. Faced with this possible result, workers and labor unions are required to make a choice between "survival of the firm to safeguard employment" and "protection of workers' claims."

Traditionally, in a labor problem due to corporate bankruptcy, priority has been given to the protection of the workers' claims, but now that a growing proportion of bankrupted firms aim at revitalization, workers have no choice but to compromise to some extent if they are eying the possibility of maintaining their jobs through business revitalization⁹. It would seem that honest and sincere labor-management discussions would be still more important as a prerequisite for such a compromise.

(vi) Coordination with Firms over Reorganization of Employment and Labor Conditions

Reduction of labor costs, a crucial task for successful business revitalization, is carried out through labor cuts and a downgrading of wages and other labor conditions.

Quite a few firms going bankrupt shed their workforce substantially before applying for the legislative bankruptcy procedure, around the time when, their business performance deteriorates, and after the application has been made. Here, the actual steps taken in cutting the labor force take various forms—voluntary retirement, dismissal, attrition, outsourcing, termination of continued renewal of contracts for part-time and other non-regular workers, employment transfer accompanying the business transfer, and so on. Measures affecting labor conditions, too, take varied

⁹ Kezuka [2003].

forms, from the halting of pay hikes to cuts in wages and bonus payments, reductions in various allowances, extension of working hours, and cuts in mandatory retirement allowances.

A general impression obtained from the firms surveyed is that it is not so difficult for labor and management to reach a consensus on employment adjustment and wage cuts provided: that enough information concerning business situation is disclosed to the labor unions; that management approaches to labor-management discussions in a faithful manner; and that the management has already made various efforts at cost reduction prior to cuts in labor costs. The subsequent employment adjustment measures taken after reaching a consensus are, in general, calls for efforts to “minimize the number of workers who leave the firm,” “resort to voluntary retirement, rather than dismissal of specific workers by designation”, “add something extra to retirement allowances,” and “help employees to get re-employed.” As for the downgrading of labor conditions, the next step is negotiations to seek labor-management consensus taking into account possible effects of the decline in labor conditions on the livelihood of union members and their working morale.

Within the process of legal bankruptcy, the unions are obliged to give priority to the revitalization of their companies so as to secure existing jobs as a whole. However, though they are aware that jobs will not necessarily be maintained fully in the bankrupted firms, such realistic perceptions seem to appease the resistance of the labor unions to labor cuts and the decline in labor conditions. The labor unions are also aware that they must show that employees are paying a price, in order to encourage cooperation in the form of debt waivers from financial institutions or trading companies.

Incidentally, among the firms surveyed, there is one case where a labor union raised an objection to and prevented the execution of employment adjustment. In this case, the labor union, while fully aware of the necessity for cuts in labor costs, insisted that employment should be maintained on the grounds that human resources are essential to the revitalization of the firm, and proposed that cuts in labor costs should be realized through a substantial wage reduction, to which the management side agreed. This case suggests that business revitalization is perhaps more likely to be eventually successful if the union’s rejection of the strategies proposed by

the firm derives from a clear-sighted grasp of business strategies.

4.3 Efforts of Industrial Labor Unions towards Business Revitalization: the Cases of UI Zensen Domei and JAM

Most company unions are suddenly faced with the bankruptcy of their firm without any foreknowledge and experience in handling corporate bankruptcy. It is not difficult to imagine a situation, where, even if they have a strong wish to make the business revitalization successful, they have difficulty in responding appropriately at the appropriate time with no knowledge of legal issues or corporate financing.

The industrial labor unions, superior to the company unions, play a considerable role in assisting company unions in the following ways: Since they have accumulated knowledge through experiencing a large number of bankruptcies in the past, they are able to handle legal procedures smoothly; to make reasonable and practical judgments in labor-management negotiations; to take measures to secure corporate assets and prevent corporate value from deteriorating after firms have applied for legal bankruptcy procedures; and to give appropriate guidance at the actual job sites.

Among those surveyed were cases where the industrial labor unions, taking advantage of their network, achieved significant results in negotiating with financial institutions concerning receivables, and in seeking sponsorship.

Of a total of several dozen industrial unions in Japan, three are outstanding for their activities in assisting companies going bankrupt: UI Zensen Domei, JAM and NUGW (the National Union of General Workers) which is a general union based on individual membership. All three unions are alike in having as affiliates many company unions of small and medium-sized enterprises. The following section will discuss special features of the activities of UI Zensen Domei and JAM.

(i) Efforts by UI Zensen Domei¹⁰

In response to corporate bankruptcy and other means of rationalization (e.g., labor shedding), UI Zensen Domei takes action as described below:

- Information concerning, for example, the name and industry of the entity subject to the rationalization, the nature of the rationalization, the number of workers affected, and the progress and results of the rationalization, is shared within the organization, and the accumulated expertise is compiled in a “handbook on rationalizing measures.” The handbook is organized in a practical, detailed manner, based on three principles: “establishment of the practice of prior consultation and strengthening of the function of the mass rally (discussion by all union members),” “prevention of downgrading of labor conditions and protest against the intensification of labor” and “securing of full employment and the right to study.” It cites related legislations and countermeasures for each type of rationalizing scheme such as personnel relocation, layoff, voluntary retirement, company liquidation, bankruptcy, and so on.
- When a subordinate union receives a plan for rationalization from the employer, a committee for rationalizing measures comprising members from the headquarters, subcommittee, branch, and company union is established forthwith to deal with the rationalization of the company in question. When the necessity arises, committee members participate in negotiations with the company.
- The information concerning rationalization projects in progress is under strict control. On the other hand, once the projects have come into the open, Zensen Domei begins taking full advantage of its position as an industrial union in organizing across various industries. For example, in the case of a retail business, it calls, using ties among affiliated unions, for the postponing of collection of accounts receivable while the revitalization procedure is in progress, and the continued supply of products to business trading companies.

¹⁰ UI Zensen Domei (the Japanese Federation of Textile, Chemical, Food, Commercial, Service and General Workers’ Unions) is an industry union comprising 1,958 company unions belonging mainly to the textile, clothes, chemical, food, distribution and service industries, with a total of approximately 830,000 memberships.

This series of these actions suggests that the industry union, while dealing systematically with the issue, also takes as many steps as possible for the purpose of letting business activities continue, not just for the purpose of protecting the workers.

Incidentally, the number of “bankruptcies” (legal bankruptcy) affecting labor unions affiliated to UI Zensen Domei totaled nine in fiscal 1993, seven in fiscal 1994, five in fiscal 1995, four in fiscal 1996, 13 in fiscal 1997, 12 in fiscal 1998, eight in fiscal 1999, 20 in fiscal 2000, 15 in fiscal 2001, 36 in fiscal 2002, 15 in fiscal 2003, and 21 in fiscal 2004.

(ii) Efforts by JAM (the Japan Association of Metal, Machinery and Manufacturing Workers)¹¹

JAM deals with bankruptcies and rationalizing measures of firms in accordance with the following policies:

- To further emphasize not permitting ill-considered job cuts by concluding a collective agreement aiming at reinforcing the rights of labor unions and establishing the rule of prior consultation system.
- To prevent firms from resorting to employment rationalization, and to strengthen the corporate financial foundations by strict monitoring of corporate management on a daily basis.
- In dealing with proposals presented by firms in accordance with the “JAM guidelines for employment measures”, to strengthen the system of collaboration and mutual assistance among company unions, regional branches and the headquarters.

The number of firms applying for legal bankruptcy that affected JAM-affiliated labor unions totaled five in 2000, 15 in 2001, 26 in 2002, and 14 in 2003.

¹¹ About 2,400 company unions in the machinery, electrical, automobile, wheeled vehicle, precision apparatus, aluminum sash, cast and iron production, steel, home appliances and other industries affiliated to JAM (The Japan Association of Metal, Machinery and Manufacturing Workers). The uniqueness of JAM is that its affiliates include unions of small and medium-sized firms; unions with 100 or less members account for 60 percent, and those with 30 or less members account for one fourth of the affiliates of JAM as a whole.

5. Promotion of “Social Dialogue” in the Business Revitalization Process: “Competence of Labor Unions” and “Good Faith of Employers” as Key Factors for Successful Social Dialogue

All the firms surveyed here are successful cases of business revitalization in the sense that they wiped out excessive debts through legal bankruptcy, and achieved a prospect of restoring profitability in business activities. However, the survey does not yield a general conclusion that the processes of these individual business revitalizations and the ways of the unions’ involvement in the processes were the best possible choices. For instance, some of the firms surveyed could have achieved business revitalization at an earlier stage with smaller costs if labor and management had engaged in dialogues more effectively at an earlier stage.

On the other hand, in looking at the overall picture of business revitalization, it is inappropriate to focus exclusively on labor-management relations as determinants of the success or otherwise of revitalization. Rather, success or failure, and the nature of the revitalization depend, quite naturally, on other factors such as the ability of the employers themselves, the state of the economy as a whole, the market position of the goods or services which the business in question produces, and its relationship with financial institutions. In this sense, it is extremely difficult to isolate labor-management relations from that of all these factors in business revitalization and empirically investigate their impact.

This section accordingly, by way of conclusion, examines mechanisms enabling the labor unions to contribute to business revitalization, and factors and conditions necessary for them to function, bearing the case studies described above in mind, and interposing theoretical considerations.

5.1 Why Can Labor Unions Contribute to Business Revitalization?

A firm seeking revitalization by way of legal bankruptcy has various stakeholders—not just the employer, employees, and the company union but also shareholders, creditors, new sponsors, business traders, and clients and customers. Among these, the grounds for thinking that labor unions, in particular, can be instrumental in business revitalization seem to be their

specific, unique attributes and the interests that motivate them to participate in revitalization. In other words, the grounds for such contributions seem to be derived from the inherent potentialities and motivations of the unions.

Unique characteristics of labor unions unobservable in other stakeholders include the facts that they are entities continuing to exist before and after legal bankruptcy, and that they have, extending across the whole firm, a command structure independent of the organizational structure.

Among the interests motivating the unions in getting involved in business revitalization, the most prominent lies in securing the interests of union members (safeguarding jobs and labor conditions, guaranteeing payment for workers' claims, etc.). Apart from this, however, labor unions seem to place great importance on the securing of a voice in the revitalization process, both during and after, since it is deeply involved with their own *raison d'être*.

Thus, the unions deal with business revitalization in the pursuit of these objectives and taking advantage of their own special attributes.

Among the interests that the unions pursue, the interest of union members—the economic interest—will in general be better realized if the business in question is successfully revitalized, rather than otherwise. This creates an essential incentive for unions to work on business revitalization. However, if some of the unions' interests are in a “trade-off” relationship to each other, as for example in the relationship between job security and the securing of labor conditions seen in the previous section, the choice of priority may differ between labor and management. Where this is the case, labor and management need to discuss and forge a consensus.

At the same time, whether or not labor and management sufficiently share information, and have had proper discussion, may affect the receptivity of workers concerning decisions on job security and labor conditions, and the morale of workers, and relationship of mutual trust with the companies, more strongly than the results of discussion *per se*. Taking all this into account, it is clear that the pursuit of the interest in “securing of a voice” by unions and the realization of social dialogue will lead to a better relationship between labor and management, and is likely to bring desirable consequences for the business revitalization.

5.2 Requirements for Allowing Labor Unions to Contribute to Business Revitalization

As seen above, labor unions are agents that, because of their nature and vested interests, can contribute to business revitalization structurally. However, faced with bankruptcy of the company, the company union does not always play a positive role in business revitalization, in reality. Although in theory it is agreed that such a union still has the potential for contributing to revitalization observed in the previous section, in practice there seem to be certain requirements for materializing that potential.

The first requirement is intrinsic competence of the unions (ability of union executives in judging corporate management, centripetal and persuasive power in respect of union members). Assistance given by the industrial unions to company unions can be also regarded as part of the unions' competence.

The second requirement is good faith on the other side—the employers, sponsors, assignees, supervisors, judicial courts, etc.—in showing understanding towards the unions and pursuing dialogue with unions sincerely and faithfully.

It is not difficult to imagine that, unless these requirements are satisfied, the contribution of the unions to business revitalization will be null or even negative. Such situations occur, for example, when the unions, because of the lack of ability in judging business management or the shortage of information provided by the management, insist on employment and labor conditions incompatible with business revitalization. They may also occur, even when the unions choose to adopt cooperative measures, due to the unions' insufficient centripetal power over their members which hinders them from implementing measures as planned.

Again, if the management side shows insufficient respect for, or no understanding of the unions, they may well become hostile to the extent of overwhelming their sense of judgment based on economic reasoning, so that the labor-management relationship could actually jeopardize business revitalization.

Conclusions: Academic and Political Tasks for the Future

- ◆ Studies on industrial relations and the actual picture of employment

management in the process of business revitalization

A gradually increasing number of studies, case studies from the viewpoint of management, have been made on business revitalization, but few studies have so far paid attention to labor and employment in the context of business revitalization. In addition, since business revitalization from now on will draw constant attention as a research theme, it will be important to continue shedding academic light on labor-management relations and the situation affecting human resource management while business revitalization is in progress.

- ◆ Assistance to labor unions engaging in business revitalization, and to employees of firms with no company unions

The survey has covered firms with their own company unions only. In addition, all were unions affiliated to industry labor unions, from which they received assistance when the companies went bankrupt.

However, the fact found in the survey that the greater the assistance given by industry union to company union, the better the results produced, begs the question of how firms with no company labor unions secure the commitment of employees to the process of business revitalization. Now that the unionization rate is down to below 20 percent among Japanese firms, it is necessary to design a system and establish practices that assume the absence of labor unions. In the meantime, the collection and provision of information concerning cases of business revitalization is likely to help firms with no company labor unions and company unions with no assistance from industry unions to tackle business revitalization.

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