

Restructuring of the System for Determining Working Conditions in Japan¹

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1. Basic Views on the System for Determining Working Conditions

In developed countries, the basic concept of traditional labor laws concerning the determination of working conditions have generally been as follows: Firstly, the state stipulates minimum standards for working conditions. In the past, the state had regarded employers and employees as equal under civil laws and taken a neutral position, respecting contractual freedom. Eventually, however, this neutral stance by the state had led to miserable consequences for workers who had less bargaining ability. This is the reason why worker protection laws were born. Secondly, with regard to labor conditions above the minimum standards set by laws, collective labor relations laws were developed to provide the framework for the negotiation between trade union and employer. Under those laws labor unions are legally considered to be collective negotiators instead of individual workers who have less bargaining capabilities. Labor unions are permitted to implement measures of economic pressure so that they can secure bargaining strength. Special legal effect is given to collective agreements that are reached by means of collective bargaining. As a result, individual labor contracts can be deemed valid only within a frame of labor conditions that are prescribed by the nationally-established minimum labor standards and the collective agreement.

In Japan, correspondingly, the basic framework for the determination of working conditions, that worker protection laws stipulate minimum labor standards, and labor conditions that are more favorable than these standards are fixed by collective agreements². Any labor contract providing working

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² Most Japanese labor unions are organized by enterprise, unlike those organized by industry as often seen in Europe and the U.S. Independent enterprise labor unions jointly form industrial organizations, and a group of these organization make up a national center. In terms of organizing labor unions, Japanese Trade Union Law takes the stance of free establishment, allowing workers to set up labor unions at their discretion without requiring any permission or application. Therefore, industry-specific labor unions typically seen in Europe and the U.S. can

conditions that do not meet the standard prescribed by laws³ collective agreements shall be void⁴.

2. Issues Surrounding the System For Determining Working Conditions

The labor legislation in our country faces a number of issues in the huge, universal trend of post-industrialization and economic globalization. Many significant papers and reports have already pointed out that Japan's labor law system is confronted with challenges such as: Changes in the industry structure (inclination towards the service industry); those in the labor force (increase in female workers and aging of personnel); rise in the number of white-collar workers; diversification of employment patterns (increase in part-timers and temporary workers); changes in workers' perceptions; individualization of personnel management in each enterprise; advancement in deregulations; decline in the unionization rate, and decrease in trade union members.

The system for determining working conditions is facing major problems with respect to its basic framework. Firstly, the organization rate of labor unions has been falling significantly. Just as has been seen in other developed countries, the unionization rate in Japan is also showing a steady trend to decline. The fall in the unionization rate and decrease in the number of trade union members is eroding the existence of labor unions that are one of the two relevant parties in determining working conditions through collective bargaining. As a result, the system of collectively determining labor conditions is shrinking. Secondly, conventional labor laws have long regarded workers as a mass that is equal and uniform nature. This is why worker protection laws considered

be organized in Japan. Yet in reality, Japanese labor unions have developed within individual enterprises in most cases. According to the "Basic Survey on Labor Unions" conducted by the labor ministry in 1997, among Japanese labor unions, 95.8% were enterprise union and 85.9% of union members belong to ones established within the corporations where they are hired. Although neither permission nor application is necessary to form a labor union, the Trade Union Law requires a labor union to meet certain criteria so that it can be recognized as a legitimate body under the said law (Article 2), and to have specific qualifications in order to be eligible to participate in the procedures provided in the Law and to be granted solutions (Article 5, Clause 1).

³ Labour Standards Law, Article 13. In Japan, there is a system that regulates work rules, which is not commonly found in labor acts in Europe and the U.S. It plays a role of standardizing and clarifying working conditions and maintaining discipline in the workplace. The Labour Standards Law states that an employer who continuously employs 10 or more workers shall draw up work rules covering certain items such as start and finish times (Article 89), and that labor contracts which stipulate working conditions inferior to the standards established by the rules of employment shall be invalid (Article 93). In drawing up or changing the rules of employment, the employer is obliged to hear opinions from the workers (Article 90).

⁴ Trade Union Law, Article 16.

workers, as a whole, to be the subject for protection that is inferior in negotiation capacity. In addition, when determining labor conditions more advantageous than minimum standards, it was understood that there would be no major problem with labor unions as collective negotiators discussing on behalf of the benefits of all workers, and that it would even be desirable to enhance bargaining capability by uniformly representing common interests of employees. Today, however, workers are diversifying and individualizing. The typical models dealt with by classic labor laws were blue-collar workers employed in factories. But today more than half of workers are white-collared, as a result of the shift of the industry structure from the secondary to the tertiary sector. It has been a common issue among developed countries, including Japan, to verify whether the models adopted in traditional labor laws are fully accommodating the changes in the images of workers. In addition, economic globalization is also urging employers to address various issues. The capital liberalization is forcing companies to review their methods of corporate governance, deeply affecting employment and labor-management relations. The developed countries are exposed not only to competitions among themselves, but also to those with developing nations, further fueling pressures to coordinate working conditions. Such changes in the environment surrounding employment and labor-management relations are requiring the labor legislation to deregulate, too.

The following sections will examine trends concerning Japanese labor unions and their responses towards diversity and complexity of today's enterprises and workers, and will give an overview of the directions to restructure the Japanese system for determining working conditions.

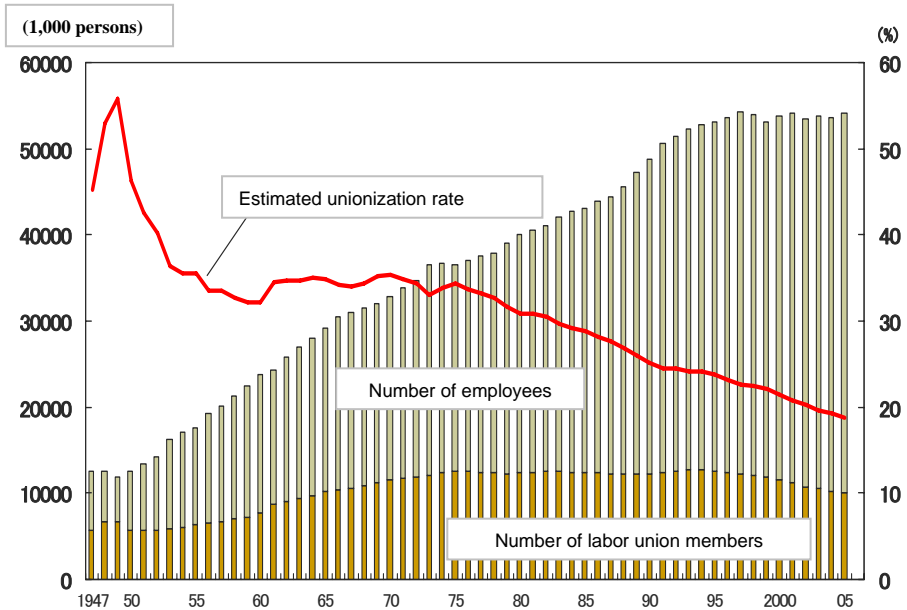
3. Trends Concerning Japanese Labor Unions

(1) Decline in the unionization rate and decrease in union members

Figure 1 shows the long-term trends of estimated unionization rate and union member numbers researched by the Ministry of Health, Labour and Welfare. After peaking at 55.8% in 1949, the unionization rate continued to decline until falling below 20% in 2003. It decreased further to 19.2% in 2004 and 18.7% in 2005, without showing any sign of recovery⁵. Not only the

⁵ With respect to causes that triggered decline in the unionization rate, there have already been many studies, which pointed out the following: (1) The shift from secondary to tertiary industry—where there are relatively few large-sized enterprises—is making unionization more difficult. (2) Changes in the employment structure, including the decrease in the number of

Figure 1: Changes in the estimated unionization rate and number of union members



Source: Ministry of Health, Labour and Welfare “Basic Survey on Labor Unions”

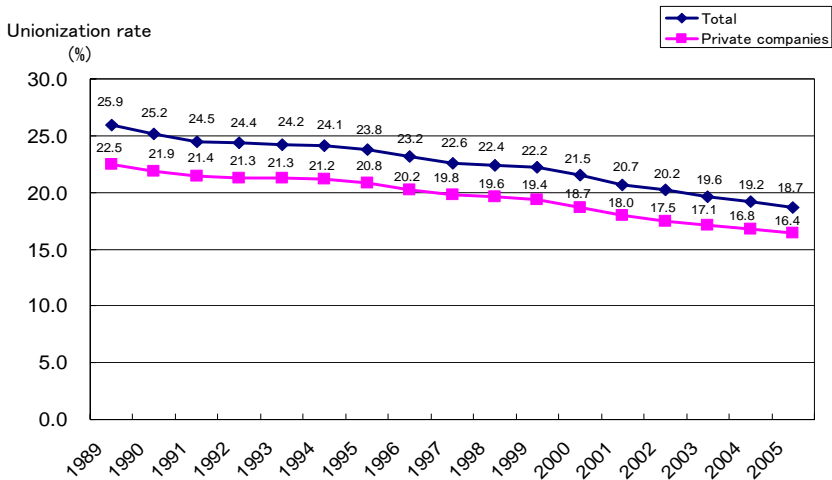
unionization rate but the number of union members is also experiencing an ongoing decline after reaching a peak of 12.70 million in 1994. It was 10.14 million in 2005—maintaining 10 million members by only a narrow margin. Private companies and public sectors do not share the same level of unionization rate. Figure 2 shows shifts in the estimated rate both among all types of organizations and among private enterprises. It is obvious that the line

workers of the secondary industry and increase in part-time workers, are the major scenarios against which the unionization rate fell. (3) Labor unions have failed to form in newly-established enterprises. (4) Activities to enroll union members have, not been very strong due to the union shop agreements, which automatically engage regular employees in union activities. Moreover, there is also the problem of interest conflicts in terms of employment security between regular and non-regular employees as well as resistance from the management side, concerning the range of membership. This indicates that the efforts to encourage workers to participate in labor unions are not enough at the individual enterprise union. Even industrial federations neither possess any sufficient system nor make satisfactory efforts. In summary, it can be said that the decrease both in union members and unionization rates is attributable to the failure of labor unions to carry out unionization activities, and their inability to address the changes in the surrounding environment including those in the industry and employment structure.

indicating the rates among private companies always runs below the total line. This is because that the rates among public sectors are generally high. In 2005, for example, public sectors had a unionization rate of 50.7%, while that among private enterprises was 16.4%.

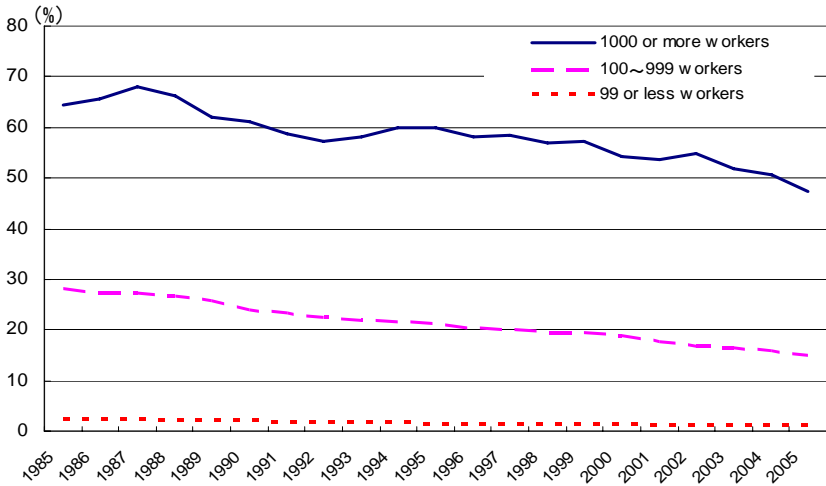
Figure 3 indicates shifts in the estimated unionization rate, and Figure 4 shows those in the estimated number of union members, both among private companies by corporate size. The unionization rate is high among large-sized companies, and low in small-sized companies. In 2005, it was 47.7% among companies with 1,000 or more employees, 15.0% among those with 100 or more but less than 1,000, and as low as 1.2% among those with 99 or less. Similarly, the number of union members drops as the company size grows smaller. It is apparent that situations regarding labor union organization vary significantly depending on the size of the corporation.

Figure 2: Shifts in the estimated unionization rate
(total and among private companies)



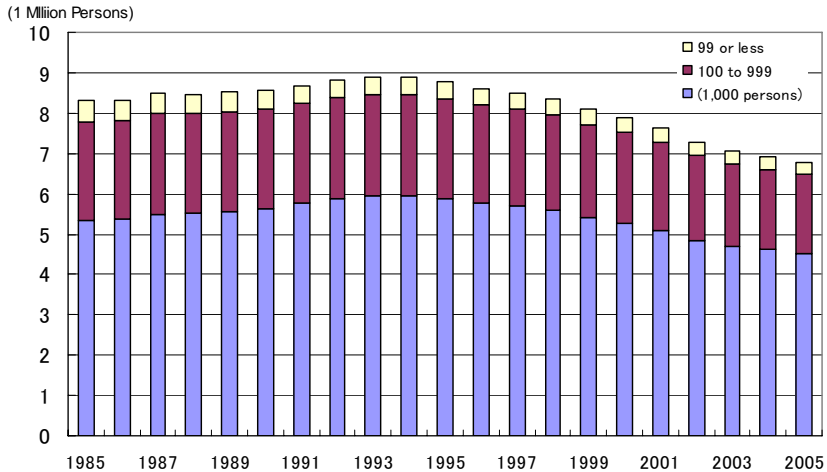
Source: Generated based on the Ministry of Health, Labour and Welfare “Basic Survey on Labor Unions”

Figure 3: Shifts in the unionization rate by company size
(among private companies)



Source: Generated based on the Ministry of Health, Labour and Welfare “Basic Survey on Labor Unions”

Figure 4: Shifts in the number of labor union members by company size
(among private corporations)



Source: Ministry of Health, Labour and Welfare “Basic Survey on Labor Unions”

Figure 5 was obtained by combining the number of employees in private enterprises and their estimated unionization rates in 2005, both by company size. Although the number of employees working for companies that employ 99 or less workers reached 25.31 million as a whole, accounting for more than 50% of total workers, the estimated unionization rate among them was 1.2%. The rate among companies with 100 or more but less than 1,000 employees, with a total of 13.05 million workers (slightly less than 30% of the entire mass of employees) was 15.0%, which is lower than the average estimated rate calculated among private corporations irrespective of size. In contrast, companies that have 1,000 or more workers indicated the rate of 47.7%, even though the total number of those who were hired by these large enterprises was 9.5 million, accounting for less than 20%. This figure tells us that the smaller a company is, the less significance a labor union has.

Figure 5: Number of employees and unionization rate among private companies by size (2005)

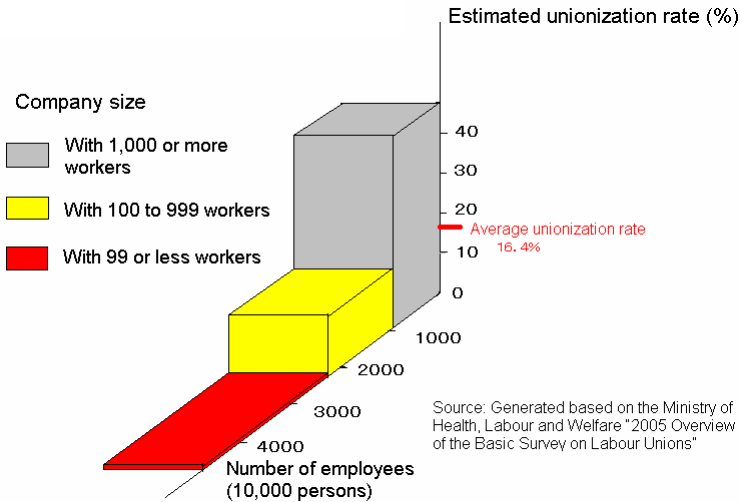
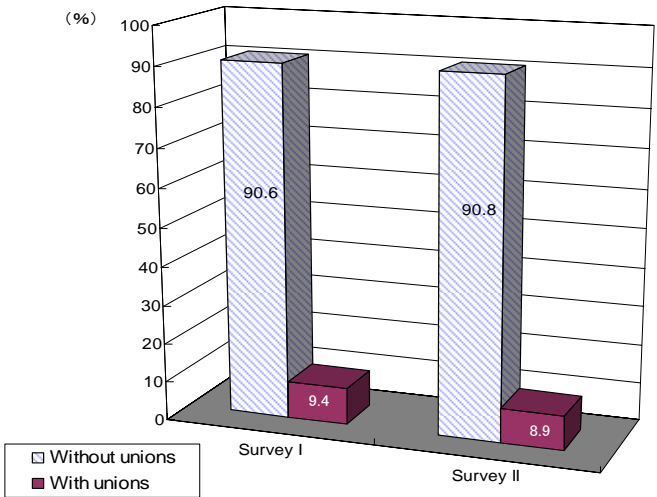


Figure 6 shows the ratio of the companies where trade union exists and the ration of the companies where trade union does not exist. Less than 10% of companies with 10 or more workers have a labor union, leaving more than 90% without any such institution. Based on the overall tendency of decrease in unionization rates, I have already pointed out the deterioration of the function

of collective negotiations for improving working conditions, which is one of the two pillars of the system for determining labor conditions. In addition to this, the functions of the collective system to determine working conditions have been remarkably weakened among small and medium-sized companies and micro enterprises. Moreover, it is revealed that this system is not functioning properly, as shown by the fact that more than 90% of companies with 10 or more employees do not have a labor union.

Figure 6: Existence or absence of labor unions at private companies (with 10 or more employees)



Note: Survey I: JILPT 2005 “Survey on the Framework of Employee Relations, Employment and Retirement”

Survey II: JILPT 2005 “Survey on the Establishment and Modification of Working Conditions and Human Resources Management”

(2) Effects of labor unions

Preceding studies have told us that, strictly speaking, after controlling other factors such as corporation size, it is not particularly easy to obtain wide agreement on the positive effects that labor unions have in terms of wages. Recently, however, there have been several studies that acknowledge such effects, at least partially. Furthermore, some recognize effects other than those related to wages. It has also been noted that there are effects to spread working conditions accepted in companies that have labor unions to those that do not.

In respect of working conditions, those achieved thanks to the existence of labor unions can improve overall standards by also affecting other companies without any union organization. Even so, some studies have realized that companies with labor unions enjoy an advantage in various aspects related to working conditions, including those associated with wages.

Again, according to previous research, it is also possible to say that labor unions have positive effects concerning employment security, although this has not been adequately confirmed yet. Negotiations between the labor unions and management may hamper particularly large-scaled employment adjustments to some extent, and their consultations sometimes serve as opportunities to seek more flexible employment adjustments or other alternative measures.

The existence of a labor union facilitates communication of thoughts and opinions from employees to employers. There are several systems established for the purpose of fostering labor-management communications, whose achievements have been recognized. The management sides also show a readiness to hear from labor unions.

Looking at actual cases where a major change in newly organizing a labor union was experienced, favorable responses can be heard from both the labor and management to acknowledge some improvements, comparing conditions before and after the union was established. The most notable area was in communications between employees and employers, as well as in working conditions. Following the establishment of a union, the management tends to better understand labor unions. In general, both labor and management positively rate the foundation of union organizations.

Based on the above observations, we can say that labor unions have certain effects upon workers in various ways. What actually matters are what kind of effects unions have on workers, if they can appeal to workers by making use of such positive effects, and if workers really find them attractive.

(3) Workers' perceptions on labor unions

The "Labor-management Communication Survey" performed by the Ministry of Health, Labour and Welfare in 2004 asked workers to what extent labor unions were necessary. In response, more than 60% of the subjects recognized the importance of unions, by choosing the options of either "Definitely necessary" or "Probably necessary." More than 80% of labor union members considered unions necessary. Even among non-union members,

almost half of them acknowledged the significance. This means that approximately 60 to 70% of workers thought that labor unions were required. Similarly, nearly half of part-timers also regarded unions as meaningful.

Ratio of workers depending on their views concerning the necessity of labor unions (unit: %)

	Definitely necessary (Labor unions are definitely necessary)	Probably necessary (Probably better to have a labor union)	Difficult to judge (Doesn't matter if there is or isn't a labor union)	Not necessary (Better not to have a labor union)
Total	26.9 (33.1)	36.1 (41.2)	25.2 (21.1)	11.7 (4.0)
Regular employees	28.4 (33.8)	36.1 (42.1)	24.5 (19.5)	11.0 (4.1)
Part-timers	10.6 (20.6)	36.2 (32.0)	33.4 (42.3)	19.8 (2.7)
Union members	43.7	40.7	13.1	2.5
Non-union members	14.9	32.8	33.9	18.4

Source: Ministry of Health, Labour and Welfare “Labor-management Communication Survey” (1999 and 2004)

Note: The questionnaire options and figures shown in the brackets were used in the 1999 survey.

Workers also showed high expectations of labor union activities. It is not just union members who have hopes for their influence upon companies with labor unions, as well as for their influence upon society as a whole. In particular, those who work in a workplace without any union yet desire to join union have great expectations. Workers employed by enterprises that do not have labor unions also expect the effects to improve working conditions, which can be implemented by the establishment of unions.

In particular, great expectations of labor unions are shown by those workers who express complaints and dissatisfaction with their companies, and who yet fail to communicate these feelings, and also by those who feel that workers' legal duties of workers are not necessarily respected.

As indicated in the table above, employees who work for companies that have labor unions think that working conditions and employment environment will be worse if unions dissolve, whereas those who work for companies without union organizations consider that establishment of unions will improve labor conditions.

Influences of labor union activities (multiple answers allowed / unit: %)

		Total	Without union	
			Desire to join	No desire to join
Influences on society as a whole	1) Workers' rights will be protected	73.8	81.4	62.7
	2) Working conditions will be improved	50.1	66.3	43.7
	3) Equal employment opportunities for both sexes will be enhanced	24.4	30.2	18.3
	- No influence can be expected	11.9	3.5	18.3
Influences on companies with labor unions	1) Welfare benefit systems and workplace environment will be improved	53.6	61.6	42.9
	2) Opinions from employees will be reflected in management practices	48.8	66.3	41.3
	3) Unfair personnel appraisals will be reduced	24.3	40.7	23.0
	- No influence can be expected	10.7	1.2	16.7
Influences on union members	1) Complaints from and dissatisfaction of members can be more easily communicated to the management	43.7	57.0	46.0
	2) Wage standards will be maintained or even improved	41.3	59.3	34.9
	3) Unfair inequality in working conditions will be reduced	34.3	54.7	32.5
	- No influence can be expected	10.8	0.0	15.9

Source: Japanese Trade Union Confederation Research Institute for Advancement of Living Standards (RENGO-RIALS) "Opinion/Awareness Survey on Labor Unions" (2003)

Changes upon establishment (dissolution) of labor unions (unit: %)

	Workers in companies with unions		Workers in companies without unions	
	Upon dissolution of unions		Upon establishment of unions	
	Improved	Deteriorated	Improved	Deteriorated
Wages	3.3	77.5	51.5	1.8
Conflicts between labor and management	8.5	62.8	33.1	22.4
Working hours	3.9	58.0	39.1	1.2
Welfare benefits	4.4	57.8	62.2	0.2
Information on corporate management	4.8	57.5	59.5	2.0
Health and safety/work environment	3.4	50.8	53.1	0.9
Operational procedures	6.2	40.1	36.4	6.2
Corporate management	11.4	36.7	37.3	6.5
Personal relationship at work	3.3	31.1	22.3	10.3

Source: Japanese Trade Union Confederation Research Institute for Advancement of Living Standards (RENGO-RIALS) (1992)

As observed above, although workers do think that labor unions are necessary and have hopes of them, this does not necessarily contribute to realizing unionization. What preceding studies have shown were images of labor unions in which they failed to fully live up to expectations from workers, to impress workers with their advantages, and to encourage workers to actively participate in their activities.

(5) Realities of labor union activities

a) General situations of labor unions

According to the “Basic Survey on Labor Unions” conducted by the Ministry of Health, Labour and Welfare in 2003, unions do not necessarily regard organization expansion as one of their major issues, saying unionization has already been sufficiently achieved. This is despite the fact that the number of union members decreased due to, for instance, the managements’ reluctance to hire regular employees, the ratio of union participants in the workplace fell, and financial conditions deteriorated. One of the reasons for the decline both in the unionization rate and ratio of union members in the workplace is thought to be that enrollment of part-time workers has not been sufficiently achieved. Unions are not, and will not be, according to their future policies, actively campaigning for unionization of part-timers⁶. Unions that do not enroll part-timers are not only reluctant to unionize them, but even seem to be cold towards them. Such unions do not go out of their way to consult with the management regarding working conditions for part-time employees.

This tendency to be unwilling to admit non-regular workers in general can be more widely observed among those who have concluded union shop agreements^{7,8}.

⁶ According to the “Basic Survey on Labor Unions” performed by the Ministry of Health, Labour and Welfare in 2003, the ratios of unions that admit part-timers, contract workers, and temporary workers turned out to be as low as 16.6%, 15.0%, and 6.1% respectively. In reality, fewer unions actually enroll non-regular employees. For example, no more than 10.9% of unions organized within companies that hire part-time workers admit members who work on a part-time basis. Furthermore, not many unions said that they were “making efforts to unionize” non-regular employees. Although part-timers are more popular targets of such unionization efforts compared to other non-regular workers, union organizations that are formed inside of enterprises with part-time workers and have actually admitted part-timers account for only 9.4%. Unions that “do not make particular attempts to enroll” non-regular workers are overwhelmingly large in number, reaching as high as 72.3% of those who do not admit part-timers.

⁷ The “Basic Survey on Labor Unions” conducted by the Ministry of Health, Labour and Welfare

In fact, the organization and finance of existing labor unions are supported by the union shop and check off agreements (even though still in difficult situations). Therefore, there seem to be no serious problem in maintaining their organizations for the time being with no change in current policies.

The relationship with the management has also shifted from collective bargaining to labor-management consultations⁹, the latter of which both labor and management sides intend to continue prioritizing in the future as well. Under such circumstances, collective labor-management disputes are decreasing in number. Despite being guaranteed by the Constitution, industrial disputes—which have never been given very much importance in the first place—are losing even more ground, and relevant know-how is fading away even in labor unions.

Although the number of collective labor-management disputes is on the decline, by no means does this indicate that there are less labor conflicts than before. Labor unions are still dealing with their individual labor problems. However, even in workplaces where unions and/or complaint handling bodies exist, most workers communicate their complaints and dissatisfaction to their supervisors; they rarely make such claims to labor unions or grievance organizations.

b) Factors for low union activity

When considering factors that lower labor union activities, especially unionization campaigns, we cannot avoid mentioning union shop agreements. It is true that union shop agreements do have advantages in terms of strengthening organization of labor unions and empowering negotiation capability against

in 2003 indicated that the ratio of unions with union shop agreements was 63.4%. It also showed the tendency that the ratio was especially high among large-sized enterprises; for instance, 77.4% among companies with 1,000 to 4,999 employees, while 52.8% among those with 30 to 99 workers.

⁸ According to the “Basic Survey on Labor Unions” (Ministry of Health, Labour and Welfare; 2003), fewer unions “with union shop agreements” answered that the number of members “increased” or “remained unchanged” than those “without union shop agreements.” Instead, 72.8% of unions “with union shop agreements” experienced a decrease in members. The Survey also showed that only 17.9% of unions “with union shop agreements” regarded organization expansion as one of their important issues, and that 80.9% “did not necessarily place significance” on this matter.

⁹ A labor-management consultation has no legal grounds. Broadly speaking, it can be considered as “a permanent body established between workers and the management (including employers federations) to consult between the two parties regarding matters associated with management, production, working conditions, welfare benefits, etc.”

employers, but they also have undeniable drawbacks for unions.

A wide range of data showing ineffectiveness of unionization campaigns carried out by labor unions with union shop agreements has already been presented above. This situation where many of the unionized enterprises have concluded such agreements allows most enterprise unions to automatically achieve unionization as far as regular employees are concerned, making their enrollment activities completely meaningless. Moreover, as they are committed only to regular workers due to the union shop system, they eventually continue excluding non-regular workers such as part-timers, leaving unionization of employees who work on a non-regular basis behind. What should be also noted is the influence on motivation of employees hired by companies without labor unions to newly establish one. Although those who work for companies that do not have any union organization, yet support the concept of unionization, expect improvement of wages and working conditions promoted by unions, such positive effects cannot be confirmed through activities of enterprise labor unions. This results in discouraging workers in companies without unions from forming their own organization. Enterprise unions, that are guaranteed to secure members by the union shop agreement and to have financial resources by the check off system, fail to recognize the common problem that the interest in organizing unions among workers in non-union companies is gradually fading. As a consequence, the unionization rate has been slowly but consistently declining.

It can also be pointed out that union shop agreements might reduce the vitality of labor unions. The union shop system doubtlessly contributes to maintaining the unionization rate in spite of complaints and indifference from members. However, labor unions' real energy falls far behind the level that can be expected from the figures appearing as unionization rates. Moreover, it is also possible to assume that the retaining of union shop agreements itself helps unions keep their bureaucratic nature and renders them inactive.

4. Responses towards diversity and complexity of enterprises and workers

Recently, for the purpose of making regulations concerning working hours more flexible¹⁰, a series of amendments of the Labour Standards Law have

¹⁰ In 1947 when the Labour Standards Law was first enacted, it stipulated that working hours in

been enforced. More precisely, the working-hours averaging system over the span of either three months or one week¹¹, the flextime system¹², and the discretionary work system for professionals and experts¹³ were introduced in 1987, under conditions of concluding labor-management agreements with majority representatives. This “labor-management agreements” refers to written arrangements either with a labor union organized by a majority of the workers at a workplace where such a labor union exists, or with a person representing a majority of the workers at a workplace where no such labor union exists¹⁴. In 1993, the applicable span of the working-hours averaging system was extended from three months to a maximum of one year, with a prerequisite of a labor-management agreement with a majority representative. Again, with the same prerequisite, the working-hours averaging system over the span of one month¹⁵ was also approved in 1998. In addition, the same year’s amendment adopted the discretionary work system for management planning workers¹⁶. It was decided that, upon introduction of this system, a unanimous decision would be required by a labor-management committee half of whose members are

principle should be restricted within eight hours per day and 48 hours per week. However its 1987 revision limited them to eight hours per day and 40 hours per week (Labour Standards Law; Article 32).

¹¹ The working-hours averaging system over the span of one week allows, based on labor-management agreements, retail enterprises, hotels and inns, and restaurants to flexibly set daily working hours on a weekly basis (Labour Standards Law; Article 32-5).

¹² The flextime system allows workers to determine the start and finish times on each working day so that their total working hours will not exceed the range fixed in advance for a certain duration of one month or less (“settlement period”) (Labour Standards Law; 32-3).

¹³ Under the discretionary work system, the working hours of a worker who is assigned to duties for which it is difficult for his or her employer to give concrete directives regarding the means of accomplishment and allocation of time due to the nature of the duties should be regarded as the number of hours agreed by both the labor and management, irrespective of his or her actual working hours. The discretionary work system for professionals and experts is applicable to those who engage in specific 19 types of technical operations, including designers and system engineers (Labour Standards Law; Article 38-3).

¹⁴ The 2003 amendment of Labour Standards Law stipulated in its enforcement regulations that a majority representative should be elected among workers who are not in the position of supervisor or manager by means of voting, show of hands, etc.

¹⁵ Based on the working-hours averaging system in the duration of one month, an employer can have his or her employees work in excess of the legally-binding working hours in specified days or weeks, as long as the average working hours per week over the course of a fixed period of no more than one month do not exceed 40 hours (Labour Standards Law; Article 32-2).

¹⁶ Discretionary work systems, are designed for workers who engage in duties of planning, drafting, researching and analyzing matters regarding business operations for which the employer does not give concrete directives regarding such decisions as the means of accomplishment and the allocation of time, since the nature of these duties is such that the methods for their proper accomplishment must be left largely to the discretion of the workers (Labour Standards Law; Article 38-4).

appointed by a majority representative of workers, and that decisions made by this committee can be substituted for labor-management agreements with majority representatives concerning working hours. In 2003, the range of enterprises applicable to the discretionary work system for management planning workers was expanded, and one of the requirements imposed on the said labor-management committee was also relaxed (from a unanimous consent to a four-fifths agreement).

As the background of making working hours more flexible, the uniform regulations cannot easily conform to, for instance, specificity of industries, circumstances of individual corporations, and diversification of workers as well as employment patterns. Introduction of flexible working hours makes it possible to ease rigid standards and to regulate with respect to real situations in companies and workplaces. What is worth noting is that, in order for a workplace to adopt a flexible working hour system, a labor-management agreement with a majority representative or a decision made in a labor-management committee is required. To put it differently, in the process of introducing a flexible working hour system to workplaces, labor-management agreements with majority representatives and labor-management committees, both of which are distinct from labor unions, has been introduced.

In an attempt to improve workplace conditions, including working hours, in order that they can give consideration to workers' health and lifestyles and conform to a diverse range of employment patterns, the "Special Measures Law on Improvement of the Setting of Working Hours, Etc." was enacted in 2005 (enforced in April 2006). This allows decisions reached in the "committee on improvement of working hours" to substitute for labor-management agreements with majority representatives concerning working hours and other similar arrangements. It was also stipulated that, in workplaces where the "committee on improvement of working hours does not exist", "the health committee" or "safety and health committee" established according to the Industrial Safety and Health Law can play the role of the said special committee, on condition that such committees satisfy certain requirements. One of these requirements is that at least half of the total committee members are appointed based on recommendations from majority representatives of workers, and that they are assigned to research and deliberate on issues regarding improvement on working hours, etc. and then to present their views to the employers.

The Child and Family Care Leave Law also relaxes uniform rules on the

premise of concluding labor-management agreements with majority representatives of workers. Established in 1991, the Law permitted employers to refuse requests for child care leave from specific employees, as long as they have reached labor-management agreements with majority representatives of workers. Furthermore, its 1995 and 2004 amendments also allowed employers to refuse requests for family care leave and child nursing care leave from specific employees in the above-mentioned years respectively, again on condition that they have reached labor-management agreements with majority representatives of workers.

The revision of the Worker Dispatching Law in 2003 stipulated that a company supplied with dispatched workers should fix the term of contract in advance when it intends to hire dispatched workers for more than one year and up to three years. In that case, it has to inform the majority representative of workers of the desired term and ask for his or her opinions. This is based on the following idea: “As the term which can be considered temporary or tentative apparently varies depending on the situations of the company supplied with dispatched workers, it is appropriate for the employer of the hiring company to individually judge if the term can be actually considered temporary or tentative even when it exceeds one year, after listening to opinions from the majority representative of employees working in the same company.”

When the Law concerning Stabilization of Employment of Older Persons was revised in 2004 (enforced in April 2006), it was stated that, in cases where the employer fixes the retirement age at under 65 years old, he or she should conduct any one of the following measures, in order to secure stable employment for older workers until the age of 65: Raising the retirement age, introduction of a continuous employment system, or abolition of the retirement age. In relation to this rule, it was also stipulated that employers can be regarded as having implemented a continuous employment system when they have designated standards concerning older persons who are subject to the continuous employment system and introduced a system based on the said standards, under a written agreement concluded with majority representative. This is based on the following idea: “In respect of the continuous employment system, as it is sometimes said that a uniform legislation cannot always properly reflect each company’s management strategies and/or labor-management relationships, it is appropriate to allow companies that have

designated standards concerning employees who are subject to the continuous employment system under a labor-management agreement to introduce a system applicable to workers who meet the said standards, so that companies can flexibly respond according to their individual circumstances incorporating innovative approaches adopted by both the labor and management.”

Figure 7 contains legislations since 1987, which are associated with the majority representative system or labor-management committee. The majority representatives system stems from the original articles in the enactment of the Labour Standards Law in 1947. The Law obliged employers to conclude and report to the authority an agreement concerning overtime work and work on holidays with “a labor union organized by a majority of the workers at a workplace where such a labor union exists or with a person representing a majority of the workers at a workplace where no such labor union exists,” as well as to conduct hearings from the majority representatives of workers when work rules are newly set or modified. Afterwards, regarding this majority representative system, only some regulations were added in the 1952 revision of the Labour Standards Law and a few rules were newly established in other acts than the Labour Standards Law, until in 1987 when the Law was amended to introduce a flexible working hour system involving labor-management agreements with majority representatives of workers. Following this amendment, as observed in recent major legislation, it seems that the existence of the majority representative system is almost always taken for granted, which, one might think, could be in inverse proportion to the actual tendency of decline in the unionization rate and decrease in union members.

It can be assumed that the diversity and complexity surrounding corporations and workers will increase on. A major challenge is how to accommodate such diversity and complexity surrounding enterprises and workers, which go beyond conventional and uniform regulations, to worker protection laws that stipulate minimum standards for labor conditions. The institutions such as labor-management agreements with majority representatives and the labor-management committee, which are established specifically for that purpose, could have important implications as a framework to provide workers with opportunities to express their opinions, under the current situation where the presence of labor unions is weakening.

Figure 7: Legislative movements since 1987, concerning the majority representative system, labor-management committee, etc.

1987	Revision of Labour Standards Law	Labor-management agreement on working hours averaging system Labor-management agreement on flexitime system Labor-management agreement on discretionary work system for professionals and experts
1991	Establishment of Child Care Leave Law	Labor-management agreement
1992	Establishment of Shorter Working Hours Law	Shorter working hours promotion committee
1995	Revision of Child and Family Care Leave Law	Labor-management agreement
1998	Revision of Labour Standards Law	Labor-management agreement on working hours averaging system Labor-management committee on discretionary work system for management planning workers
2003	Revision of Labour Standards Law	Expansion of planning workers companies applicable to discretionary work system for management planning workers Relaxation of decision requirements in labor-management committees
	Revision of Shorter Working Hours Law	Relaxation of decision requirements in shorter working hours promotion committee
	Revision of Worker Dispatch Law	Hearing from majority representatives
2004	Revision of Law concerning Stabilization of Employment of Older Persons	Labor-management agreement
	Revision of Child and Family Care Leave Law	Labor-management agreement
2005	Revision of Shorter Working Hours Law	Committee on Improvement of Working Hours
	(Law on Improvement of Working Hours, Etc.)	Health committee in compliance with requirements

5. Summary of Issues and Reviewing Direction

(1) Decline in the unionization rate and decrease in the number of union labor members

The necessity of labor unions remains unchanged, and their positive effects cannot be denied. In the system of determining labor conditions, they have played a significant role in obtaining better working conditions than minimum standards through negotiations with the management. Their roles cannot be overlooked. Rather, expectations are still high for labor unions in the system of determining working conditions, and it is desired that they restore and expand their power of influence and use their energy to improve working conditions

for workers. Nonetheless, looking at their current activities, we must admit that it is difficult to foresee their influence being recovered any time soon. On the contrary, it can be easily imagined that the decline in the unionization rate and decrease in the number of union members will be further exacerbated. It should also be noted that the presence of labor unions is extremely weak, particularly in small and medium-sized companies and micro enterprises.

Given these circumstances, it is possible, both theoretically and from the viewpoint of labor movements, to consider reinforcement of labor unions by reviewing labor-management relations laws with the aim of preventing the unionization rate and number of union members from falling. From what we can see in their actual situations, however, it would be difficult to achieve social consensus for such measures. The existing labor-management relations laws offer systems to help labor unions expand their power of influence, by, for instance, protecting labor unions' right to organize with the system to deter unfair labor practices and by granting general binding force to labor arrangements. In this light, the question is rather how can labor unions themselves regain and enhance their presence by making the most of the already-established labor-management relations acts.

The labor legislation in our country faces scores of issues, which urge us to examine restructuring of the system to determine labor conditions. These issues include, in particular, the two most important and vital challenges with respect to the basic framework of the system of determining labor conditions: One of them is the shrinking collective negotiation system to set up working conditions due to the decline in the unionization rate and decline in union members, and the other is development of individualization of personnel and labor management in private enterprises and diversification of employment patterns and workers.

We are forced to admit that it is difficult to expect labor unions to rapidly regain their power. In arguing the restructuring of the said system, it would be more practical to assume further decline in the unionization rate and decrease in union members to be the inevitable trend. When the overall system of determining working conditions is under review, we must pay close attention to labor unions' realities, and not their idealistic theories. In other words, we should now realize that it is time for us to give serious consideration to a new system to enable workers' voices to be reflected which should have as much practical influence as labor unions even in the case where trade unions do not

exist.

(2) Responses towards diversity and complexity of enterprises, workers, etc.

It is also time for significant change for worker protection laws, which are one of the two major pillars of the system to determine working conditions. Traditional labor laws regarded workers as a collective mass, members of which share an equal and uniform nature. This means that they made uniform regulations, having mainly blue-collar workers as their targets. Today, however, the core of the industry has shifted from the secondary to the tertiary sector and many workers have obtained white-collar jobs. Moreover, employment patterns have diversified and human resources managements have been individualized. It is becoming more and more difficult for laws and regulations to establish a uniform set of standards that can cover every case and occasion, as industry types, job descriptions, employment and work styles, and personnel management methods all vary to a great extent. Even in such surroundings, it becomes important to set up appropriate criteria and to oblige employers to abide by them, by giving some flexibility to these criteria so that they can accommodate various circumstances of individual workplaces and workers through legitimate procedures.

Under the Labour Standards Law, flexible working hour systems, including the working-hour averaging system, flextime system, and discretionary work system have been already acknowledged, with a prerequisite of labor-management agreements with majority representatives or decisions by labor-management committees. In a similar manner, legislation that can conform to workplace situations and workers' realities after reflecting opinions from employees via specific processes is now expanding into other fields.

The modern labor laws —not only in the Labour Standards Law but also other acts— increasingly accept flexibility according to practical situations of workplaces and workers, under condition of concluding labor-management agreements with majority representatives of workers and obtaining decisions in labor-management committees. These laws require consensus from workers to lift uniform regulations. This, at the same time, could have great implications when it comes to designing a new system to reflect workers' thoughts in response to the decline in the unionization rate and decrease in the number of union members.

(3) Considerations towards small and medium-sized companies, micro enterprises, and non-regular workers

Although partially overlapping with the above-mentioned points, I would like to highlight once more the fact that the presence of labor unions is extremely weak among small and medium-sized companies and micro enterprises. This does not only mean that it is necessary to envisage the creation of a system to enable employees to express their opinions, which can also work in small and medium-sized companies and micro enterprises. On top of that, a decline in the functions of the collective system of determining working conditions—due to the decline in the unionization rate and decrease in union members—will lead to intensifying the importance of minimum standards fixed by worker protection laws, especially for the sake of employees who cannot expect maintenance and/or improvement of working conditions through such a collective system.