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## General Survey

### **1995 White Paper on Welfare**

Minister of Health and Welfare Shoichi Ide submitted the 1995 white paper on welfare to a May 23 Cabinet meeting for approval. The annual paper for the first time deals with "medical care" in a comprehensive manner and concludes that we are now in an age in which the quality of medical care must be viewed from the consumers' standpoint of being an essential service. In view of the changed structure of maladies and an increase in the number of the elderly over 75, medical care which also stresses "cure," but without exclusive emphasis on "cure" alone is also necessary. In this context, the paper calls for expediting introduction of a "new publicly-funded care system" targeted for the elderly. This is currently being studied by the Council on Health and Welfare for the Elderly. In addition, the paper urges a drastic review of the framework of the current Older Persons Health System and Medical Insurance System.

Subtitled "Medical Care-Quality, Information, Choice and Mutual Understanding," the paper for the first time reviews medical service as the central subject. It points out the gradual decline in fatality rates from such maladies as cancer, coronaries and strokes which are called the "three major adult maladies." The report also points to the rising number of bedridden older persons who die from pneumonia and bronchitis, thus recognizing the 1990s as an era when the "adult maladies" cause a smaller share of deaths.

Predicting that more elderly people will be inflicted with maladies for longer periods in the years to come, the paper analyzes that the nation is now entering an age calling for better care as well as cures. The paper also refers to ever-increasing medical expenses, saying that growth in total medical costs has since 1991 continued to grow faster than national income. The paper thus stresses the need to review the nation's medical insurance system. In this respect, the tasks the country must tackle are the following. First, in view of the graying population and the changing employment structure, reviewing employees' insurance, local insurance and the older persons' insurance systems. Second, dealing with the problem of increasing medical costs from both aspects of benefits and contributions. Third, instituting a fairer allocation of contributions and benefits which are presently differentiated among the insured, the paper says.

### **1995 White Paper on International Trade and on Small and Medium-sized Enterprise**

The Cabinet of Prime Minister Tomiichi Murayama approved the 1995 white paper on

international trade and the 1995 small business white paper, submitted by Ryutaro Hashimoto, Minister of International Trade and Industry, on May 12.

The annual report on trade characteristically focuses on the internal-external price gap, which is responsible for domestic companies' rising costs and weakening of international competitiveness, citing as one illustration the cost of doing business in Japan is the highest among the advanced industrial nations. Touching also on the "hollowing out" of Japanese industry, the report points out that Japanese companies are shifting their operations offshore due to the strong yen. Furthermore, it analyzes that governmental regulations, high costs and business practices constitute obstacle to foreign direct investment. Thus, in 1994 the number of domestic plants starting operations dropped to one-third of the number in 1989 and direct investments into Japan from abroad is not increasing, the report maintains.

On trade issues, a MITI official expressed concern over possible U.S. unilateral action such as the use of the "Super 301" sanctions on unfair trade practices. Curbing exports to slash the current account surplus "goes against the ideals of free trade," the official said. Partly because a meeting of the Asia-Pacific Economic Cooperation Forum will be held in Osaka in November, the white paper states that Japan should play a leading role in liberalizing trade and investment restrictions in the region. Domestic demand-led economic growth through deregulation will help reduce the trade surplus, the white paper concludes.

The small and medium-sized Enterprise white paper concludes that the sluggish business performance of smaller firms was brought on by structural changes-such as the rocketing yen and price busting. These firms will soon be in difficulty if they stick to the conventional way of coping with such problems, the paper warns, thus asking them to actively take measures to diversify into new business fields and push ahead with technological development in order to pull out of their difficulties.

### **Total Fertility Rate Marks Its First Increase in 10 Years**

The number of births in Japan topped 2 million a year in the 1971-74 period when the "junior baby boomers" were born but continually declined yearly thereafter and dropped below 1.2 million in 1993. However, in 1994 a total of 1.238 million babies were born in Japan, up about 50,000 from the previous year, marking the first large increase in the 21 years since 1973, according to an annual report of vital statistics released by the Ministry of Health and Welfare(MHW).

Women in their late 20s to early 30s, finally deciding to have babies, contributed most to the increase. By age group, women in all age brackets, excluding those in their late teens,

contributed to the increase. In particular, women in the 30-to-34 age bracket had 20,300 more babies than the year before, while those in the 25-to-29 age bracket had 15,000 more and those in the 35-39 age bracket had 8,300 more births.

The average number of children born to a Japanese woman during her lifetime increased to 1.50 last year from the all-time low of 1.46 in 1993, representing the first increase in 10 years. The factors behind this are as follows. First, the "trend toward waiting until later in life to marry and have a family" still persists. Second, people belonging to the second baby boom-generation are now reaching marriageable age.

## Human Resources Management

### Major Distributors to Start Hiring in Fall

Major Japanese corporations traditionally hire school graduates as regular employees in April of each year. But the nation's three largest retailers will revamp their traditional method hiring. In addition to annual hiring in April, Jusco, Daiei and Ito Yokado will also employ *shushokuronin*, or unemployed recent university graduates, mid-career job hoppers and those who have passed national qualifying exams in an attempt to secure outstanding people. They will also seek to hire returnees, hoping they will meet the immediate needs of corporate overseas operations. Jusco plans to recruit 100 university graduates as sales staff for its stores in the Tohoku and Kanto areas. Specifically, the company will employ males and females who graduated from 4-year universities last spring and those who will graduate from college overseas this coming summer. Jusco had so far recruited in other seasons than spring, but this is the first time it will carry out the bulk of over 100 mid-career hires. The firm plans to open more outlets in 1996 and beyond and will continue hiring the same number of new staff members.

Daiei will look for 4-year university students who graduated last spring and who have no job experience, those who will graduate from overseas colleges and universities in July and those who passed the national exam for pharmacists in April. It will give these prospective recruits job tests in July and August and will select a total of 100 persons for employment September 1. "The number of *shushokuronin* is currently estimated at 90,000. With the job market tilting in favor of corporations, we concluded that the new method of hiring in the fall will enable us to attract an outstanding work force," according to an official of the company's public-relations department. The company thus showed their determination to emphasize fall-season employment. Furthermore, Daiei has already decided to open three or more food supermarkets in Tien-tsin, China. Before moving into China, "We would like to secure particularly employees who can speak Chinese," he added.

Ito Yokado plans to hire a total of 300 sales persons and pharmacists in September. The firm will limit applicants only to those aged up to around 30 and will give them exams as they come in. A distinctive point about the hiring system Daiei adopted is an attempt to offer positions to mid-career job hoppers who can immediately perform their new job functions and "To secure people with diverse talents based on personality." "We have a barrage of applications coming in at employment briefing sessions underway in many places starting this month," an official at the public-relations department said. He added the company has greater response than expected.

Retailers traditionally hire mid-career persons and are able to adopt flexible personnel policies. There is a strong tendency for the number of recruits in retailing to be affected by plans to open new outlets rather than by business trends.

## Labor Management Relations

### Issue of Fire Fighters' Right to Organize Largely Settled—MHA and Jichiro Chief Agree

On June 14, the Commission on Application of ILO Treaty Recommendations under the International Labor Organization (ILO) deliberated on the issue of Japan's fire fighters' right to organize. On May 26, Jichiro (All Japan Prefectural and Municipal Workers' Union) and the Ministry of Home Affairs (MHA) as well as the Fire Defense Agency (FDA) agreed on introduction of a consultation method to be replaced by the right to organize. Chairman Goharan of the Commission from India stated that "Japan's labor and management made a step forward in the contents of the agreement," adding that "I will expect revision of the Local Officials Act (LOA) will result in approval of granting fire fighters the right to organize in the years ahead." The issue of fire fighters' right to organize had been debated and widely regarded as violating the ILO Treaty for more than 20 years. Chairman Goharan's remarks indicate the issue has by and large been settled in the international arena. The Japanese government will set procedures for legalizing a new organization as a forum for joint consultation to be replaced by a trade union.

In Japan, fire fighters are barred from organizing under the LOA. Thus, despite its ratification in 1965 of Article 87 of the ILO Treaty, which "guarantees all the workers, excluding military and police officers, the right to organize," the government had insisted that "failure to grant fire fighters the right to organize does not constitute violation of the Treaty since they are treated as the equivalent of police officers." Meanwhile, in 1972 Jichiro filed an action with the ILO's Commission on Freedom of Association against what it viewed as

violating the Treaty via the now-defunct Sohyo (General Council of Trade Unions of Japan). In 1973, the Commission on Application of ILO Treaty Recommendations demanded that the Japanese government allow fire fighters the right to organize. In the year that followed, the Commission continually asked the Japanese government to take adequate action on the basis of the Treaty. At its 1993 general assembly the ILO came close to specifying in its report that Japan violates Article 87. However, Japan escaped punitive measures by promising that it would offer the ILO a concrete action plan to deal with the issue at a general meeting two years later. In the meantime, Jichiro, MHA and FDA held rounds of tripartite talks where they decided to take a wait-and-see attitude toward granting fire fighters the right to organize. Instead, they agreed on the following points through revision of the LOA. First, a committee for fire fighters (tentatively named) will be established at fire defense headquarters across the country to assure smooth communication between officers for consultations with fire defense chiefs and headquarters chiefs on working conditions. Second, regular consultations will be held continuously between Jichiro's chairman and the Minister of Home Affairs to discuss working conditions of fire fighters.

## Public Policy

### **New Family Leave Bill Becomes Law**

On June 5, the House of Councilors with majority support approved a government-sponsored bill requiring companies to allow their employees leave of a certain period to care for sick family members. Under the Law, which will replace the present Child Care Leave Law, companies must permit a three-month family leave period, available once per family. The Law, which will take effect in April 1999, is designed mainly so that employees can take care of their elderly parents or other family members (the spouse, the spouse's aged parents and children). Employers will not be allowed to refuse requests for the leave or to dismiss employees for taking it. No penal provisions are given.

The largest opposition party, the Shinshinto (New Frontier Party) had submitted its own bill in line with that of Rengo (Japanese Trade Union Confederation) to launch a system permitting a one-year-long family leave period beginning in 1996. The Shinshinto-sponsored bill also allowed employees to take the leave once for a sick family member and to receive allowance during the leave. The tripartite ruling coalition, meanwhile, had put forward a revised bill, and it was passed by a majority in the House of Representatives. The revised bill called for the following. First, how long and how many times employees can take the leave depends on how serious is the situation requiring family care activities. Second, employers must make efforts to introduce the leave system before the measures take effect. Third, the government will study and take necessary measures in a comprehensive manner after they

take effect.

In a statement announced following Diet approval of the bill, Rengo evaluated efforts made by both the ruling coalition and opposition parties, while saying that the Law is still "inadequate" in terms of how long and how many times leave is permitted as well as when the law will go into effect.

According to a Ministry of Labour survey, over 80,000 workers are forced to quit their jobs to care of aged parents or other family members. Fifty-two percent of companies with 500 and more employees have adopted the leave program. On the other hand, only 14 percent of firms with less than 100 employees have done so. Diffusion of the system is extremely low at smaller-scale firms which have a hard time securing substitute staff.

## Special Topic

### Modification of Working Conditions Through Dismissals?: A Comparative Analysis of the SAS Case

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#### 1 Introduction

On April 13, 1995, in the Scandinavian Airlines Systems (SAS) case<sup>1</sup>, the Tokyo District Court held that an employer can legally dismiss their employees when they have not accepted a proposed modification of working conditions under several conditions. This case attracted the attention of both practitioners and lawyers because until then, in Japanese employment relations with long-term employment practices, such dismissals have been believed to be null and void. Though the Court did not explicitly address the question of applicable law in international employment relations, the case involves the conflict of social norms concerning dismissals for economic reasons and the rules for changing working conditions between Japan and a foreign country.

This article first examines the new approach for modifying working conditions adopted in the SAS case. Second, the traditional case law rules for changing working conditions will be overviewed. Through a comparison with the traditional methods, the problems of the new SAS approach, as well as its implication for future Japanese employment relations, will be

examined.

## 2 Outline of the SAS Case

On 10 June, 1994, SAS, which had seen its business performance continue to deteriorate, set forth a drastic restructuring plan. According to the plan, all 140 employees in its Japanese branch were asked to accept an early retirement plan with a generous severance package. Thirty two of the early retired employees would then be re-hired under disadvantageously modified terms and conditions of employment. Though 115 employees applied for the early retirement plan, 25 refused to do so. The employer dismissed these 25 employees. In the course of litigation, the employer withdrew the dismissal of 9 employees and 16 remained as plaintiffs who contested the legality of the dismissals.

The plaintiffs were divided into two groups: 9 who did not apply for the early retirement plan in spite of the employer's re-hiring proposal with concrete terms of employment, and 7 who were simply dismissed for economic reasons without any re-hiring proposal by the employer. The Court held that both groups of employees legally dismissed.

Though the dismissal of the employees in the latter group entails several legal problems, it is the dismissals of the employees in the former group that attracts more attention. These employees were dismissed because they refused to accept the modification of their working conditions.

The Court first stated that the employees' place and type of job was specified by their contracts, which is not at all common in Japan. The Court held that the notification of dismissal in question a dismissal in order to change working conditions specified by these employment contracts. In other words, this was a dissolution of a present contract accompanied by a proposal of a new contract, and thus regarded as a so-called *Henko-Kaiyaku-Kokuchi* (dismissal to change working conditions). Since the plaintiffs' place and type of job was specified by their employment contracts and the wages and hours were important terms of employment, the Court held that SAS was not able to alter these terms unilaterally without obtaining plaintiffs' consent.

The Court set out the following general criteria to recognize the legality of a dismissal to change working conditions: 1) the modification of working conditions, such as a type of job, place of job, wages and hours, etc. is indispensable for the firm's operation, 2) the necessity of the modification surpasses the employees' disadvantages caused by the modification of working conditions, 3) the proposal of a new contract with modified working conditions is unavoidable and reasonable enough to justify a dismissal of employees who do not accept the proposal, and 4) employer's endeavor to avoid dismissals is fully exerted.



Applying the said criteria to the case, the Court recognized the employer's need to change working conditions, that this surpassed the disadvantages to the employees, and that the employer engaged in good-faith negotiation with the union to which the plaintiffs belonged. Thus held the Court the dismissals to be legal.

### **3 Established Rules Concerning Modification of Working Conditions in Japan**

The Modification of working conditions contested in the SAS case are classified into two types. One is the collective and uniform modification of working conditions which applies to all employees, such as modification of working hours, wage and pension system, etc. The other type of modification concerns the individual terms and conditions of employment, such as the change of an individual worker's place and type of work. In order to clarify the significance of the issue posed by the SAS case, established rules for these two types of modification of working conditions in Japan should be overviewed briefly.

The modification of working conditions can be rendered by three legal tools, namely by individual employment contracts, collective agreements and work rules.

#### **3.1 Collective Modification of working Conditions by Work Rules**

Among these three, an individual contract is rarely used to modify working conditions collectively because it is too costly to obtain all individuals' consent.

A collective agreement is also not a sufficiently workable tool to attain uniform modification of working conditions. In principle, the normative effect of a collective bargaining agreement applies only to members of the union which is a party to the agreement. Though an extension of a collective agreement is possible under certain conditions (Art. 17, the Trade Union Law), it is generally understood that the extension is denied when the employees in question belong to another minority union in order to respect that union's right to bargain<sup>2</sup>. As a result, even when an employer reaches an agreement with a majority union to change working conditions, the employer cannot enforce this agreement against other union members.

Compared to collective agreements, work rules offer a more effective alternative to attain the uniform modification of working conditions.

First, regulations set by work rules have a wider and more universal coverage in the workplace. Work rules are a set of regulations laid down by an employer for the purpose of establishing uniform rules and conditions of employment at the workplace. Employers who continuously employ ten or more workers are obliged to draw up work rules (Art. 89, the

Labor Standards Law). These rules apply to all employees in the undertaking irrespective of their job classification or union membership.

Second, transaction costs are cheaper. Whereas a modification of working conditions through a collective agreement requires an agreement with the union, an employer can unilaterally establish and modify work rules. In drawing up or modifying work rules, the employer is required to ask the opinion of a trade union organized by a majority of the workers at the workplace or, where such a union does not exist, the opinion of a person representing a majority of the workers (Art. 90, the Labor Standards Law). Consent, however, is not required.

As a result, changing is the most effective way for employers to achieve the collective and uniform modification of working conditions<sup>3</sup>.

### **3.2 Binding Effect of Disadvantageously Modified Work Rules**

The Labor Standards Law ensures that the unilateral modification of work rules favorable to employees automatically has normative and binding effect (Art.93). The Law, however, remains silent regarding the effect of work rules that set inferior standards on provisions in individual contracts. When employers change work rules for the purpose of adjusting to deteriorating business performance in economic downturns, the binding effect of such disadvantageously modified work rules raises difficult legal questions.

Concerning this issue, the Supreme Court established a unique rule that a "reasonable modification" of work rules has binding effect on all employees, including those opposed to the modification<sup>4</sup>. Despite severe criticism asserting the lack of legal grounds for recognizing such binding effect, the Supreme Court has repeatedly reconfirmed this rule and it has become established case law<sup>5</sup>.

Underlying this ruling is a consideration of employment security and the need for the adjustment of working conditions. Pursuant to traditional contract theory, an employee who disagrees with the modified working conditions will be discharged. According to Japan's established case law, however, such a dismissal may well be regarded as an abuse of the right to dismiss<sup>6</sup>. On the other hand, since employment relations are continuous contractual relations, modification or adjustment of working conditions in accordance with changing economic and social circumstances is inevitable. Considering these situations, Japanese courts have recognized the binding effect of unilaterally modified work rules on the condition that the modification is regarded as reasonable. This means that courts give top priority to employment security but, in return, employees are expected to be subject to reasonable changes in working conditions<sup>7</sup>.

### **3.3 Modification of Individual Working Conditions**

In many European countries, a dismissal to change working conditions is utilized to change individually agreed working conditions. In Japan, however, "individually agreed working conditions" are rather rare. It is common that employees merely agree orally that they will work for the company, and the employment contract remains absent of details.

The practice in which the parties to an employment contract do not specify concrete conditions of employment in the contract, especially the place and type of work, enables flexible modification of working conditions in accordance with changing circumstances. A transfer order that entails change of an employee's place or type of work, that would be regarded as modification of the content of an employment contract in other countries, seldom raises the question of contractual change because the place and type of work is not specified in the Japanese employment contract.

The Nissan Murayama Plant case<sup>8</sup> shows a typical interpretation concerning the specification of an employee's place and type of work. In this case, machinists who had been engaged in machinist work for about twenty years were transferred to assembly line work. The Court denied the alleged specification of work by implied agreement through such a long engagement with the same activities *for the reason that their contracts did not explicitly prohibit a change of work* and endorsed the flexible deployment of employees. Based on this flexible interpretation of employment contracts, many transfer cases involving changes of place or type of work have been treated as an issue of whether the transfer order is regarded as an abuse of the right to transfer rather than an issue of modification of contract.

It is exceptional for the court to interpret the employee's place and type of work as specified in the individual contract. In those cases, however, even if the employer alters work rules by inserting a clause that allows the employer to change employees' place and type of work based on business necessities, the employer cannot legally order such a change unless he or she obtains the individual's consent<sup>9</sup>.

## **4 Change of Working conditions and Dismissals in Japanese Employment Relations**

### **4.1 Why a dismissal to change working conditions?**

As mentioned above, the SAS case involves both the collective and individual modification of working conditions. As for the collective modification, it was believed that employers could only reasonably modify work rules and could not resort to dismissal to change working conditions<sup>10</sup>. However, as in the SAS case, where the employee's place and type of work is contractually specified, the employer cannot alter these provisions without

obtaining the individual's consent. In such a situation, can an employer dismiss employees who disagree with the proposed modification of individually agreed working conditions? This is the real question raised by the SAS case.

Considering the need for modifying such individually agreed working conditions, the court seemed to introduce a notion of a dismissal to change working conditions modeled after the German law. However, according to the special provision in the Dismissal Protection Law in Germany<sup>11</sup>, employees who are notified of the discharge for changing working conditions can contest the social appropriateness before a court while maintaining his or her employment. In the author's opinion, without such a special provision in Japanese law, employees are obliged to choose between dismissal by opposing the modification or acceptance of the modification without any reservation. The Court overlooked this significant difference between German and Japanese legislative regulations.

#### **4.2 Modification through Dismissals v. Modification without Dismissals**

In countries with no or relaxed regulations on dismissals, employers can modify working conditions by simply introducing new conditions and dismissing those employees who oppose. Any vacancies are filled by hiring new employees who agree to the proposed conditions. Here the adjustment of working conditions is dissolved into the dismissal and hiring procedures. In other words, modification of working conditions are accomplished by the functioning of the external labor market.

By contrast, in countries with strict regulations on dismissals, like many European countries as well as Japan, employers are not able to dismiss employees freely even in an economic downturn. Therefore, how to modify working conditions while maintaining employment becomes an important legal issue. This is especially true of Japanese employment relations where long-term employment practices have been rooted in the society for years. Japanese courts have established case law which severely restricts dismissals for business reasons. To compensate for such rigidity in the adjustment of the size of employees, the courts have allowed for the flexible modification of working conditions.

From the view point of the flexibility of employment relations, the former relies on "numerical flexibility" and the latter on "functional flexibility." Japan's employment policy has relied heavily on functional flexibility to cope with the fluctuating economic circumstances while avoiding dismissals<sup>12</sup>. Coupled with the government's positive employment policy to maintain employment<sup>13</sup>, this has resulted in Japan's very low unemployment<sup>14</sup>.

#### **4.3 The Implication of the SAS case to future employment relations in Japan**

Viewed from the said two types of policies for working conditions adjustment, the reason

that the SAS case caused such a sensation lies in the fact that the court introduced a significant exception to Japan's established policy of modification without dismissals. Should this new method to change working conditions be regarded as appropriate in Japanese employment relations?

The author's opinion is in the negative. It is true that the established collective modification rule through reasonable modification of work rules does not provide sufficient practical solution for the modification of individually agreed working conditions. In accordance with the development of the individualized management of employment, the need for changing such individual working conditions will undoubtedly increase. However, if employees are forced to choose between dismissal or modification of deteriorated working conditions, most would helplessly accept unfavorable modification of working conditions.

The German Dismissal Protection Law provides a third choice for employees: acceptance of a modification proposal with the reservation that such modification is not regarded as socially inappropriate. Allowed such qualified acceptance, German employees can avoid the risk of losing their employment by contesting the binding effect of the modification.

The aim of a dismissal to change working conditions is not to dismiss the employee in question but to alter his or her terms and conditions of employment. There is no conflict between the employer and employee that the maintenance of employment relations is possible if both parties agree to the change of working conditions. The conflict is with which conditions they can agree. Considering these situation and the social cost of the solution through dismissals, In the author's opinion, it is appropriate for Japan, with its established employment policy adopting employment maintenance, to seek a third choice found in Germany and solve the conflict without dismissals.

In the similar context of collective modification of working conditions, Japan has adopted a policy of modification through court intervention, a reasonableness test, maintaining employment rather than a policy of modification through dismissals. Though the Tokyo District in the SAS case allows dismissals for changing working conditions, what we need in the development of individualized employment management in the future is a new rule for changing individually agreed working conditions without resorting to dismissals.

#### Acknowledgment

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1 Tokyo District Court, April 13, 1995, Hanrei-Jiho No. 1526 p.35.

2 Since the Trade Union Law in Japan does not adopt the exclusive representation system like in the U.S., all unions in one company or undertaking have full-fledged equal rights to bargain collectively and to strike.

3 See Yasuo Suwa, *Relations of Collective Agreement to Rules of Employment*, Japan Labor Bulletin, Vol. 32 No. 3 p.5 (1993).

4 Shuhoku Bus case, the Supreme Court, Dec. 25, 1968, Minshu Vol. 22 No. 13 p.3459.

5 Takeda System Case, Supreme Court, Nov. 25, 1983, Rodo-Hanrei No. 418 p.21; Omagari-shi Nogyo Kyodo Kumiai case, Supreme Court, Feb. 16, 1988, Minshu Vol. 42 No. p.60; Dai-ichi Kogata Haiya case, Supreme Court, July 13, 1992, Hanrei-Jiho No.1434 p. 136.

6 Case law established the rule that a dismissal without just cause is regarded as an abuse of the right to dismiss and thus null and void. Courts also set severe four requirements to allow dismissals for business reasons: 1) a personnel reduction must be based on business necessity, 2) every possible measure to avoid layoffs must be tried, 3) the selection of employees to be dismissed must be made on an objective and reasonable basis, 4) the employer must faithfully consult with unions or employees. An economic dismissal failing to satisfy one of these is regarded as an abuse of the right to dismiss.

7 SUGENO KAZUO, *JAPANESE LABOR LAW*, pp.99 (Univ. of Washington Press, 1992).

8 Supreme Court, Dec. 7, 1989, Rodo-Hanrei No. 554 p.6.

9 Nihon Terebi Hoso-mo case, Tokyo District Court, Jul. 23, 1976, Rodo-Hanrei No. 257 p.23.

10 In this connection, since reasonable modification of work rules has binding effect irrespective of individuals' agreement, the court holding that wage and hour regulations cannot be altered without obtaining plaintiffs' consent is questionable.

11 Art. 2 of the Dismissal Protection Law (Kündigungsschutzgesetz), which was newly introduced by the 1969 amendment in order not to impose the risk of the working conditions modification on employees, allows notified employees to accept the modification under the condition that the modification is not socially inappropriate. When the court

holds that the modification is socially appropriate, the modification becomes binding, and holds socially inappropriate, the employee returns to the previous conditions (Art. 8, KSchG). As for the details of the regulations, see Gunter ■ Schaub, *Arbeitsrechts-Handbuch (Labor Law Handbook)*, 7Aufl., pp.1090 (C.H. BECK, 1992).

12 Takashi Araki, *Flexibility in Japanese Employment Relations and the Role of the Judiciary*, in Hiroshi Oda (ed.), *JAPANESE COMMERCIAL LAW IN AN ERA OF INTERNATIONALIZATION*, pp.249 (1994, Graham & Trotman, London).

13 Takashi Araki, *Promotion and Regulation of Job Creation Opportunities, National Report: Japan*, in INTERNATIONAL SOCIETY OF LABOUR LAW AND SOCIAL SECURITY, *PROMOTION AND REGULATION OF JOB CREATION OPPORTUNITIES (Proceedings of XIV World Congress of Labour Law and Social Security, Theme D)*, pp.385 (1994).

14 As of 1994, the unemployment rate is 2.9%.

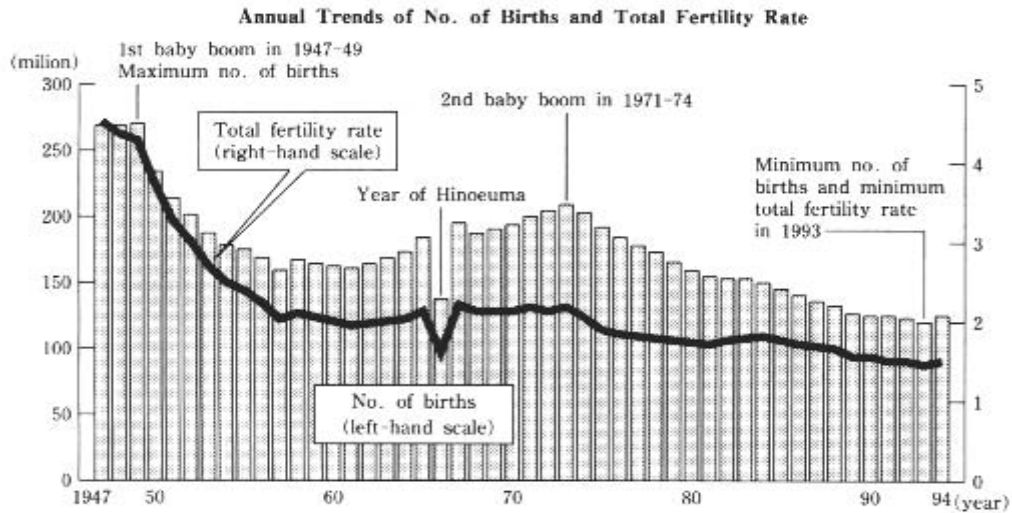
## Statistical Aspects

<u>Recent Labor Economy Indices</u>			
	April 1995	March 1995	Change from previous year
Labor force	6,690 (10thousand)	6,600 (10thousand)	0 (10thousand)
Employed	6,475	6,381	-21
Employees	5,234	5,217	-28
Unemployed	214	219	20
Unemployment rate	3.2%	3.3%	0.3
Active opening rate	0.65	0.66	0.01
Total hours worked	164.7 (hours)	160.5 (hours)	0.7
Total wages of regular employees	(¥ thousand) 283.5	(¥ thousand) 280.4	1.5

Source: Management and Coordination Agency, Ministry of Labour.

Notes: 1.\*denotes annual percent change.

2.From February 1991, data of "Total hours worked" and "Total wages of regular employees" are for firms with 5 to 30 employees.



Note: "Hinoeuma"

There is a superstition in Japan which concerns the year of "hinoeuma", or literally "c-horse", the year comes around every 60 years, because the naming of each year is based on 12 animals and 10 orders, a to j. Under the old belief, female persons born in the year of "c-horse" is doomed to ominous destiny. Most Japanese people take it in a more sophisticated manner, but we noted decline in number of births in 1966. So we watched with interest what would happen in 1966.

Source: Health and Welfare statistics in Japan, 1994. Health and Welfare statistics Association.