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# The Process of Formulating Policy in Labor Matters: Derailment? Or Transformation?

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In this paper, I discuss the fact that a gradual change may be occurring in the way in which labor policy is formulated in Japan. The Labour Policy Council, a tripartite body established by the Ministry of Health, Labour and Welfare (MHLW), has played a central role in the formation of labor policy in Japan. However, reading through the minutes of 2005-2006 meetings of the Council's Work Conditions Subcommittee has led me to the conclusion that there is a possibility the Council's function might be weakening from the inside. The survey conducted revealed four developments at these meetings: an expressed concern about the establishment of a Study Group consisting of experts, shelving of the Study Group's report, opposition expressed by both union and employer group representatives to a draft of a Response made by the MHLW, and the Response with objections from both groups. It seems that these developments show that both unions and employers lose faith in the experts, and moreover do not engage in serious and substantive debate with each other. As a result, both groups may have come to down-grade the importance of the Policy Council and up-grade that of parliamentary lobbying.

## I. Introduction

In this paper I argue that there may be occurring a gradual change in the way in which labor policy is formulated in Japan. The change I have in mind is a weakening of the function of the Labour Policy Council,<sup>1</sup> the tripartite body established by the Ministry of Health, Labour and Welfare, which hitherto had played a central role in the formulation of labor policy. It is only in gathering together and analyzing the material in preparation for this conference paper<sup>2</sup> that I came to entertain this hypothesis. Testing it would require interviews with participants and analysis of more documents, but unfortunately I have not been able to reach the stage of definitive judgment. The paper, remains, therefore, an elaboration

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<sup>1</sup> Such policy councils are an important part of the Japanese bureaucratic/legislative process. Their composition is determined by law. The Ministry of Health, Labour and Welfare currently has thirteen such councils. The Labour Policy Council consists of ten "representatives of the public interest" (in the 2007 appointments, one lawyer and the rest from universities and research institutes, two of them ex-bureaucrats now directing semi-public research agencies), ten union representatives, and ten employer representatives. Most of its work is done in subcommittees of which there are 18—employment exchanges, equal opportunities, work conditions (with two sub-subcommittees on accident insurance and minimum wages), etc. Of these, the most important in recent years, dealing with the most controversial issues, is the Subcommittee on Work Conditions.

<sup>2</sup> The paper was originally written for a panel discussion at the Conference on Change in the Employment System and the Reorganization of Labor Law, held in Tokyo on June 23rd, 2007. Pressure of work has prevented me from following up with interviews with the participants, or further analysis of documents. Consequently the paper remains primarily a statement of the problems to be addressed.

of the questions to be answered, and I hope it will be read in that light.

I begin by outlining how I came to take up the question of how labor policy is decided, what discoveries I made and how I made sense of them. I then examine the deliberations in the Labour Policy Council of the proposals for legislation on the Labor Contract and Working Hours and explain why I came to hold the hypothesis that the deliberation process was undergoing “transformation.” Finally I would like to speculate concerning the background factors which might explain that transformation.

## II. The Labor Policy Formulation Process and the Deregulation Subcommittee

What set me off on the study of the process of policy formation for labor issues was interest in a naively simple question. One of the purposes for the formation of *Rengo* (Japan Trade Union Confederation)<sup>3</sup> as a national labor union center in 1989 was to become more deeply involved in policy-making at the central and local government level. What had it actually done to achieve that and what results had it obtained? Those questions were my starting point, and to answer them I took three amendments of labor law carried out in the 1990s, and tried to examine the process by which they were carried through, the role that *Rengo* had played and what it had achieved. The results were summarized in Nakamura and Miura (2001).

In the course of doing this research I became aware of circumstances that I had not originally expected. When I started I had quite simply assumed that the process of formulating policy was carried out in the Labour Policy Council, set up as a tripartite deliberative council in what was then the Ministry of Labour and subsequently the Ministry of Health, Labour and Welfare (Hereafter MHLW). I assumed that what I had to do was to follow closely the debates in the Council, find out what *Rengo* had done and in what manner, and assess whether or not *Rengo* had succeeded in getting its ideas embodied in policy. However, I discovered that from the latter half of the 1990s an organization of great political power was beginning to have an exceedingly strong influence on the making of policy. This was the Deregulation Subcommittee, created within the Administrative Reform Committee in April 1995. This committee, subsequently transforming itself into the Regulatory Reform Committee, the Council for Regulatory Reform, and the Council for the Promotion of

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<sup>3</sup> *Nihon Rodo Kumiai Sorengokai* (the formal nomenclature of *Rengo*). *Rengo* was formed in 1989 as an amalgam of four existing national union centers, distinguished chiefly by their political stance and connections, particularly the two main centers, *Sohyo* supporting the Socialist Party and *Domei* the Social Democrats. At its inception *Rengo* had some 8 million affiliated members, today 6.8 million. Two other smaller national centers are the *Zenroren*, with close connections to the Japan Communist Party with nearly a million affiliated members and the *Zenrokyo*, linked to the remnant socialist parties with some three hundred thousand.

Regulatory Reform,<sup>4</sup> has exercised and continues to exercise considerable influence on policy decisions.

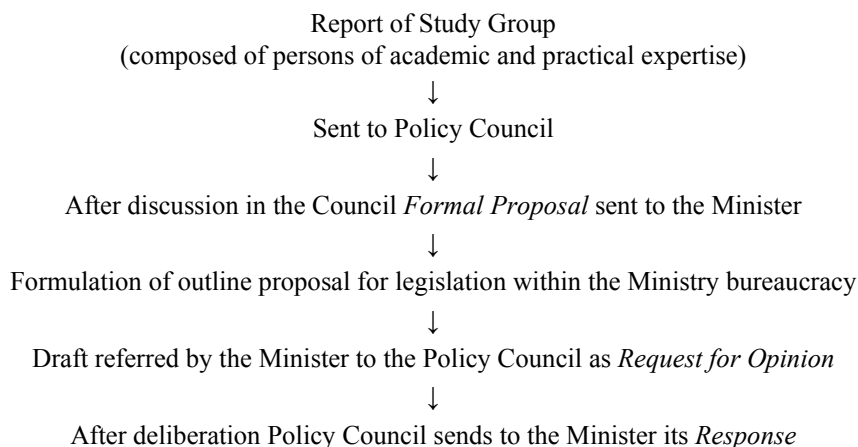
Plans drawn up in these bodies for the relaxation or reform of regulations are put up for Cabinet approval, and then subsequently, in the case of labor regulations, sent down to the Ministry of Health, Labour and Welfare's Labour Policy Council. In the case of plans which have already received Cabinet approval, it is difficult for that Council to do any substantive deliberation, with the result that they simply pass through the Council intact. For example, in the case of the revision of the Labor Standards Act, work on which started in 1997 and included the introduction of the Discretionary Hours Labor Contract system, it was, to quote the account of it in a *Rengo* document, a matter of our being told "relaxation of Labor Standards Act-related regulations was also included in the *Plans for the Promotion of Relaxed Regulation* which has already had Cabinet approval," and so the subsequent discussions in the Labor Standards Committee of the Policy Council had to be confined within the framework of that cabinet decision and were left to concentrate solely on the technical question of which particular regulation to relax—an anomalous situation which we have never experienced before (Japanese Trade Union Confederation 1999, 3). The same situation recurred in the case of the 1999 revision of the Dispatched Workers Act (the introduction of the negative list system of industries and occupations in which worker dispatching was not permitted, replacing the previous system of listing the industries in which it was acceptable.)

The meaning of the word "anomalous" there is defined in contrast to what had until then, been the normal course of events in the process of policy formation. According to Yasueda (1998, 36) "It is quite commonly the case that before a proposal is put before one of the Policy Councils, the main outlines of the argument for new legislation have been worked out in study groups of academic and practitioner experts. The report of such a study group then goes to a Policy Council, and on that basis the Council presents a *Formal Proposal* to the Minister of Labour. The officials of the Ministry of Labour then draw up draft

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<sup>4</sup> The sequence of birth and rebirth of these bodies is as follows.

| Date | Name                                      | Official Translation (Literal Translation)   |
|------|---|--|
| 1995 | Kisei kanwa sho-iinkai                    | Deregulation Subcommittee<br>(Regulatory relaxation subcommittee)  |
| 1999 | Kisei kaikaku iinkai                      | Regulatory Reform Committee  |
| 2001 | Sogo kisei kaikaku kaigi                  | Council for Regulatory Reform<br>(Comprehensive regulatory reform council)   |
| 2004 | Kisei kaikaku, minkan kaiho suishin kaigi | Council for the Promotion of Regulatory Reform<br>(Council for the promotion of regulatory reform and privatization) |
| 2007 | Kisei kaikaku kaigi                       | Council for the Promotion of Regulatory Reform<br>(Council for regulatory reform)                                    |



Source: Compiled from Yasueda (1998, 35-46).

Figure 1. The Formulation of Labor Policy and the Policy Councils

legislation which is then consigned to the Policy Council by the Minister with a formal *Request for an Opinion* to which the Policy Council gives its *Response*.” Figure 1 diagrams this procedure.

After the response is delivered, the bureaucrats in the Ministry complete the drafting, negotiations are held with other ministries where necessary and the law then goes through the screening process of the Cabinet Legislation Bureau, Cabinet approval and submission to the Diet (Hatanaka 2000, 17-18).

In this normal scheme of policy formation the Deregulation Subcommittee and Councils play no part. But in the revision of the Labor Standards Act of 1998 and of the Dispatched Workers Act of 1999, the Deregulation Subcommittee wrote the scenario from outside that scheme and were able, having got Cabinet approval, to exercise a powerful control over the legislative process.

*Rengo*, of course did not take this lying down. It concentrated on its Diet strategy lobbying sympathetically disposed parties, and succeeded in getting a number of amendments and accompanying resolutions which blunted the intended effect of the law (See Nakamura and Miura [2001]).

### III. Deviation

Political scientists describe these circumstances as “a transformation of the labor policy formulation process” (Kume 2000) or as “the rise of a new labor politics” (Miura 2002a, 2002b), I, for my part, have called it a deviation (Nakamura 2006).

I use the word in two senses. First, in the sense that it is a way of making labor policy

which effectively by-passes the Labour Policy Council—a deviation from the conventional policy formulation process, and secondly the effect is that the policy measures instituted end up burdened with considerable restrictions which defeat the original purpose so that it is also a deviation from the principle that law should be effective. The reason why I deliberately chose the word “deviation” was because at the time it seemed to me to be, neither a transformation of the policy formulation process nor a new kind of labor politics, but what you might call simply an outlier event in the normal distribution of events.

My reason for thinking that was that I believed there to be a general consensus that the Labour Policy Council had played and would in the future continue to play an extremely important role in policy-making. Like Yasueda (1998) I believed that “particularly in the field of legislation affecting labor relations, there can be no meaningful legislation without some reconciliation of the views of the unions and of the employers,” and that for the purpose of such reconciliation, the Policy Council had hitherto played, and should continue to play, an exceedingly important role. It seemed to me generally to be a bad thing to reduce that role, both for labor and management, and more generally for society as a whole. And that is why I concluded by calling such deviations a direct challenge to industrial democracy (Nakamura and Miura 2001, Nakamura 2006).

#### **IV. Four Novel Features**

In order to write this paper I read through the minutes of the 2005-2006 meetings of the Work Conditions Subcommittee of the Labour Policy Council when it was discussing Employment Contract Legislation and Work Hours Legislation. As I read them I became aware of four features which seemed to me cause for concern, features which seemed to me evidence that the functions of the Council were being eroded from the inside. The deviations of the 1990s were caused by a powerful body, the Deregulation Subcommittee using its political power from the outside. But this was different, leading me to the hypothesis that an internal transformation within the Council was lowering its functional effectiveness. Let us examine these four features.

##### **1. Concern over the Establishment of a Study Group**

At its 34th meeting on March 23rd, 2004, the Work Conditions Subcommittee of the Labour Policy Council was told the following by the Ministry representative regarding the establishment of a study group concerning legislation on employment contracts.<sup>5</sup>

*“In the Formal Proposal made by the Labour Policy Council in December 2002, it indicated that it would be appropriate to continue the consideration of legislation covering the whole field of employment contracts, including ex-*

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<sup>5</sup> These minutes are to be found at <http://www.mhlw.go.jp/shingi/2004/03/txt/s0323-2.txt> (Accessed May 17, 2007).

*tensions thereto such as changes in conditions of employment, posting outside the firm, shifting to another firm's payroll, change of job within the firm, etc. Also, in the Diet debates on the revision of the Labor Standards Act, an accompanying resolution was passed in identical terms by both Chambers which says in part that there should be created an organ to carry out expert study and investigation on the matter, and that on the basis of its findings necessary action, including legislative action, should be undertaken."*

*"The Ministry's proposal is, first of all to explain today the Ministry's basic thinking on the matter and hear your opinions on that, and then, as a concrete step to further deliberations, to set up a Study Group to begin work from April which will have the remit of doing the basic groundwork from an expert point of view, concentrating particularly on the legal issues."*

This was the establishment of a Study Group which in Figure 1 is the start of the whole process. However, a union representative responded in the following terms.

*"[On the matter of creating a law to govern employment contracts] the difference of opinion between the union side and the employers' side is very great. Given that, instead of setting up a group exclusively of so-called "persons of knowledge and experience," as the formula has it, basically academics, how would it be to have representatives of employers and workers already in the Study Group."*

And again

*"I think this committee should make it clear that if there are no union or employer representatives on the Study Group, this Council will not be bound [by] its recommendations, but what is your opinion on that?"*

The authority to set up a Study Group and commission its members rests with the MHLW Minister, and its report is a report to him or her. Consequently the Council has no power over Study Group appointments. And, while the Study Group provides material for debate in the Council, there is no question of its report itself determining the content of the law.

The same concern with the set up and membership of a Study Group surfaced at the 40th meeting of the same Subcommittee on April 12th, 2005 when the Ministry set out its plans for "a study of the legislation governing work hours."

In short, criticism or concern has come from within the Subcommittee from the very beginning over the process by which a Study Group is set up and discusses what should be the basic principles of the legislation to be drafted. The whole process of policy formation has not got off smoothly.

## 2. Shelving the Study Group Report

Subsequently, on September 15th, 2005, the report of the “Study Group on the nature of legislation to be enacted to govern employment contracts,” was finalized and submitted to the Minister. It was severely criticized by both union and employer representatives (from different points of view, naturally), but the point to note is that both sides expressed the view that the report and discussions in the Subcommittee were two different things.

Rengo said “The Study Group Report is a report by scholars, it is not the starting point for our discussions in the Subcommittee.”<sup>6</sup> And Keidanren<sup>7</sup> said “This is quite simply the summary conclusions of the Study Group and we should not be bound by it; the important thing is that we should have an open debate directed at making the legislation as good as it can be.”<sup>8</sup>

At the 43rd Subcommittee meeting on October 21st, 2005, following on these statements by the two organizations, both the union representatives and the employers’ representatives made their views on the Study Group Report known.<sup>9</sup> First, from the employers’ side:

*“Our basic stance is that if it be a law of content such as that, we would certainly not oppose it. But, specifically with regard to Item 2, the treatment of the Study Group Report, exactly how its status is defined becomes a considerable problem. My view is that it should be considered as a systematization of the points at issue, contributing material for the debates of this Subcommittee. Certainly, as far as its content goes, I see a lot which looks highly restrictive of employers’ powers. Not in everything, but it seems to me in a very great deal. I certainly could not agree to a law being enacted in this form.”*

In other words, an Employment Contract Law with the sort of content outlined in the Study Group Report was acceptable, but he would not want it to be translated straight into law; the Report should be treated as material, a systematization of the issues. His position seems somewhat more favorable towards the report than the official Keidanren statement. By contrast the union side is more sharply critical.

*“I would like to have it confirmed that this Report in itself is not going to be*

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<sup>6</sup> Rengo, *Statement regarding the “Report of the Study Group on the Nature of Legislation to be enacted to govern employment contracts,”* September 13th, 2005.

<sup>7</sup> Keidanren, the Japan Business Federation was until 2002 known in English as the Japan Federation of Economic Organizations but changed its official English name in that year when it absorbed the former *Nikkeiren*, the Japan Federation of Employers’ Associations, which had until then been the union counterpart as the major employers’ negotiating body. Membership is by company, industrial association and regional associations.

<sup>8</sup> Keidanren, Special Committee on Labor Law, *Statement on the Interim Report of the Study Group on the Nature of Legislation to be enacted to govern employment contracts*, June 20th, 2005.

<sup>9</sup> All citations from this 43rd meeting are at <http://www.mhlw.go.jp/shingi/2005/10/txt/s1021-1.txt> (Accessed May 28, 2007).

*the basis for our discussions in this Council, and if there really is going to be a Labor Contract Law it should be tackled as a problem on the nature of which unions and employers are in agreement.”*

It seems to me that one of the independent members got it right when he said that he thought the report should be treated as material for the Council’s deliberations.

The Report, he said,

*“It seems to me should be considered as something which is an aid to our deliberations in the broadest sense, as data, you might say, or raw material, as a systematization of the points at issue.”*

In saying that the Report should be seen as material, as a discussion agenda for the Council, the independent member and the employer representative seem to take a similar position. What the union member meant by the Report not being “the basis” for the Council is not very clear, but if he meant that the Report should be excluded from consideration and that the discussion should proceed only on those issues “on the nature of which unions and employers are in agreement” then clearly the union position and the position of the employers and the independent representatives are a long way apart. At any rate, discussion finally began without any agreed conclusion as to whether the Report should or should not be treated as raw material for the Council’s deliberations.

### 3. The Objections of Both Unions and Employers and Suspension of the Discussions

Starting from the Subcommittee’s 44th meeting on November 11th, 2008, it began discussion of the current labor situation and whether or not a law governing employment contracts was necessary. Discussions continued through the 46th (November 29th, 2005), 47th (December 6th), 48th (December 20th), 49th (January 7th) and 51st (February 23rd). As far as one can judge from the minutes, it is hard to resist the impression that both sides were simply stating their own positions, without any attempt to engage with each other’s arguments.

Meanwhile, as for legislation on the work hours regime, the Report of the “Study Group on the appropriate future shape of the work-hours regime” was presented at the Subcommittee’s 50th meeting (February 9th, 2006). The two salient issues were an increase in the overtime premium to discourage over-lengthy work hours and the so-called White Collar Exemption, excluding from maximum work-hour regulations, certain classes of white collar workers assumed to be self-motivated and not in need of work-hour regulation. The discussions continued at a fast pace through the 52nd (March 15th) and 53rd (March 29th) meetings and on this subject, particularly at the 53rd meeting the union and the employer representatives seem really to have been addressing each other’s arguments.

Both of these issues—employment contracts and work hours were contentious issues



on which it was difficult for unions and employers to agree. Why both issues had to be discussed in the same forum and at the same time I do not understand, though it may well be that MHLW felt itself under pressure because of the Council for the Promotion of Regulatory Reform and Privatization whose second report was issued on December 21st. That report, which bore the title *Towards the Realization of Small and Efficient Government: Competition plus consumer/user choice in both public and private sectors*,<sup>10</sup> proposed that discussion of an expansion and systematization of the exceptions to work-hours regulation and employment contract law should be considered during fiscal 2005 and decisions taken in fiscal 2006.

After five sessions on contracts and three on work hours, at the 54th meeting of the Subcommittee, the Ministry produced a document entitled *Points for discussion concerning the legal regulation of employment contracts and work hours*. Both union and employer representatives voiced their opposition.<sup>11</sup>

The union representatives made a fundamental criticism, opposing the basic idea of the *Points* (which was also the stance taken in the Study Group Report) that employment contract law should be based on case law, on the legal doctrines developed by the courts concerning employers' work rules.

*"I do not deny that work rules have hitherto, in practice, played a large part in establishing and in clarifying the content of the contract between worker and employer. But when we start talking about what an employment contract should be and immediately jump into work rules I wonder what is going on. It seems to me that the fact that all sorts of questions about the employment contract have been resolved by reference to work rules has hitherto acted as an impediment to the healthy development of employment contract doctrine. According to the law of contracts, a contract is something arrived at with the agreement of both parties which becomes invalid if there is not agreement, but the doctrine derived from precedents concerning work rules holds that even if an employee does not individually give his consent, he is bound by any work rules that the employer makes or changes, but the basis for that has never been made clear."*

This argument from the principle of freedom of contract seems on the face of it quite reasonable, but is nevertheless, it seems to me, somewhat inappropriate. To reject a basic approach adopted by experts such as those on the Study Group with a deep knowledge of Japanese judicial practice, and the interpretation of statutory and case law, is, for someone who has no expert knowledge of such things, hardly reasonable. It is as if a researcher with

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<sup>10</sup> [http://www8.cao.go.jp/kisei-kaikaku/old/publication/2005/1221/item051221\\_02.pdf](http://www8.cao.go.jp/kisei-kaikaku/old/publication/2005/1221/item051221_02.pdf) (Accessed May 1, 2007).

<sup>11</sup> For the 54th meeting, see <http://www.mhlw.go.jp/shingi/2006/04/txt/s0411-1.txt> (Accessed May 29, 2007).

no intimate knowledge of actual workplaces should propound his views on policies and law regarding work. Union officials and employers who have such intimate knowledge would surely be fiercely critical. The fact that in the end the union representatives came round to accepting that basic approach suggests that they did in the end acknowledge that.

One of the employer representatives offered the following idea, or criticism, of the direction of the proceedings

*“One thing that I think is of great importance is the relative weight to be given to the two issues of contracts and work hours, or the sequence in which we discuss them. This is just my personal opinion, but may I remind you that we have got other unfinished business, there is the matter of allowing the payment of cash compensation instead of reinstatement in findings of unfair dismissal and the business of work hours. I personally would like to see us deal with those first and then get on to contracts, but would that change of procedure be acceptable?”*

The suggestion betrayed this member’s lukewarm attitude to the idea of a law governing employment contracts, but his proposal was rejected by other employer representatives and the union and independent members.

Subsequently discussion at the 55th (April 25th, 2006), 56th (May 16th) and 57th (May 23th) meetings revolved around the *Points for Discussion*. The 54th, 55th and 56th meetings were largely taken up with exchanges between the union members and the independent members concerning the relation of employment contracts to work rule case law and there was not a great deal of discussion of specific issues. Then, at the 57th meeting, the employers’ representatives expressed their opposition on a number of points. Throughout it did not seem to me, from a reading of the minutes, that the two sides were engaged in a serious dialogue.

But nevertheless at the 58th meeting (June 13th, 2006), the MHLW officials produced a document entitled *Concerning the appropriate legislation to govern employment contracts and work hours (Draft)*, explaining that they hoped to produce an Interim Report in July, and this was a draft for what might go into it. This certainly seems to me to have been a distinctly abrupt action, and it must have appeared so to both the union and employer representatives concerned. At the 59th meeting (June 27th) criticism of the draft came from both union and employer representatives. One of the employer representatives spoke as follows:

*“We have been conducting our discussions on the points which were suggested there [in the Points for Discussion], but if one asks whether we have had a full and comprehensive discussion going into the real issues in detail, the answer is, I don’t think so.*

*As for the idea of going ahead on the basis of this draft and arriving at*

*an interim report by July before we have had full discussions of such content as to go into a report of our findings, I can say from the employers' side that we are firmly opposed to it."*

The union members were equally critical:

*"The Secretariat gave us in April the Points for Discussion which contained a great variety of issues, but I don't think we have had anything like a satisfactory degree of detailed substantive discussion of those issues."*

*"Without adequate discussion, for the Secretariat to take the lead in producing an interim report which pretends to be the way forward and which does not reflect the views of the unions or the employers, is no way to get an Employment Contract Act of the kind that we are proposing, namely one which is helpful to workers. Consequently, I would like to propose to the Subcommittee that we temporarily suspend consideration of the employment contract issue."*

And so the discussions were broken off. They resumed some two months later, on August 31st, during which interval the Ministry and the independent members doubtless held informal talks to reconcile opinions.

One of the reasons which produced this situation was certainly, in my view, the ineptness of the Ministry in trying to get an interim report before there had been really substantive discussion, but I think there was a more important reason which is as follows.

Were the union and employer representatives really trying to have a "substantive discussion"? They were agreed on the need for legislation. But the employers' representatives were always lukewarm on the issue, and the union representatives, stopped, as it were, at the gateway to such discussions with their preoccupation with the question of the relation of employment contracts to work rules. As far as work hour questions were concerned, on the introduction of some form of "White collar exemption" from work rule restrictions, the employers were in favor and the unions were against, while on raising the legal overtime premium the unions simply repeated their support and the employers their opposition. I cannot see that either really engaged in genuine debate.

#### 4. A Response Qualified by Objections from Unions and Employers

Subsequently, after much toing and froing, the Work Conditions Subcommittee of the Labour Policy Council at its 72nd meeting (December 27th, 2006) resolved to send to the Minister a document entitled *Recommendations for Future Legislation on Employment Contracts and Work Hours* as its *Response* to his referral. Thereafter draft outline legislation was sent for comment to the Subcommittee at its 73rd meeting (January 25th, 2007) and at its 74th meeting the Subcommittee reported to the Minister that it was "in general agreement" with that outline. I do not intend to give my opinions here on the substance of

the Employment Contract Act or the revision of the working hours provisions in the Labor Standards Act. I wish to concentrate solely on the policy formation process.

What I do not understand is the attitudes of both labor and management to the revision of the Labor Standards Act concerning hours of work.<sup>12</sup> One of the employers' representatives said the following:

*"I think we are seeing a gradual understanding of the new self-regulated work hours system. Simply raising the overtime premium will do nothing by itself to cure the problem of long work hours or over-working, and I don't see it as having any effect. Nor does it seem that working people themselves want higher premiums. So, in that sense I am very strongly opposed to that part of the draft."*

The "self-regulated work hours system" means the so-called White Collar Exemption, as explained earlier would put white collar workers with the most responsible jobs in a similar position to managers in being outside of the restriction of maximum work hours beyond which overtime premiums have legally to be paid. The employers were in favor of that but on the other hand "strongly opposed" to raising overtime premiums for other workers. By contrast the union representatives were in favor of raising premiums, but opposed to the self-regulated hours system, and the relaxed definition of the eligible scope for discretionary work-hour contracts (i.e., payment by the job not by the hours worked in doing it).

*"As I have said many times, I simply cannot accept the self-regulated hours system, nor the relaxation of restrictions on discretionary work contracts for planning-type jobs in small and medium firms."*

In short there is a clear clash of opposing views between unions and employers. Usually in such a case, in collective bargaining or in an enterprise Union-Management Consultation Committee within a firm, one would expect some kind of trade-off, concession on one issue in order to gain a corresponding concession on another. In drafting legislation, such compromise might not be normal. In my view the employer member representing the Chambers of Commerce was quite correct when he said:

*"As I said just now, I disagree with the proposal to send a report of discussions and a formal Response on the revision of the Labor Standards Act. As it is clear from the draft of the report, there are sections of the law to which unions and employers have made strong objections. That, nevertheless, it is proposed to send a report and a Response endorsing the draft law seems to me inexplicable."*

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<sup>12</sup> These debates in the 74th meeting are to be found at <http://www.mhlw.go.jp/shingi/2007/02/txt/s0202-2.txt> (Accessed June 2, 2007).

Nevertheless a *Response* indicating “general agreement” endorsing the draft law was sent. Why? One malicious interpretation is that there was some kind of bargained collusion between the union and employer representatives, but that is not the explanation I favor.

It is much more likely that both sides were counting on being able to amend the Bill to alter the provisions they disagreed with during the Diet discussions. Both sides already had experience of being able to alter drafts they disapproved of by stepping up their parliamentary lobbying activities. The employers for their part managed, when Article 131 of the Attached Regulations to the Labor Standards Act was revised in 1993, making the legal statutory work week 40 hours, to get an extension of the deferment exemption allowing 46 hours (Nakamura and Miura 2001). On the union side, *Rengo* achieved a certain degree of success from its intensified lobbying over the 1998 revision of the Labor Standards Act to introduce the discretionary work contract system, and the 1999 revision of the Worker Dispatching Act, which switched to the negative list of excluded industries and occupations, from the positive list of those permitted. Quite recently there was also the amendment of Article 18-2 of the Labor Standards Act, the so-called “Dismissal rules” defining what constituted an abuse of the employer’s right to terminate employment—in effect a definition of “unfair dismissal” (on the latter, see Miura [2005, 188-90]).

If that interpretation is correct, it means that on the part of either both, or of one of, the parties, union and management, have come to attach lesser value to the Labour Policy Council.

## 5. The Down-Grading of the Function of the Labour Policy Council

In this survey of the discussions in the Work Conditions Subcommittee of the Labour Policy Council debating legislation on employment contracts and hours of work over the years 2005 to 2006, I have concentrated on four developments: the expressed concern about the establishment of a Study Group, the shelving of the Study Group’s report, the opposition expressed by both union and employee representatives, and the report appended to the *Response*, making clear the opposition of both unions and employers to certain sections of the proposed legislation. It is, of course, perfectly true to say that both bits of legislation were formally approved and that the Council had therefore done its job.

I, however, take the view that these four developments are signs of a transformation in the process of formulating labor policy, and that what is driving that transformation is not external forces such as Deregulation Subcommittee, but the internal members.

Faith in the process by which experts develop the arguments which form the basis of proposed legislation, and, basically the same thing, faith in the experts themselves, has been shaken. This was obvious from the concerns about the establishment of the Study Group, and from the shelving of the Study Group’s report. It does not appear that at any time there was serious and substantive debate between the unions and the employers. As a result, although the ineptness of the MHLW officials may also have been a contributing factor, a *Response* indicating “general approval” of the draft law was sent in spite of complete oppo-

sition from both sides. And the background to that seems to be a down-grading of the importance of the Policy Council and an up-grading of that of parliamentary lobbying. And as a result the function of the Policy Council is gradually diminishing.

## V. The Background

If my hypothesis interpreting these events is true, what explains them? I can only answer with further hypotheses, but it seems to me that the following points are important.

The first point, clearly, must be the existence of the series of committees and councils dedicated to deregulation. These have great political power and in effect control the labor policy formulation process from outside. Both for the MHLW itself and for the Policy Councils it sets up, it is difficult to resist the Government-led push that results. And the implications of this control from outside, do not stop there; they are, surely, bringing about a transformation of the Labour Policy Council.

For the employers, if they want a relaxation or reform of the labor laws, it is much more effective for them to ask it of the Council for the Promotion of Regulatory Reform and Privatization than to argue their case out in the Policy Council. And for the union side, if the Policy Council is going to be by-passed, intensifying their lobbying of the Diet is the best way to get what they want. And in fact it is of great significance that this has allowed them to achieve some notable victories in securing amendments, most particularly their success in altering the provisions of the draft law on unfair dismissal, Article 18-2 of the Labor Standards Act. Thus, for both sides there are good reasons for treating the Policy Council as of little consequence.

In addition, for the labor side, they probably see little difference between the Regulatory Reform Council and an experts' Study Group, as far as the stance likely to be taken by their individual members is concerned. It may well be that they see the Study Group, established before the Policy Council begins its deliberations, as similar to the Regulatory Reform Council in trying to control the Policy Council from outside, and that this explains why they have come increasingly to distrust the experts who are appointed to it.

## References

- Hatanaka, Nobuo. 2000. Rodo anzen eisei ho no keisei to sono koka [Development and effects of the occupational safety and health act]. *The Monthly Journal of the Japan Institute of Labour* 42, no. 1:14-28.
- Japanese Trade Union Confederation (Nihon Rodo Kumiai Sorengokai [*Rengo*]). 1999. *Shokuba ni ikaso: Kaisei rodoho Q&A* [Bringing the labor law revisions to life in the workplace: Questions and Answers]. Tokyo: Japanese Trade Union Confederation.
- Kume, Ikuo. 2000. Rodo seisaku katei no seijuku to henyō [Japanese labour policy making in transition]. *The Monthly Journal of the Japan Institute of Labour* 42, no. 1:2-13.

- Miura, Mari. 2002a. Atarashii rodo seiji to kyohiken [The new labor politics and veto power]. *The Journal of Social Science* 53, no. 2-3:55-78.
- . 2002b. Rodo kisei: Atarashii rodo seiji to kyohiken [Labor regulation: The new labor politics and veto power] In *Ryudoki no nihon seiji: “Ushinawareta junen” no seijigakuteki kensho* [Japanese politics in an era of fluidity: A political science examination of “the lost decade”], ed. Nobuhiro Hiwatari and Mari Miura, 259-77. Tokyo: Tokyo University Press.
- . 2005. Rengo no seisaku sanko [Rengo participation in policy formation]. In *Suitai ka saisei ka: Rodo kumiai kasseika e no michi* [Decline or rebirth: The road to revitalization of labor unions], ed. Keisuke Nakamura and Research Institute for Advancement of Living Standards, 160-92. Tokyo: Keiso Shobo.
- Nakamura, Keisuke. 2006. Kaikaku no naka no itsudatsu [Deviations within reform]. In *“Ushinawareta junen” wo koete II: Koizumi kaikaku e no jidai* [Beyond “the lost decade,” vol. II: The road to the Koizumi Reforms], ed. Institute of Social Science, the University of Tokyo, 251-77. Tokyo: Tokyo University Press.
- Nakamura, Keisuke and Mari Miura. 2001. Rengo no seisaku sanko: Rokiho, hakenho no kaisei wo chushin ni [Rengo’s participation in policy-making: With special reference to the revisions of the Labor Standards Act and the Dispatched Workers Act]. In *Rodo kumiai no mirai wo saguru: Henkaku to teitai no 90nendai wo koete* [Beyond the nineties decade of change and stagnation in search of a future for labor unions], ed. Research Institute for Advancement of Living Standards, 395-559. Tokyo: Research Institute for Advancement of Living Standards.
- Yasueda, Hidenobu. 1998. *Rodo no ho to seisaku, dai 2 han* [Labor law and labor policy, 2nd Edition]. Tokyo: Yuhikaku.