Commentary

Worker Status of Platform Workers under the Labor Union Act

The *Uber Japan and One Other Company* Case
Order, the Tokyo Labor Relations Commission (Oct. 4, 2022) 1280 *Rodo Hanrei* 19

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I. Facts

The respondent, Uber Japan, Inc. (hereinafter, "Uber J"), was established on November 30, 2012, and was engaged in the Uber Eats business commissioned by Uber Portier B.V. (hereinafter, "Uber P"), a company located in the Netherlands and incorporated under the laws of the Netherlands.

On October 3, 2019, 18 delivery persons (hereinafter, "delivery partners") who had concluded a contract with Uber P formed the claimant Uber Eats Union (hereinafter, the "Union"), and on October 8, the Union notified Uber J of the formation of the Union and requested to collectively bargain over compensation for the delivery partners involved in the accident (hereinafter, the "October 8 Collective Bargaining Request").

On October 18, 2019, Uber P responded to the Union that it was not able to bargain collectively because the delivery partners had a contract with Uber P, not with Uber J, and that the delivery partners were not workers under the Japanese Labor Union Act.

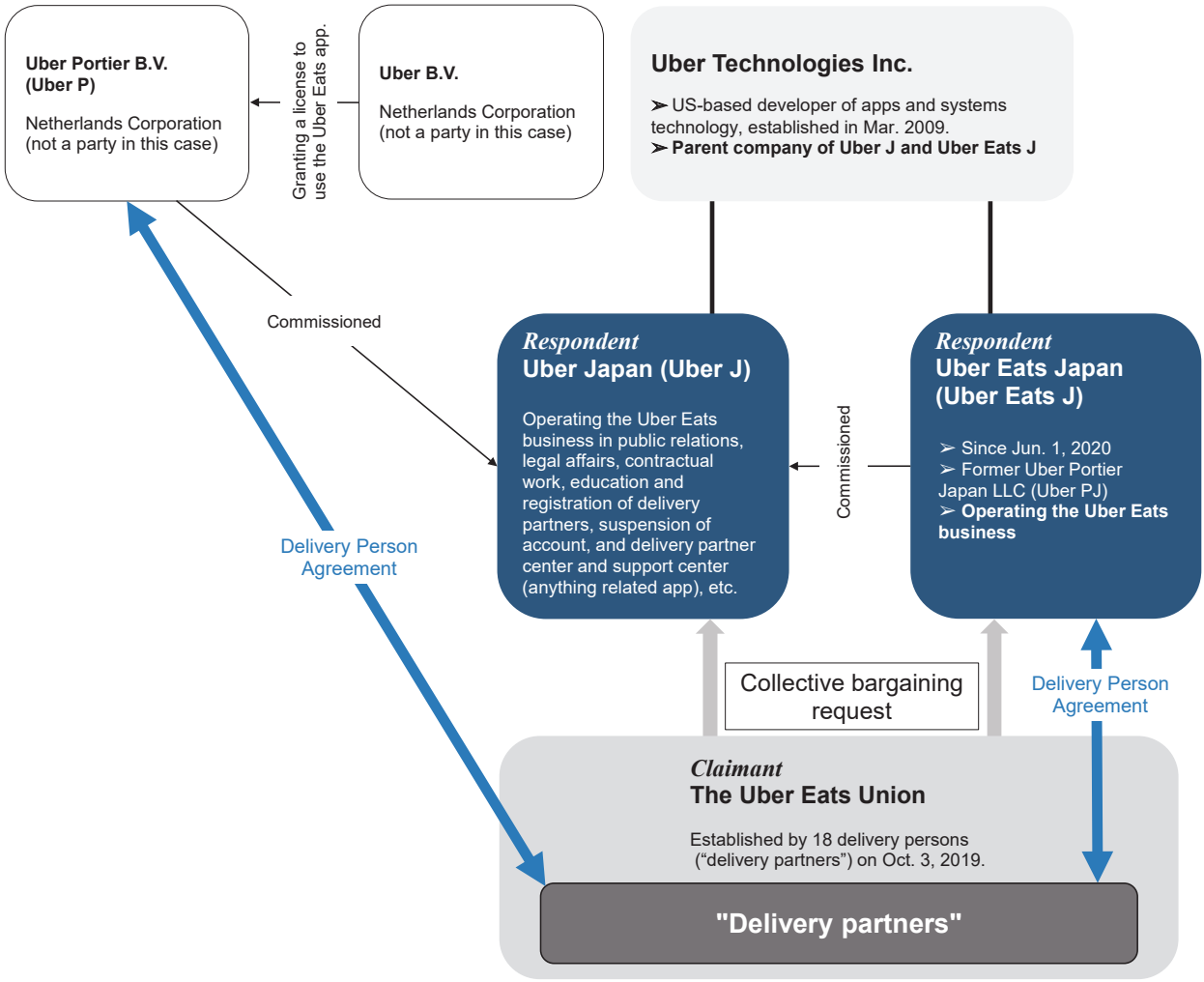
On October 29, 2019, one other respondent Uber Portier Japan LLC (hereinafter, "Uber PJ") was established as the operator of the Uber Eats business in Japan, and on June 1, 2020, Uber PJ changed its name to Uber Eats Japan (hereinafter, "Uber Eats J").

On November 20, 2019, Uber P notified delivery partners that, beginning December 1, Uber PJ would provide a platform for connecting delivery partners with restaurants and customers. Uber P, together with Uber PJ, entered into an agreement with delivery partners, Uber P granted the delivery partners the right to use the app, and Uber PJ conducted the matching between the users on the app. Uber J concluded an intercompany service agreement with Uber P on and after December 1, 2019, and performed services such as registration procedures, education, and support for delivery partners.

On November 25, 2019, the Union submitted a collective bargaining proposal to Uber PJ regarding compensation for the accident, reduction of fees, and other issues (hereinafter, the "November 25 Collective Bargaining Request").

On December 4, 2019, Uber PJ refused to bargain collectively with the Union, claiming that the delivery partners were not "employed workers" under the Labor Union Act.

The contract relationships of this case are shown in Figure 1. The case concerned from the perspectives of (1) whether delivery partners are workers under the Labor Union Act, (2) whether Uber J is an employer under the Labor Union Act in relation to union members who are delivery partners, and (3) whether Uber J's refusal to respond to the October 8 Collective Bargaining Request and Uber PJ's refusal to respond to the November 25 Collective Bargaining Request constitute refusal to bargain collectively without just cause, respectively. This commentary deals only with issues (1) and (2).



Source: Author created.

Figure 1. Contract relationships diagram

II. Order

Remedies for all unfair labor practices.

1. Whether delivery partners are workers under the Labor Union Act.

1-A. Framework for determining worker status

The Uber Eats business is a service that connects restaurants, customers who order food and beverages, and delivery partners via an app, and delivers food and beverages provided by the restaurants to the customers. Therefore, the business of delivering food and beverages is an integral part of the Uber Eats business.

Under the contract, Uber does not provide delivery services, etc., but provides a platform to users, and with respect to the sale of food and beverages, the transaction is made directly between the ordering customer and the restaurant, and if the sale of food and beverages involves delivery, a direct business relationship for delivery is created between the restaurant and the delivery partner, and the delivery partner is not in a relationship to provide labor to Uber P and Uber Eats J. One of the purposes of the Labor Union Act is "to elevate the status of

workers by promoting their being on equal standing with their employer in their negotiations with the employer" (Art. 1 LUA). Given the purpose and nature of the Act, it is necessary to determine objectively whether a worker is a "[person] who [lives] on their wages, salaries, or other equivalent income" (Art. 3 LUA) to whom the Act applies, in accordance with the reality of the situation, without being bound only by the formality of the contract such as its title.

Contractually, the delivery service is a direct business relationship between the restaurant and the delivery partner. In practice, Uber issues a Delivery Partner Guide to the delivery partner and suggests or warns that the account will be suspended if certain prohibited behaviors are violated, sometimes actually suspends the account, and even terminates the Uber Service Contract with the delivery partner if it is deemed difficult for the delivery partner to properly perform the delivery service, or if trouble occurs, the Uber support center operated by Uber J takes care of the problem. In light of these facts, it can be seen that Uber is involved in various ways in the performance of the delivery business so that the delivery partners can smoothly and stably perform the delivery business, which is an integral part of the Uber Eats business. Although delivery fees are contractually paid by the restaurant to the delivery partner, Uber Eats J actually receives them from the ordering party based on its agency authority and pays them to the delivery partner, minus a service fee that it earns itself. Therefore, it is difficult to view the delivery partner as merely a pure 'customer', and it is strongly inferred that it may be evaluated as supplying labor to Uber, which operates that business, within the overall Uber Eats business.

Even if the (Uber Eats) business provides a platform on the sharing economy, in some cases, users can be evaluated as supplying labor to the share provider. Therefore, in determining the worker status of delivery partners, the companies' argument that there is no room for the application of the criteria for determining worker status under the Labor Union Act because the companies are not using the labor of delivery partners cannot be adopted.

As to whether the delivery partner in this case is a worker under the Labor Union Act, in light of the purpose and nature of the Act, the relationship between the companies and the delivery partners should be examined, including whether there is an actual situation that can be evaluated as a labor supply relationship. The decision should be made by comprehensively considering various circumstances, such as integration into the business organization (see B. below for details), unilateral and routine determination of the content of the contract (C. below), whether the compensation is for labor (D. below), whether the delivery partner should respond to the request for business (E. below), the provision of labor under direction and supervision in a broad sense, and a certain time and place restraint (F below), and significant business ownership (G. below).

1-B. Integration into business organizations

(a) Purpose of the contract

The purpose of the agreements that delivery partners will enter into with Uber P and Uber Eats J is to provide Uber services to delivery partners on the platform provided by Uber P and Uber Eats J. The agreement also has the objective of securing a delivery partner to take care of most of the delivery work in order to ensure that the matching on the platform can be concluded quickly and reliably.

(b) Status of integration into organizations

In the Uber Eats business, delivery partners deliver food and beverages to the customer for 99 percent of all orders. And the number of delivery requests, at its highest, reaches 2.7 million per week. The percentage of delivery requests that are accepted by the delivery partner was approximately 70 percent at the time of the filing of the petition, and has generally remained at 40 percent since the response time was changed from 60 seconds to 30 seconds, but the percentage of delivery requests that are matched has generally been close to 100 percent throughout this period.

In order for Uber Eats to be successful as a

business, it is necessary to match many orders reliably and, due to the nature of the business of delivering food and beverages, it is also necessary to complete orders quickly. Uber Eats J pays its delivery partners money, which it calls an incentive, in addition to the basic delivery fee. Incentives can be said to direct and place delivery partners in locations, times, and periods of high demand for deliveries. When making a delivery request at the time of this filing, the delivery address was not indicated, suggesting that the delivery address was not indicated on purpose in order to match the request quickly.

(c) Evaluations and account suspensions

The companies seek to maintain and ensure a certain level of labor by controlling the behavior of delivery partners through an evaluation system for delivery partners and by eliminating labor that falls below the arbitrage evaluation average.

The account suspension means that the delivery partner will no longer be able to work, which has a considerably strong controlling effect. In the Delivery Partner Guide, the company stipulates a greater number of actions that are subject to account suspension for delivery partners than for other users, indicating that the companies are making efforts to strongly control the behavior of delivery partners and ensure that delivery partners are able to smoothly perform delivery operations.

(d) Representations to third parties

The companies do not require delivery partners to use Uber bags; it is up to the delivery partner to decide whether or not to use said bags. However, it is easy to infer that there are many delivery partners who use Uber Bags to take advantage of the name recognition of "Uber Eats," and these delivery partners can be considered to be treated as part of the Uber organization by third parties.

According to the Delivery Partner Guide, delivery partners are encouraged to address themselves as "Uber Eats" when visiting a restaurant or ordering customer. This can be seen as an indicator that they are being treated as part of the Uber organization.

(e) Exclusivity

Delivery partners only need to run the application when it is convenient for them, and they are not contractually prohibited from working for other companies, and in fact, some delivery partners are using multiple matching services simultaneously to perform similar delivery tasks. However, incentives such as "quests" can be said to encourage people to be virtually bound for a certain period of time in order to achieve their goals and earn rewards. Even though the percentage of delivery partners is not large, there are about 2,000 delivery partners who are working more than 40 hours per month on the app and are considered to be making a living by working exclusively for Uber Eats delivery services, and according to a survey conducted by Uber, a quarter of the respondents have delivery as their "main business." In this way, although delivery partners are not necessarily obligated to be exclusive to Uber, a system has been established to encourage them to engage exclusively in the Uber Eats delivery business, and in fact, there is a certain number of delivery partners who appear to be exclusive to this business.

(f) Summary

As described above, the Uber Eats business provides a service that connects users via an app and delivers food and beverages provided by restaurants to the customers who place orders. The delivery partners deliver food and beverages to customers, which account for 99% of all orders. In order to continue the business and generate profits, it is necessary to secure a large number of delivery partners, and it is believed that the companies control the behavior of delivery partners through evaluation systems and account suspension measures to maintain the smooth and stable performance of delivery operations. In addition, some delivery partners are treated by third parties as part of the Uber Eats organization, and a certain number of delivery partners are retained on a virtually exclusive basis with incentives.

In light of the above, the Uber Eats business could not function without the labor provided by the

delivery partners, and the delivery partners should have been secured and integrated into the business organization as an essential labor force for the execution of the companies' business.

1-C. Unilateral and routine determination of the contents of the contract

In both the determination and modification of the contents of the contract, there is no equal relationship, and it can be said that the companies are making unilateral and routine decisions.

1-D. Compensation for labor

The agreements that the delivery partners and the restaurants have with the companies provide that the companies are technical service providers, not delivery service providers, that a direct business relationship arises between the delivery partners and the restaurants with respect to delivery, and that the delivery partners charge the restaurants a delivery fee.

However, looking at the flow of money related to the delivery fee, Uber Eats J receives it from the ordering party and pays it to the delivery partner on behalf of the restaurant based on its agency authority, and the restaurant is not involved in the collection and payment of the delivery fee. The amount of the delivery fee is also determined by Uber Eats J, and the delivery fee is considered to be the recommended price. But, in practice, there is no negotiation between the delivery partner and the company, or between the delivery partner and the restaurant, and the delivery fee has never changed to an amount other than the recommended price. Uber Eats J also pays a certain amount of money to the restaurant or the ordering party depending on the circumstances, such as when the delivery of food and beverages is unsuccessful. Uber Eats J may also pay a predetermined delivery fee to the delivery partner even when the ordering party is not at the delivery location and the food and beverages are not delivered, or when the food and beverages are damaged due to the carelessness of the delivery partner. Therefore, even if the restaurant is supposed to pay the delivery fee under the contract, it is reasonable to assume that Uber Eats J pays the delivery fee to the delivery partner in reality.

When a delivery partner allows another person to use their account, it is considered grounds for suspension of the account, and the delivery service is to be performed by the delivery partner, supplying their own labor.

Regarding the delivery fee, the Delivery Partner Guide states that it is the basic delivery fee (base fee - service fee) plus an incentive (irregular additional compensation), and that the "base fee" consists of a receiving fee, a delivery fee, and a distance fee. The receiving fee is based on the number of food and beverages received at the restaurant, the delivery fee is based on the number of food and beverages given to the orderer, and the distance fee is based on the distance from the restaurant to the delivery destination, all of which are calculated based on the volume of business that the delivery partner delivers food and beverages to the orderer. Uber Eats J may pay a predetermined delivery fee to the delivery partner even if the delivery is not completed, for example, if the delivery cannot be completed for the convenience of the ordering party. This makes it difficult to say that the delivery fee is a reward for the completion of the job. Delivery fees are paid weekly, are due every Monday, and are transferred to the registered account within one week of the closing date.

The Delivery Partner Guide states that incentives are additional compensation added to the delivery fee. Among the incentives, boosts are increased by a certain multiplier at times and locations with high order volume, quests are paid when the target number of deliveries is met within a time period, and online time incentives are the difference between the fixed amount and the actual delivery fee if the delivery fee at a specified time is less than a certain amount. Boosts can be described as encouraging operation at times and locations with high order volumes, quests as encouraging increased deliveries, and online time incentives as encouraging apps to be online at specified times by guaranteeing a certain amount of money, all of which are similar in nature to busywork allowances, incentives, and the like.

In short, the delivery fee paid by Uber Eats J to

the delivery partners is a basic delivery fee and an additional remuneration called an incentive, both of which are in the nature of compensation for the labor performed by the delivery partners themselves.

1-E. Relationship to respond to requests for business

Delivery partners can receive delivery requests, which are requests for work, when the app is online. Whether or not to put the app online, at what time of day, and at what location the delivery service is to be performed is completely up to the delivery partner. While cancellation after responding to a delivery request could result in a loss of reputation or account suspension, there is no specific provision to the effect that simply not responding to a delivery request will result in a specific disadvantage. In fact, delivery partners had a certain degree of freedom to accept or reject delivery requests, as the percentage of acceptances by delivery partners was approximately 70 percent at the time of the filing of the petition and approximately 40 percent in recent times, after the response time was changed from 60 seconds to 30 seconds. However, the following circumstances are also recognized.

(a) Possibility of disadvantageous treatment

In many cases, the app is set to automatically go offline if the delivery request is not accepted three times in a row within a certain period of time. Although it is possible to log in again, if the delivery partner is unaware that they have been taken offline, they may miss the opportunity to accept the delivery request.

The union claims that if a delivery partner fails to respond to two or three delivery requests in a row, the partner may be "hung out to dry" for a while, meaning that no more delivery requests are received. Even if it is difficult to find that there was a fact of being "hung out to dry," it is undeniable that the delivery partners, who are members of the association, were aware that if they refused delivery requests, they might be disadvantaged, for example, by a decrease in the number of delivery requests sent.

(b) Possibility of rejecting the request for a contract

The circumstances suggest that Uber did not indicate the delivery destination when the delivery request was made. The delivery partner was in a difficult situation to reject the delivery request at the stage when the delivery destination was actually informed at the restaurant. Among the incentives set by the firms, quests are paid if the target for the number of deliveries is achieved within a certain period of time. Therefore, delivery partners who set a goal for a quest are less likely to refuse a request for work until the goal is achieved within that time period. Furthermore, since delivery partners are not guaranteed a certain amount of income and do not know how many delivery requests will be sent, they are likely to be inclined to comply if a delivery request comes in while the app is online. In particular, delivery partners who operate approximately 40 hours per week and are virtually exclusively engaged in the Uber Eats business essentially find it difficult to refuse delivery requests.

(c) Summary

Delivery partners were free to decide whether or not to put the application online, at what time of day, and at what location to perform delivery services, and there was no specific stipulation that they would suffer specific disadvantages if they refused delivery requests, and it cannot be said that they were in a relationship where they had to respond to business requests. However, in some cases, the delivery partner's perception is that it is difficult to refuse a delivery request.

1-F. Provision of labor under direction and supervision in the broad sense, and a certain time and place restraint

The delivery partner can put the app online at the time and location of their choice when they wish to perform the work, and they are completely free to choose at what time and location they wish to perform the work. After the delivery partner accepts the delivery request, the delivery partner is given instructions by the company in the delivery partner

guide, etc. on how to perform the delivery operation, and is forced to follow the instructions regarding time and place, but after the delivery operation is completed, the delivery partner is free to either leave the application online to wait for the next delivery request or to go offline to finish the operation. In light of this, it cannot be said that the delivery partners are bound by the companies, at least as to what time and where they perform their work.

Since delivery work is routine and work procedures are indicated by the delivery partner guide, the only discretion that delivery partners have in their work is the selection of delivery routes. However, it can be inferred that the delivery partners have little room for discretion in their work, as they are virtually forced to follow the recommended route.

In light of the above, although the delivery partners cannot be said to be bound by the companies with respect to the time and place of their work, they are, in a broad sense, under the direction and supervision of the companies in performing their delivery duties.

1-G. Significant business ownership

(a) Opportunity to profit from one's own talent

There is very little room for discretion for delivery partners in the delivery operations, and since community guidelines prohibit restaurants and customers from unnecessary contact with delivery partners and from acquiring their own unique customers, there is little opportunity for them to use their own talents.

(b) Burden of profit and loss in operations

The profits and losses in the delivery business are borne by Uber Eats J, and it cannot be said that the delivery partners bear any risk in their operations.

(c) Use of other persons' labor

Delivery services are to be provided by the individual who has registered in advance, and violations of this rule may result in account suspension. Therefore, delivery partners are not allowed to expand their business by hiring others, etc.

(d) Burden of equipment, etc. necessary for the work

Delivery partners carry out delivery operations by owning their own means of delivery, such as motorcycles and bicycles.

(e) Summary

Although delivery partners own their own means of delivery, such as motorcycles and bicycles, they cannot independently acquire unique customers or use the labor of others, and they have little opportunity to profit from their own talents or take on the risks of the delivery business, so it cannot be said that delivery partners have significant business ownership.

1-H. Conclusion

The delivery partners in this case are: secured as labor force indispensable for the execution of the companies' business and integrated into the business organization (as the order states in B. above); the companies have unilaterally and routinely determined the contents of the contract (C. above); and the delivery fees earned by the delivery partners are compensation for the provision of labor (D. above). On the other hand, the delivery partners have freedom as to whether or not to run the application, at what time of day, and at what location to perform delivery services, and it cannot be said that they were in a relationship where they had to respond to the companies' requests. However, it is recognized that in some cases, there were circumstances that made it difficult for them to reject delivery requests (E. above). In addition, although they are not bound to a certain time and place, in a broad sense, they are under the direction and supervision of the companies in carrying out their delivery work (F. above). And, the delivery partner cannot be found to have significant business ownership (G. above). Taking all of these circumstances into consideration, the delivery partners in this case are workers under the Labor Union Act in relation to the companies.

2. Whether Uber J is an employer under the Labor Union Act in relation to union members who are delivery partners.

With regard to the Uber Eats business, the division of roles among the affiliated companies involved in the business is not clearly differentiated, and it is reasonable to assume that the affiliated companies were, in effect, developing and operating the business as a single entity.

Uber J, which practically handles the Uber Eats business for delivery partners, from registration and contract procedures to explanation and support of operations and various inquiries, should be considered to be in a position to control and decide collective bargaining matters concerning working conditions, etc. of delivery partners in a realistic and concrete manner, together with Uber Eats J, a party to the contract with delivery partners, and to be an employer who should respond to collective bargaining.

III. Commentary

1. Significance and features of this order

This order of the Labor Relations Commission is the first case in Japan, in both administrative and judicial terms, to determine the worker's status under the Labor Union Act when matching labor supply and demand through digital platforms. With the development of platform work, as represented by the Uber Eats business, this order, together with the conclusion of the affirmation, is of great significance, as it indicates the way of determining the worker status of such workers under the Labor Union Act.

As a framework for determining worker status under the Labor Union Act, this order cites the factors listed in the Report of the Labor-Management Relations Law Study Group of the Ministry of Health, Labour and Welfare (MHLW) of July 25, 2011, and applies them to the facts found to make a decision, but does not give any weight to the factors and takes the form of a comprehensive judgment.

Contractually, the platform provider is not supposed to use the labor of the worker, and in many cases, the one who needs the labor is the ordering party and not the platform. This phenomenon is not limited to the Uber Eats business, but has become a common phenomenon for businesses that use the platform. In this case, it was found that even though the delivery partner does not contractually provide labor to UP and UEJ, actually, the delivery partner may be considered as supplying labor to the platform. And UJ, which is not a party to the contract, was deemed to be an employer under the Labor Union Act.

2. Japanese concept of worker and criteria for determining worker status

While some countries, such as Germany, maintain a unified concept of worker regardless of individual or collective laws, in the case of Japan, the concept of worker under collective laws, represented by the Labor Union Act, is a broader concept, separate from the concept of worker under individual laws, such as the Labor Standards Act and Labor Contracts Act.

The concept of worker in individual labor relations is often determined by reference to the definition in Article 9 of the Labor Standards Act.[1] The definition in Article 9 of the Act indicates that a worker is "a person who is (i) employed at a business or office" and (ii) receives wages therefrom. However, both the meaning of "employed" and the definition of "wages" are broad and abstract, so the scope of workers cannot be immediately clarified from this article. The criteria for determining worker status that is generally based and used in practice is the Labor Standards Act Study Group Report of December 19, 1985, "On the criteria for determining worker status under the Labor Standards Act."[2] The report stated that the determination of worker status should be based on actual and concrete relationship, regardless of the form of the contract, such as an employment contract or a subcontracting contract, and established a basic framework for determining worker status under the LSA: the existence of "subordinate relationship to an employer (personal dependence, namely, subordination to the control of the employer [*shiyo juzoku sei*])," that is, whether a person (i) works under the direction and supervision of an employer and (ii) receives compensation for his/her labor. On the other hand, it is generally

accepted that economic subordination is not a basis for worker status under the Act.[3]

(i) Whether or not the work can be considered as work under direction and supervision is judged in light of whether or not the worker has the freedom to accept or refuse work requests, direction in performing the work, etc., whether or not the work is restricted in terms of workplace and work hours, and whether or not the work is substitutable.

(ii) Regarding the remuneration as compensation for labor, if the remuneration is calculated on the basis of hourly rates, etc., and if there is little difference depending on the result of labor, and if it is judged as compensation for providing labor for a certain period of time, it is considered to reinforce the "subordinate relationship to an employer."

In cases where the determination cannot be made solely from the perspectives of (i) and (ii), (iii) the existence (or degree) of business ownership and the degree of exclusivity may be considered as factors to reinforce the determination of worker status. Specifically, the burden of machinery and equipment, the amount of remuneration, liability for damages, and whether or not a trade name is used.

On the other hand, the issue in this case was the concept of worker under the Labor Union Act. Article 3 of the Labor Union Act defines the concept of worker under the Labor Union Act as "[t]he term "workers" as used in this Act means those persons who live on their wages, salaries, or other equivalent income, regardless of the kind of occupation." There is almost no dispute that the concept of worker under the Labor Union Act is broader interpreted than that under the Labor Standards Act because, unlike the concept of worker under the Labor Standards Act, the worker is not required to be employed; but it was not always clear how much broader than that under the Labor Standards Act, or the criteria for defining its extension.

Therefore, in three decisions in 2011–2012,[4] the Supreme Court established the stance that economic subordination plus moderated employment subordination (personal subordination) is taken into account to determine workers' status under the Labor Union Act. According to the common theory, the basic factors of judgment presented by the three aforementioned Supreme Court decisions are (i) integration into the business organization, (ii) unilateral and routine determination of the content of the contract, and (iii) the remuneration for labor. The supplemental factors of judgment are (iv) a relationship to respond to requests for work, (v) provision of labor under direction and supervision in a broad sense, and a certain time and place restraint. Lastly, (vi) significant business ownership is interpreted to be a factor that negatively affects the status of a worker.[5]

With regard to (iv), the Labor Standards Act presumes that a worker is obligated under the labor contract to respond to requests for work, but the Labor Union Act only requires that the worker is obliged to respond to requests for work in the actual labor relationship, even if there is no such obligation under the labor contract. With regard to (v), this is exactly what is understood as "moderate subordinate relationship to an employer status." While (iv) and (v) are the basic factors of judgment when determining worker status under the Labor Standards Act, (iv) and (v) are merely supplemental elements of judgment when determining worker status under the Labor Union Act. The determining factors that delineate the boundaries of worker status under the Labor Union Act are (i) and (ii), which were not considered in the concept of worker under the Labor Standards Act.

The factor (i) held that when labor providers are involved within an organization as a labor force that is quantitatively and qualitatively indispensable for the performance of work, the terms and conditions of use of the labor force should be resolved through collective bargaining, and clarified the breadth of the concept of worker under the Labor Union Act, which is not based on the contractual form of the parties,[6] and at the same time, it delineated the boundaries of the concept of worker under the Labor Union Act. In addition, in the case of unilateral and routine determination of the content of the contract in (ii), the labor provider side has a disparity in bargaining power vis-à-vis the other party, which clearly requires protection under the collective bargaining legislation.

The factor (iii) corresponds to "wages, salaries, and other similar income" as specified in the definition of workers under the Labor Union Act.[7] The significant business ownership of (vi) is considered as a negative factor in determining worker status under the Labor Union Act. If a labor provider is viewed as a person who constantly has the opportunity to profit from his/her own talent and undertakes the risk of conducting business on his/her own, it may act negatively in considering worker status.

Thus, in the abovementioned Report of the Labor-Management Relations Law Study Group which is generally referred as the criteria for determining worker status under the Labor Union Act, the factors are divided into "basic" and "supplemental," etc., and from their perspective, there appears to be a difference in the level of importance. However, this order took the stance of "making a judgment based on a comprehensive consideration of various circumstances," and did not assign any strength or weakness as a factor in making a judgment.

Looking at the specific judgment, this order, in line with the judgment framework presented in the above mentioned Report breaks down each judgment factor into more detailed circumstances for consideration.[8] Bearing in mind that this is only a "judgment of degree," the order finds that even if the degree is not as strong as when recognizing worker status under the Labor Standards Act, there are circumstances of a degree appropriate for recognizing worker status under the Labor Union Act, and after comprehensive consideration, the order finds that the delivery partner is a worker under the Labor Union Act. In determining the relationship between the delivery partner and the company, the Tokyo Metropolitan Government's Labor Relations Commission emphasized, it has "recognized" that if the delivery partner did not respond to two or three delivery requests in a row, the delivery partner would be "hung out to dry" and would not receive delivery requests for a while, and that "there were circumstances that made it difficult to refuse the delivery request." Although there is no specific provision in the contract to the effect that a party will suffer specific disadvantages if it does not comply with a delivery request, the stance of this order, which emphasizes the perception of the parties rather than making judgments based solely on the content of the contract, is consistent with the criteria of judgment presented in the Report.[9]

3. Determination as to whether the platform provider is using the labor of the delivery partner

In the platform economy, not limited to the Uber Eats business, platform providers often claim that there is a direct business relationship between the party needing labor and the labor provider, and that they do not use the labor of the labor provider, and that the platform provider merely provides a platform for matching labor supply and demand. In Japan, however, in determining whether a franchisee who operates a convenience store under a franchise agreement is a worker under the Labor Union Act, the issue is whether the convenience store franchise owner is in a contractual relationship to provide labor to the head office.[10]

There are two patterns of logical construction in regards to this point. One is to first determine whether the platform provider is using the labor of the labor provider (delivery partner), and if that is denied, then there is no room to apply the criteria for determining the worker status under the Labor Union Act for labor provider's.[11] The other is to strongly infer the possibility that a labor provider may be supplying labor to the platform provider that operate the business within the overall Uber Eats business, thereby expanding the scope for applying the already established framework for determining worker status under the Labor Union Act, and drawing a conclusion about whether the platform provider is using the labor provided by the labor provider. Considering that the use of labor performed by labor providers is a subcomponent of the factor of the "integration into the business organization," that it is necessary to consider each factor comprehensively, and that, in determining worker status under the Labor Union Act, it should be determined as much as possible in accordance with the already established framework of judgment, the latter logical structure is more

appropriate.

4. Determination of Uber J as "employer"

Another characteristic of the platform economy is that there may be cases where there is no contractual employer, or where the platform provider, in order to escape employer liability, may create a subcontractor or other entity with jurisdiction over a particular area to act as the contractual employer. Again, the issue was the employer status of Uber J, which had no contractual relationship with the delivery partner.

In a case in which unionized workers of a subcontractor applied to the prime contractor for collective bargaining, the Supreme Court in the *Asahi Hoso* case[12] held that even a business owner other than the employer is recognized as an employer "if it is in a position to control and decide in a realistic and concrete manner to the extent that it can be considered, though partially, as an employer" (The *Asahi Hoso* case, Supreme Court decision). The judgment method of the Supreme Court decision in the *Asahi Hoso* case has become the established method for holding parties other than the contractual employer liable for employer liability under the Labor Union Act, which centers on the contractual employer and attempts to partially extend the employer concept to related parties in the surrounding area.

On the other hand, in this case, it was found that the division of roles among the affiliated companies involved in the Uber Eats business was not clearly differentiated, and that the affiliated companies, including Uber J, were effectively united in the development and operation of this business. In determining the worker status of delivery partners under the Labor Union Act, even when determining their integration in the business organization, the "business organization" referred to therein does not refer to a specific company, but to all of the affiliated companies engaged in the same business. In other words, this order held that all of the affiliated companies involved in the Uber Eats business, regardless of whether they were contractual employers or not, were subject to the labor provision of the delivery partners because the division of roles among the companies was not clearly distinguished, and any affiliated company had the status of an employer who should be subject to collective bargaining as long as it was responsible for a part of the Uber Eats business. In other words, rather than focusing on a particular company and partially extending the employer concept to other parties, this order adopts the logical structure that as long as multiple companies share the employer function, all companies have worker status under the Labor Union Act. This concept is similar to the American concept of "joint employer," and may develop as an important legal doctrine in the platform economy era to pursue employer liability against platform providers who try to distance themselves from labor providers by establishing a separate contractual employer.

1. The concept of worker under the Labor Contracts Act is commonly understood to be the same as that under the Labor Standards Act. See Takashi Araki, *Rodoho* [Labor Law], 5th ed. (Tokyo: Yuhikaku), 53.
2. https://www.mhlw.go.jp/stf/shingi/2r9852000000xgbw-att/2r9852000000xgi8.pdf.
3. Araki, *supra* note 1, 54.
4. The *National Government and Central Labor Relations Commission (Shin-Kokuritsu Gekijo Un'ei Zaidan [New National Theatre Management Foundation])* case, The 3rd Petty Bench, Supreme Court, (Apr. 12, 2011) 65–3 *Minshu* 943; *National Government and Central Labor Relations Commission (INAX Maintenance)* case, the 3rd Petty Bench, Supreme Court, (Apr. 12, 2011) 1026 *Rohan* 27; The *National Government and Central Labor Relations Commission (Victor Service Engineering)* case, The 3rd Petty Bench, Supreme Court, (Feb. 21, 2012) 66–3 *Minshu* 955.
5. The Study Group of the MHLW on Labor-Management Relations Law, Roshi kankei-ho kenkyukai hokokusho: Rodo kumiai ho jo no rodosha sei no handan kijun ni tsuite [Report of the Study Group on Labor-Management Relations Law: Criteria for determining worker status under the Labor Union Act] (Tokyo: Ministry of Health, Labour and Welfare, Jul. 25, 2011). https://www.mhlw.go.jp/stf/houdou/2r9852000001juuf-att/2r9852000001jx2l.pdf.
6. In the discussion at the time of the Trade Union Law in December 1945, it was apparent that the intention was to guarantee that those who live on remuneration for their own labor under contractual arrangements such as subcontracting may also organize a labor union and bargain collectively, etc. The Trade Union Law was completely revised into the current law in 1949, but the concept of "worker" was maintained as it was in the old Labor Union Legislation. See the Study Group of the MHLW on Labor-Management Relations Law, *supra* note 5, 1–6.
7. "The term "workers" as used in this Act means those persons who live on their wages, salaries, or other equivalent income, regardless of the kind of occupation." (Art.3 LUA)

8. The Study Group of the MHLW on Labor-Management Relations Law, *supra* note 5, 12 and the following for details of the circumstances considered.
9. The Study Group of the MHLW on Labor-Management Relations Law, *supra* note 5, 11, for details on the criteria.
10. The *National Government and Central Labor Relations Commission (Seven-Eleven Japan)* case, Central Labor Relations Commission (Feb. 6, 2022) 1209 *Rohan* 15; The *National Government and Central Labor Relations Commission (Seven-Eleven Japan)* case, Tokyo District Court (June 6, 2022) 1271 *Rohan* 5.
11. In this case, the company argues it.
12. The *Asahi Hoso* case, The 3rd Petty Bench, Supreme Court (Feb. 28, 1995) 49 *Minshu* 387.

The order of this case is available at https://www.metro.tokyo.lg.jp/tosei/hodohappyo/press/2022/11/25/documents/14_01.pdf [summary in Japanese]. For other related information, see *Rodo Hanrei* (*Rohan*, Sanno Research Institute) 1280, pp.5–17 and *Rodo Horitsu Junpo* (*Rojun*, Junposha) 2026, pp.6–27.

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