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General Survey

Mitsui-Miike Mine Shutdown Proposed - Mine's 120-Year History to End

Mitsui Coal Mining Co., Ltd. submitted a formal proposal to its three labor unions, Miike New Labor Union, Miike Staffers Labor Union and Miike Labor Union, to close its Miike coal mine, Japan's largest on March 31. Individual labor unions' are to agree on the shutdown. Since the end of WW II, Miike coal mine supported the nation's economic recovery with basic energy. However, with Japan's shift to crude oil in the late 1950s and increasing imports of cheap coal, Miike Mine lost its cost competitive edge. The severe drop in coal production saw Miike Mine's operations continuing in the red. With this formal proposal, Japan's largest coal mine will end its 120-year history (that began) as a state-run modern coal mine.

Along with the planned closure, Mitsui Coal Mining Co., Ltd. notified its union members of dismissal of about 1,200 employees and other measures such as severance pay and the relocation of employees to another places. The gist of the closure proposal included: first, suspending mining on March 29; second, closing the mine on March 30 and dismissing all employees; third, offering regular severance pay at the company's convenience plus an additional sum equivalent to 210 to 310 days of the average pay according to years of service; fourth, presenting reemployment posts for 1,744 persons; and fifth, allowing employees residing in company-owned housing to continue living there for 8 months after the closure and for 4 more months when needed. To this proposal, Miike New Labor Union responded "We will synthesize our views and opinions within the union and would like to hold talks with management."

Coal production at Miike Mine remained at 2.27 million tons in 1995, down to around one third of its peak level. The company's cumulative debts swelled to ¥73 billion. Mitsui was strongly urged by its suppliers, electric-power firms, to rectify its coal prices which were three times higher than those of imported coal. With the prices expected to rise even higher in fiscal 1998, the company gave up on continuing operations of its coal mine.

Miike Mine started operations in 1873 under government management and then was sold to the Mitsui zaibatsu (Mitsui combine) in 1889. It supported the nation's industrialization as a major domestic energy supply source for heavy industry. Also, it created the chemicals industry with coal as a raw material and became the cornerstone of Mitsui-related chemicals manufacturers. In 1959 and 1960, personnel rationalization and streamlining efforts prompted a large-scale labor dispute, known as the Miike labor dispute, which is documented as a part of Japan's labor-movement history. It was dubbed the "Confrontation between

Overall Capital and Overall Labor."

The closure of the Miike Mine leaves only two operating coal mines in Japan - Matsushima Mining's Ikejima coal mine in Nagasaki and Taiheiyo Mining's Kushiro coal mine in Hokkaido. The reduction in coal prices, however, is prospected to have a major impact on these two coal mines.

Working Conditions and the Market

Employees Seeking New Jobs Top 2 Million Notably Among Young Workers in 1996

According to the Management and Coordination Agency's Labor Force Survey, the number of individuals seeking to change jobs (employed persons, actively looking for new employment) topped the 2-million mark for the first time since 1968 when the Agency started compiling these statistics and such job seekers averaged 2.08 million annually. The number of "those wanting to switch jobs" who comprise those job seekers actively searching for another job plus those wanting to change jobs who are not actually job-hunting, has reached 5.43 million. The number of those wishing to change to new jobs, it is said, tends to grow in tandem with a recovery in the employment situation stemming from an economic upturn. In recent years, however, the figure has also been affected by a growing tendency for young persons to change jobs resulting from diversifying types of employment. The annual average number of job seekers wishing to switch jobs grew to 1.95 million in 1991. The number decreased when the collapse of the bubble economy worsened the employment environment, but turned upward thereafter.

Those wanting to switch jobs spur the transformation of the industrial structure, but on the other hand, they quit their jobs before finding new ones and are likely to be unemployed. Some analysts say that "the stagnant labor liquidity may raise the unemployment rate to over 10 percent." Calls are growing stronger for labor liquidity measures to prevent a rise in the unemployment rate, such as liberalization of private job-placement agencies and worker-dispatch agencies.

In the wake of this situation, in December 1996 the Central Employment Security Council made a proposal to revise the job-placement business system to the Minister of Labour. The gist of the proposal is: first, fully liberalizing placement of white-collar workers excluding those engaged in clerical and sales jobs and those less than a year out of college and high-school ; second, allowing collection of consulting fees in addition to present provisions for

job-placement fees (10.1% of wages for 6 months); and third, drawing up of government guidelines regarding operation of private job agencies. The Ministry of Labour will launch necessary consolidation involving the paid job-placement business system starting April 1997.

Human Resources Management

Corporate Chiefs Earn Average ¥29.36 Million a Year

A corporation's chairman averages an annual income of ¥29.86 million, a president ¥29.36 million, and a managing director ¥20.28 million, according to a survey on corporate executives' salary, bonuses and annual income released by Seikei Kenkyujo (Political Science and Economics Research Institute). The survey was conducted in January 1997 targeting about 2,000 listed corporations and mid-ranking as well as smaller-scale companies. Replies were received from 247 firms. Annual bonuses were those actually offered between September 1995 and August 1996, and monthly remuneration were those paid as of September 1996.

Average annual income for college-educated employees between the ages of 20 to 24 (average age: 23.8), when calculated based on the Basic Survey on Wage Structure, was about ¥3.2 million, approximately 10 percent of the company chief's annual income. The presidents of corporations listed on the first section of the Stock Exchange (47 firms) earned an average ¥37.87 million per year. With this as an index of 100, annual income for presidents of companies listed in the second section was 80.9 (¥30.64 million) and that for presidents of non-listed firms including over-the-counter firms was 71.5(¥27.06 million). Presidents of the most 23 companies received an annual income of ¥20 to ¥22 million. Nikkeiren has advocated a zero wage base increase for the fifth straight year. The average "wage increase rate" for presidents in the past year was 2.7 percent, and 62.3 percent of companies raised the annual income of their presidents. Incidentally, 114 companies raised the yearly income of their presidents from the previous year, 42 companies froze it and 27 companies lowered it.

Labor-Management Relations

Private Railway Unions Shift from Central Collective Negotiations to Separate Wage Talks - Characteristic of 1997 Spring Wage Talks -

Japan's corporate workers will face the climax of this year's spring wage talks on March 18 and 19 and will likely end up receiving a wage increase representing the previous year's increase plus several hundred yen, or slightly higher than the previous year's of 2.86 percent.

The landmark feature of this year's *Shunto* spring offensive is the fact that the unions of

major private railway companies decided to do away with the central collective wage talks that they have held for 30 years and have opted to negotiate wage problems separately. Representatives of Nihon Mintetsu Kyokai (Japan Non-Government Railway Association), an employees' association, and of Shitetsusoren (General Federation of Private Railway Workers' Unions of Japan) met together with unions and managements of individual private railway companies for wage-hike negotiations and agreed on the same wage increase. In Japan, industrial unions lead the wage-hike negotiations, but in actuality, workers and employers alone hold wage talks at company level. Therefore, the way major private railway companies held wage talks was an extremely rare case.

This year, Shitetsusoren formally abolished the system of giving prior notice before staging a strike, expecting that more unions and managements will participate in the central collective wage talks. However, it called off the new plan as it met with opposition from the union and management of Tokyu Electric Railway Co., a leading private railway company. The Tokyu labor and management claimed that presenting the union's wage increase demands and securing wage-hike offers from management should be revised for the increase in the basic wage alone excluding set annual pay increases. The reason for Tokyu's claim is two-fold: one, to ensure that individual companies hold wage talks separately and the other is that the boost in the basic wages alone will result in a lower wage increase than the amount offered in the traditional way.

Nikkeiren (Japan Federation of Employers' Associations), calling non-trade industries "an inefficient sector sheltered from international competition," criticized that workers of these industries drew from their management wage hike offers added to a wage increases of pacesetting metal industries, thus putting the burden of cost increases on prices. What the federation meant is that price increases were brought on by wage hikes set in annual wage talks. From this perspective, Nikkeiren has in recent years been calling for "Doing away with simultaneous and collective wage-raise offers." As a typical example of collective wage-hike offers, the federation is denouncing Shitetsusoren for its wage negotiations more vehemently. To avert Nikkeiren's "harsh criticism," unions and managements insisted that the boost in the basic wage alone be demanded, but failed to win the overall approval of major railway companies. Thus, workers and employers at individual private railway companies held wage talks separately.

Only workers in the electric power industry, which is also a public-interest industry, received a smaller wage hike offer than the previous year's level, among those of major industries, while labor of other industries were offered a larger wage raise than the previous year's level. With deregulation currently progressing, public-interest industries, such as

private railway companies, experienced "low-key *shunto* wage talks."

Public Policy

Ban Lifted on Formation of Holding Companies

Details of a proposal to revise the Antimonopoly Law and lift the ban on holding companies, presented to the current ordinary Diet session by the government, were unveiled on March 5. Under the proposed revision, a holding company with combined assets exceeding ¥300 billion will be required to submit a business report once a year within 3 months after the close of its fiscal year. The company is also required to report to the Fair Trade Commission on its establishment "within 30 days after registration."

The proposal revision also will "prevent an excessive concentration of corporate power." Concerning definition of "excessive concentration," the proposal lists three types of holding companies, namely, holding companies of mammoth general business size, holding companies which have an enormous impact on other companies; and holding companies which occupy leading positions in mutually related business fields. It thus stipulates that "excessive concentration of business control" means "to have a significant impact on the national economy and to demote of fair and free competition."

The proposed revision also incorporates provisions for re-examining the scope of the ban on formation of holding companies 5 years after its enforcement and for "taking adequate measures if necessary." With its date of enforcement set "within 6 months after promulgation," the revision is expected to take effect within the year if it becomes law during the current ordinary Diet session.

Regarding the handling of labor-management problems, Rengo (Japanese Trade Union Confederation) and Nikkeiren which had opposing views, moved closer to a joint consultative organization to endeavor to study ways to settle problems by separating them from the issue of the liberalization of holding companies. They thus in effect postponed the settlement concerning the handling of labor-management disputes. Responding to Rengo's intentions, the Social Democratic Party (SDP) had asked for revision of the Trade Union Law to allow employees of subsidiaries also to be able to bargain collectively with employers of holding companies which are their parent companies, thus voicing concerns that the liberalization of holding companies may likely trigger many labor-management disputes. The Liberal Democratic Party and Nikkeiren, meanwhile, had opposed the SDP's request, arguing that "revision of the Law is unnecessary."

Top Court Dismisses Final Appeal Over Wage Cuts Involving Extended Retirement Age

In a high court ruling former employee of the Daishi Bank, Ltd. lost a battle over wage cuts stemming from extension of the mandatory retirement age. On February 28, the Second Petty Bench of the Supreme Court, in dismissal of final appeal, ruled that wage cuts are disadvantageous to the plaintiff but are inevitable in light of changes in the rules of employment. The former employee of the Daishi Bank, headquartered in Niigata City, filed a suit against the bank demanding about ¥9.4 million in wages, the amount slashed from his pay as a result of extension of the mandatory retirement age from 55 to 60 under the rules of employment. He claimed that wage cuts in exchange for the extended fixed age limit were unreasonable. His claim, however, was rejected in the first and the second lower court ruling. He then appealed the case at the higher court. Presiding Judge Hiroshi Fukuda determined that "considering the requests from society to extend the retirement age and the bank's diminishing profits caused by the extended fixed age limit, wage cuts are highly necessary and may be construed as reasonable." He thus dismissed the plaintiff's final appeal, supporting the first and the second lower courts' rulings.

The plaintiff claimed that the bank implemented in 1947 a system of continuous employment beyond the mandatory retirement age in which an employee can stay on until age 58, thus adopting a de facto limit of age 58. In 1983, however, the bank introduced a system with the age limit at 60. At the same time, they inaugurated new pay provisions, and this made total wages before pay provisions were changed for the ages of 55 to 58 substantially the same as those for the ages of 55 to 60 after they were changed. The employee would "virtually work unpaid for an extended period of 2 years from age 58 to 60, the plaintiff claimed.

Citing the following reasons, the court said that "wage cuts due to changes in the rules of employment are inevitable." First, the age 60 limit was a national policy issue at that time and was called for by society; second, the bank's wage levels were higher than those of other banks; and third, extension of the fixed age limit obviously meant an improvement in working conditions for female bank employees. Of the four justices of the Petty Bench, Judge Shinichi Kawai pointed out the need for interim measures for changes in the rules of employment, expressing a view opposing the verdict. He said that "changes in the rules of employment could be considered reasonable from the broad perspective of companies and workers as a whole, but uniformly doing so would force unbearable disadvantages in some part of

industry." "Changes in the rules of employment without measures to reduce drawbacks are not reasonable in the absence of specific reasons to do otherwise," the judge added.

It was the first Supreme Court decision on wage cuts involving extension of the fixed age limit. On the threshold of Japan's aging society, the verdict will likely provoke future debate in labor organizations which are promoting the age 65 limit.

Special Topic

Changing Japanese Labor Law in Light of Deregulation Drives: A Comparative Analysis

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1 Introduction

This article deals with the current discussion and developments of Japanese labor laws in light of the trend of structural reforms and deregulation of the Japanese economy and gives some comparative analysis to clarify the characteristics of deregulation trends in the labor law context.

1.1 Political Drives for Deregulation and Labor Laws

As reported by foreign observers[1], the Japanese government is, against all expectations, squarely dealing with structural reforms of the Japanese economy covering all fields including labor and employment relations under the slogan of "deregulation[2]." The current deregulation drives in the 1990s have their origins in the initiatives of the second RINCHO (Special Research Committee on Administration) in 1981 to lessen public regulations. Since then, deregulation has been given high political priority to make the Japanese economy more oriented to domestic demand in order to cope with foreign criticism against Japan's export-oriented industrial policy maintaining its closed domestic market. Though the progress of deregulation was slow in the 1980s, the unprecedented economic slump, after the burst of the bubble economy in the early 1990s compelled the Japanese government to take deregulation seriously to revitalize its economy.

In the beginning, regulations in the labor and employment arena were, regarded as social regulations and thus, unlike economic regulations, they were not the target of the

deregulation policy. With the tardy recovery from the business recession after the bubble boom, however, deregulation of labor laws surfaced. It was thought that the inactive external labor market was impeding the flow of workers from declining industries to emerging new businesses and slowed restructuring of the economy. At the same time, it was worried that global competition and the high appreciation of the yen induced many Japanese companies to shift their production to other countries with cheaper labor cost. To cope with these economic problems, the "Deregulation Promotion Program" ratified by the Cabinet on March 31, 1995 expressly listed employment and labor relations as one area of deregulation targets.

1.2 Structural Changes Surrounding Employment Relations

Behind the current deregulation drive, however, lies another fundamental reason: the need for adapting traditional regulations to new situations caused by the following changes occurring in the labor market, workers, and employers.

First, the state of the Japanese labor market has changed. Though the traditional labor law was designed under the labor market with surplus workers, it is expected that Japan will have labor shortage because of a continuously declining birth rate. The structure of the work force is also changing. The previous pyramid shaped labor force structure with more younger and fewer older workers is adopting a barrel shape with fewer younger and more older workers because of prolonged longevity and a declining birth rate.

Second, the traditional image of weak and homogeneous workers who need the government's mandatory and universal intervention is fading and a new type of worker who is more independent, individualized and with various orientations is emerging. Currently more than half of the Japanese work force are white collar workers. Employees including male full-time workers, especially in the younger generation, have become more individualistic and private life-oriented. The expected labor shortage caused by a continuously declining birth rate requires more utilization of female and older workers, which inevitably causes diversification of the work force.

Third, Japanese employers facing intensified global competition are compelled to reconsider of the traditional employment practices. To compete with resurgent American industries and rapidly growing Asian industries in the globalized market, Japanese industries launched restructuring and re-engineering. To rationalize employment management of white-collar workers, a seniority based wage system is being drastically modified into a merit or performance-based system. The information revolution has also accelerated the reform of corporate structures from a pyramid personnel structure with multi-layered middle management to a flat or network-type structure.

These structural changes concerning the labor market, workers, and employers, affect inevitably labor laws designed about fifty years ago. Reforms and modernization of labor laws are required to accommodate changed situations. Modernization means abolishing obsolete regulations and, at the same time, introducing new forms of regulations to cope with new situations. As a result, the picture of the current Japanese labor law reforms presents a mixture of deregulation and re-regulation. 2 Deregulation of Labor Market Regulations

The "Deregulation Promotion Program" of March 1995, mentioned above, enumerated 30 subjects relating to the employment relations among 1091 subjects. In July 1995, a list of primary deregulation subjects among the Deregulation Promotion Program was publicized by the Deregulation Sub-committee (Kisei Kanwa Sho-iinkai) of the Administration Reform Committee (Gyosei Kaikaku Iinkai) established in the Prime Minister's Office. After holding public hearings, the Deregulation Sub-committee submitted a report to the Administration Reform Committee in December 1995 which reconfirmed the need for deregulating fee-charging employment services and worker dispatching businesses. Since then, these two regulations on the labor market have become the primary targets for deregulation in the labor law arena.

2.1 Fee-Charging Employment Placement Businesses

Under the current Employment Security Law (hereinafter "ESL") enacted in 1947, employment placement services have been, in principle, monopolized by a state, i.e. by public employment security offices. This system was introduced modeling the ILO Convention No. 34 (1933) and revised Convention No. 96 (1949) on Fee-Charging Employment Agencies[3], the latter of which Japan ratified. Private employment placement businesses are only allowed with a permit from the Labor Minister (Art. 32 Par. 1, Proviso, ESL). Art. 24 and Annexed Table No. 2 of the ESL Ordinance enumerates 29 permissible occupations such as artists, nurses, designers, housekeepers, cooks, models, interpreters, etc.

Though public employment security offices have functioned well for the placement of blue collar job seekers in the past, in accordance with the increase in the number of white-collar workers, their function is diminishing and currently only twenty percent of new recruits come via public employment security offices. In response to the deregulation drives mentioned above, the Central Employment Security Council, a tripartite advisory body established in the Ministry of Labor, proposed a drastic revision plan to the Labor Minister. The proposed revisions were put into effect from April 1, 1997. The revisions contain the following two major reforms as well as other deregulation measures such as on procedures for the permission from the Labor Minister.

2.1.1 Lifting the General Prohibition: From the Positive to Negative List System

First, the new regulation has quit the current so-called "positive list" system in which permissible occupations are enumerated by the administrative order and adopted the so-called "negative list" system which removes general prohibitions and lists prohibited occupations individually. This is a drastic shift from the government placement monopoly system to a co-existence system of public and private placement service.

The new regulation lists the following seven occupations which should not be dealt with by the private fee-charging employment agencies: 1) clerical occupation done by persons who have not yet passed one year after their graduation from school; 2) sales occupation done by persons who have not yet passed one year after their graduation from school; 3) occupation of services except for occupations of housekeepers, barbers, hair dressers, Kimono dressing helpers, laundering and cleaning technicians, cooks, bartenders, waiters and waitresses at formal restaurants, models and demonstrators of goods for retail; 4) occupation of security guards; 5) occupation of agriculture, forestry and fishery; 6) occupation of transport and communication except for bus tour conductors; and 7) occupation of technicians, occupation of digging, production and construction, and occupation of laborers except for that of technicians producing fresh confectionery.

Most of the exceptions to the newly specified prohibition are occupations which are already listed as permissible occupations under current regulations. Under the amended regulations, private placement services for white collar workers are generally liberalized with the exception of services involving employees in their first year of employment after graduating from school.

2.1.2 Deregulation of Placement Fees

The current ESL stipulates fee-charging employment placement agencies shall not receive actual expenses or other commissions or compensation under any guise whatsoever, apart from the fee determined by the Minister of Labor (Art. 32 Par. 6). Under the regulation until March 31, 1997, when a job seeker has been employed by an indefinite period contract for more than six months, the maximum chargeable fee to the client company[4] was fixed as 10.1 percent of the worker's wages for six months (Art. 24 Par. 14 and Annexed Table 3, ESL Ordinance).

In spite of such regulations, many scouting agencies conducted their business based on the assumption that scouting activities were different from "employment placement" in the terminology of the ESL[5] and thus they were not subject to the ESL's upper limits on fees for

placement services. Recently, however, the Supreme Court[6] held that scouting activities fall under the notion of employment placement in the ESL and the client company did not need to pay fees or remuneration exceeding the 10.1 percent limit (¥505,000 in this case) in spite of the agreement between the parties to pay ¥2,000,000 as a cost for investigation and remuneration. This case realized the need for reconsidering whether the current regulation is adequate for scouting activities which are considerably different from traditional employment placement activities. In this light, the revision divides the placement activities into two types.

As for basic services for bringing together those seeking workers and those seeking jobs, the new regulation maintains pre-existing regulation on maximum fees. By contrast, as for consulting, counseling, finding suitable workers or employers and other similar services conducted upon individual requests, the new regulation allows for extra fees apart from those for basic services on the condition that the amount of the fees is reported to and authorized by the Labor Minister.

It is planned to reconsider further deregulation taking the result of revision of the ILO Convention No. 96 of June this year into account.

2.2 Worker Dispatching Businesses

2.2.1 Legalization of Dispatched Work under Positive List System

Until 1985, worker dispatching businesses (temporary work business) sending their workers to a client company to conduct work under the direction of the client company was prohibited under the ESL as one form of labor supply business. In practice, however, underground or legally questionable dispatching businesses spread under the guise of contract work which is differentiated from labor supply businesses. In order to properly regulate these businesses and to provide legal protection of dispatched workers, the Worker Dispatching Law of 1985 (WDL) was enacted[7].

The WDL did not liberalize dispatched work completely but lifted the ban only for 16 allowable forms of work designated by the Cabinet Order to avoid their eroding regular employment (so-called "positive list" system). Allowable forms of work are those requiring professional knowledge, skills or experience (e.g. computer programmers, production of broadcast programs, interpretation, translation and shorthand, etc.) and those necessitating special employment management (e.g. cleaning of buildings, operation and maintenance of building equipment, etc.).

After the enactment of the WDL, a strong opinion has appeared in business circles that the present restriction of allowable work to 16 designated work is too narrow and does not

match real situations in practice. Reflecting such voices, the government deregulation plan lists the WDL as one of the primary targets in labor laws.

2.2.2 Deregulation already implemented

Unlike the employment placement regulation, however, dispatched work regulations are already deregulated in part by the initiative of the Ministry of Labor.

First, in 1994 when the Older Persons Employment Stabilization Law was amended, the positive list system was abandoned and the so-called negative list system was introduced as far as those older than 60 were concerned. Namely, the amendment lifted the general occupational restriction on worker dispatch for those general older than 60 and only listed prohibited activities (port transport services, construction, guard services and production services).

Second, by the 1996 amendment of the Child Care and Family Care Leave Law, worker dispatch for the positions of those who take child or family care leaves is also changed into the negative list system (Art. 40-2, the Child Care and Family Care Leave Law). The new regulation liberalizes this worker dispatch except for prohibited areas (port transport, construction and guard services) and on the condition that the dispatched period is not longer than one year.

Third, based upon the Central Employment Security Council's proposal, the Cabinet Order of December 10, 1996 designated 10 new allowable works and widened one work which was already allowed under the current regulation. In total, therefore, 26 forms of works are allowed under the current WDL. Newly designated allowable forms of work include scientific research and development, business planning, editing of books, advertisement designing, interior designing, announcing in broadcasting, office automation instructing, telemarketing, sales engineering, and arranging of stage setting and properties.

2.2.3 Deregulation under Discussion

Apart from the above-mentioned exceptions, however, the WDL still basically maintains the so-called the general prohibition policy list system. The Administration Reform Committee (Gyosei Kaikaku Iinkai) established in the Prime Minister's Office and the Japan Federation of Employers' Association (Nikkeiren) and the Federation of Economic Organizations (Keidanren) intend to lift the general prohibition of worker dispatching and adopt a negative list system to designate exceptionally prohibited forms of work. In January 1997, the Central Employment Security Council established in the Ministry of Labor launched drastic reconsideration of the current system including the adoption of the negative

list system. The amendment is expected to be proposed within one year.

3 Deregulation of Individual Labor Law

In response to the diversification and individualization of employees, traditional regulatory measures in the Labor Standards Law (LSL) on individual employment relations are experiencing mixed reforms: deregulation on the one hand, and reshaping on the other hand.

3.1.1 Period of Contracts

Art. 14, LSL, prohibits concluding fixed term contracts longer than one year to prevent harmful effects caused by binding a worker for a long period. However, the possibility of such negative effects becomes rare and exceptional. For both employers and employees, diversified contract periods for diversified work patterns are needed, for example, for a fixed term project for research and development. Thus, extending the contract period limitation from one year to three or five years is now under discussion. The revised Deregulation Promotion Program of March 28, 1997 requires the Ministry of Labor to decide a revision plan by July 1997.

3.1.2 Work Hour Regulations

Concerning working hour regulations, the 1987 amendment of the Labor Standards Law, which reduced the maximum workweek from 48 hours to 40 hours accompanied by several deferment measures, has already deregulated traditional regulations and introduced various work hour averaging systems. The current Deregulation Promotion Program contains an expansion of the availability of the discretionary work scheme, a relaxation of regulations on the hours-averaging scheme over a one-year period, and the exclusion of a housing allowance from the basis for calculating overtime pay. Especially the expansion of the discretionary work scheme, under which an employer can calculate the number of work hours based on the conclusive presumption of work hours, irrespective of the number of hours actually worked, attracts attention. Currently the discretionary work scheme is only available for the designated five types of activities. From April 1997, six new activities are added to the designated allowable activities. It is a symbol of deregulating work hour regulations on white collar workers and at the same time it enables a shift from quantity (number of hours worked) based to quality (performance) based employment management[8].

3.1.3 Protection for Women Workers

Proposed abolition of protection of women workers other than maternal protection, i.e. prohibition of night and holiday work and limitation of overtime, has almost been decided in exchange for intensifying the Equal Employment Opportunity Law (EEOL). Though the current EEOL imposes simply a "duty to endeavor" to treat women equally with men with

regard to recruitment, hiring, assignment and promotion (Art. 7 and 8, EEOL), the proposed draft of the EEOL amendment, which was adopted by the Council for Women and Young Worker Issues and is understood to be adopted in the Diet in 1997, if any, with minor modification, prohibits discrimination against women with regard to recruitment, hiring, assignment and promotion.

4 Comparative Analysis of Current Deregulation and Reforms of Japanese Labor Law

As explained above, current deregulation measures in Japan are centered on external labor market regulations and work hour regulations. These deregulation targets are ostensibly similar to those in European countries. In Iceland (1985), Portugal (1989), Denmark (1990), the Netherlands (1991), Sweden (1993), Austria (1994), Germany (1994) and Spain (1995), the state's monopoly of employment placement services was abolished. Temporary work business or worker dispatching business has been similarly deregulated in many European countries since the 1980s. Work hour regulations have also been made flexible to adapt to contemporary work patterns.

However, with closer observation, some comparative comments can be made on the characteristics of Japan's deregulation and reform of labor laws.

4.1 Countermeasures against Unemployment?

In European countries, the primary purpose of deregulation in recent years is to combat long-lasting high unemployment. The idea of the strategy is to give employers an incentive to employ more people by lightening their burden and costs arising from employment.

In Japan where the unemployment rate, though higher than previously, is still around three percent, the purpose of countermeasures against unemployment which has already occurred is not emphasized greatly. Instead, the deregulation of labor market regulations is aiming at two purposes. First, by activating the external labor market, it is expected to attain smooth reallocation of work force from declining industries to developing industries without unemployment. Currently under the long term employment practice and employment policy supporting the practice, redundant workers are retained within respective companies. Faced with intensified global competition, however, it is questionable for Japanese companies to maintain such a practice intact in the future. Thus, deregulating fee-charging employment placement services are required to cope with expected increased workforce mobility in the future. Second, deregulation to activate the external labor market is expected to provide individuals, especially those who have special skills or talents and are dissatisfied with traditional egalitarian employment management, with opportunities to find more suitable

jobs, and such a possibility of changing job is also expected to enhance these individuals' bargaining position vis-a-vis their present employer.

4.2 For Increasing External or Numerical Flexibility?

In European countries, deregulation drives include measures to increase external or numerical flexibility, namely employers' ability to vary the amount of labor they use by changing the number of people employed.

A typical example is the recent deregulation in Germany. The German deregulation law entitled "The Law for the Promotion of Growth and Employment" of October 1996, among other things, expanded the exemption of the dismissal law, made a selection of economically dismissed employees more flexible, and relaxed strict restriction on fixed term contracts[9].

In Japan, contrary to the situation in most European countries, restraints on dismissals are not imposed by legislation but by case law. Employer's duty to verify just cause for dismissals or the duty to attempt alternative measures to avoid economic dismissals are a creation of the judiciary. To relax current social norms concerning dismissals, therefore, not deregulation of enacted laws but new legislation that modifies the current case law is needed. At present, however, such a legislative discussion is not taking place.

As for the regulations on atypical works, Japanese regulations on fixed-term contracts are much more flexible than those in European countries. To conclude a fixed-term contract, no objective reason is required. Its renewal is basically free, though case law sets certain restrictions on rejection of renewal when the fixed-term contract is renewed repeatedly[10]. Current discussion concerning extending the upper limitation of fixed term contracts does not intend to alter the current fixed term contract regulation in terms of reasons and renewal.

4.3 For Increasing Internal or Functional Flexibility?

The other feature of European deregulation is the increase in internal or functional flexibility. First, it is being attempted to decentralize the traditionally centralized collective bargaining system, through which flexible regulations on working conditions can be made possible. Second, in Europe, rigid regulations on working conditions are deregulated to enable their flexible adjustment.

In Japan, by contrast, collective bargaining takes place at a decentralized level because nearly 95 percent of all Japanese unions are enterprise-based unions. Therefore, decentralization is not discussed in the context of labor law reforms. Further, under the long-term employment practice, Japanese courts have developed legal theories which allow flexible adjustment of working conditions in accordance with economic fluctuations[11]. Since

current Japanese labor law, as a whole, provides significant internal or functional flexibility, deregulation measures concerning internal flexibility are confined with work hour regulations, especially those for white collar workers.

4.4 Deregulation as a Method for Structural Reforms of Japanese Labor Law

In European countries with highly developed labor protection systems accompanied by centralized collective labor relations, deregulation is required to make both the internal and external labor market flexible to absorb the huge number of unemployed and enhance competitiveness in the global market. In Japan, by contrast, labor market is considerably more flexible. What is discussed in Japan is how to reform the labor law system to accommodate structural changes taking place. When we consider measures required in the future, we can conceive that the conventional concept of labor law, characterized by the protection of mandatory, interventional labor standards and by the right to apply collective pressure, will no longer be sufficient. Reflecting the emergence of diversified and individualized employees, labor law in the future must provide diversified regulations ranging from traditional interventional measures to less interventional, optional measures. In the process of approaching a more diversified and flexible labor law, deregulation is and will continue to surface. However, deregulation itself is only one method in this process and does not negate the indispensable nature of labor law.

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1 *The Economist* (Jan. 11th, 1997) p. 19.

2 It is interesting that "deregulation" is translated into Japanese with a term "Kisei-Kanwa," which means literally not abolishing but relaxing regulations.

3 Though Japan did not ratified ILO Convention No. 34 and ratified Part III of the Convention No. 96 which does not necessarily require the state monopoly of employment placement service, the Employment Security Law of 1947 adopted the state monopoly system. See Noriaki Kojima, "*Rodo Shijo wo Meguru Ho-seisaku no Genjo to Kadai* (Present Situation and Issues of Legal Policy concerning the Labor Market)" *Nihon Rodo-ho Gakkai-shi* No. 87 p. 9. (1996).

4 A fee-charging business cannot charge a job seeker except for ¥540 (about US$ 4.3) registration fee.

5 In the ESL, "employment placement" is defined as "receiving application for workers and for jobs and extending services to establish employment relationships between those seeking workers and those seeking jobs." (Art. 5 Par. 1, ESL).

6 Tokyo Executive Search case, Supreme Court, April 22, 1994, *Minshu* Vol. 48 No. 3 p. 944.

7 See Takashi Araki, "Characteristics of Regulations on Dispatched Work (Temporary Work) in Japan", *Japan Labor Bulletin* Vol. 33 No. 8 p. 5 (1994).

8 Takashi Araki, "Regulation of Working Hours for White-collar Workers Engaging in 'Discretionary Activities'", *Japan Labor Bulletin* Vol. 35 No. 7 pp. 4 (1996).

9 Arbeitsrechtliches Gesetz zur Förderug von Wachstum und Beschäftigung vom 25. September 1996

(Bundesgesetzblatt 1996. S. 1476). A famous German scholar evaluates the deregulation law not only as the first retreat in the 150 years of labor law progress in Germany but also as a significance modification of the philosophy of labor laws. See, Peter Hanau, Labor Law Deregulation for the Promotion of Employment, *Nihon Rodo Kenkyu Zasshi* vol. 442 p.74 (1997).

10 Toshiba Yanagimachi Factory case, Supreme Court, July 22, 1974, *Minshu* Vol. 28, No. 5, p. 927; Hitachi Medico case, Supreme Court, December 4, 1986, *Hanrei-Jiho*, No. 1221 p. 134.

11 Takashi Araki, "Flexibility in Japanese Employment Relations and the Role of the Judiciary," Hiroshi Oda (ed.), JAPANESE COMMERCIAL LAW IN AN ERA OF INTERNATIONALIZAITON, pp. 249 (1994).

Statistical Aspects

Recent Labor Economy Indices

	February 1997	January 1997	Change from previous year
Labor force	6,647 (10thousand)	6,642 (10thousand)	125 (10thousand)
Employed	6,418	6,420	120
Employees	5,359	5,370	114
Unemployed	230	222	6
Unemployment rate	3.5%	3.3%	0.1
Active opening rate	0.73	0.76	0.03
Total hours worked	158.4 (hours)	143.2 (hours)	1.4*
Total wages of regular employees	(¥thousand) 287.4	(¥thousand) 283.2	1.6*

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.

Trends of Job Separations by Industry