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New Minister of Labour



On October 5, Prime Minister Keizo Obuchi formed his second Cabinet, a tripartite coalition government formed by his own Liberal Democratic Party, the Liberal Party and New Komeito. Takamori Makino (LDP) was appointed Minister of Labour. Born in 1926, Mr. Makino is a graduate of the Faculty of Law at Tokyo University. As a bureaucrat of the Ministry of International Trade and Industry (MITI), he has held posts as the First Secretary at the Japanese embassy in Germany and as a Director-General of Osaka's Bureau of International Trade and Industry. Since becoming a member of the Lower House in 1979 he has been chairman of the Foreign Affairs Committee, the Health and Welfare Committee, and the Cabinet Committee, including a period as the Deputy Chief of the Cabinet Secretary.

Working Conditions and the Labor Market

Rise in Unemployment Rate among Youth

According to a Report on School Basic Surveys released by the Ministry of Education, Science, Sports and Culture, 60.1 percent of the graduates of four-year universities this March had found jobs as of May 1. Only 20.2 percent of high-school graduates had done so, with 44.2 percent going on to universities, 16.8 percent to technical colleges, and 9.9 percent to other types of educational institutions. The employment rate for graduates at both levels was the lowest since 1950 when such data was first collected. The drops in employment rates among youth are attributed partly to the effect the prolonged recession has on their assessment of their employment prospects and partly to the increasingly diversified set of values which now characterize the younger generation.

The employment rates derived from the Report on School Basic Surveys are seen by some as underestimating employment levels because the graduates themselves are doing the reporting. However, the fact that the employment situation has deteriorated among young people can also be seen in the Labour Force Survey which has recorded a soaring unemployment rate among the youth of Japan. The seasonally-adjusted unemployment rate in July was a record high 4.9 percent. In particular, the rate for those 24 years old and younger has increased. Of approximately 3.19 million unemployed people in July, 710,000 were aged 15 to 24. Their unemployment rate was 8.8 percent, the highest figure among 10-year age groupings. The number of unemployed people aged between 25 and 34 totaled 810,000. Thus, nearly half of those underemployed in July were under the age of 35.

While the unemployment rate for the population aged between 15 and 24 stood at 8.8 percent, it was 5.5 percent for the 25 to 34 age group, 3.3 percent for the 35 to 44 age group, 3.1 percent for the 45 to 54 group, 5.5 percent for the 55 and 64 group, and 2.3 percent for those 65 years old and older. The rate for young males is conspicuously high; for males between 15 and 24 the unemployment rate has been above 10 percent since February. The figure in July was 10.1 percent, down slightly from 10.7 percent in June but higher than the rate for any other male age groups. The unemployment rate for females in the same age group was 7.7 percent. Like their male counterparts, this rate is the highest for younger age groups.

The Ministry of Labour has estimated from employment insurance data that about 70 percent of the junior high-school graduates in 1995 who found employment at private enterprises upon graduation have since left their first job within three years. The figure is about 50 percent for high-school graduates for the same year; and 30 percent for graduates of two-year colleges and four-year universities. The figures include a considerable number of people who left their jobs voluntarily. Since large companies have kept their recruitment of new graduates to a minimum, increasing numbers of graduates have had to find employment in small or medium-sized companies where turnover rates are traditionally high. Many had failed to get job offers from the companies they wanted to work for, or had failed to get the particular job they wanted. At the same time, the number of young people who do not get jobs and remain unemployed has been increasing.

Summary of Summer Bonus Negotiations

According to a survey conducted by Nikkeiren (Japan Federation of Employers' Associations), bonus payments dropped by a record amount in the private sector this past summer. The weighted average bonus agreed upon in negotiations at 261 major companies was ¥772,150, down ¥38,769 (4.78%) from the previous year. The reduction was the largest since Nikkeiren began to compile the data in 1959. The drop in bonuses reflected the poor business performance of enterprises due to the prolonged economic recession. Japanese enterprises can adjust their wage bill through bonus payments rather than altering the regular wage rate, which is why the bonus cuts turned out to be rather substantial this year.

By industry, the average bonus in manufacturing was ¥731,200, down 6.66 percent from the previous year. In non-manufacturing sectors bonuses dropped by ¥17,985 or 2.1 percent. This means that payments were cut irrespective of sector. Bonus cuts of more than 10 percent included 18.01 percent in heavy electric equipment, 13.19 percent in commerce and

distribution, 12.85 percent in printing, and 10.13 percent in the steel industry.

The timing of the bonus negotiations seems also to be a factor. The average payment of 49 companies in textiles, newspapers and other industries which held negotiations during the summer dropped by 1.09 percent from the previous year. The average payment by 206 companies which reached agreement during the spring wage offensive dropped by 7.06 percent. The drop at six companies which had already settled on their bonuses last winter was 8.37 percent. The rate of the reduction in bonuses seems to have become smaller over time.

Although the bonuses paid in summer resulted in the largest reduction ever in bonus amounts, this drop was nevertheless smaller than the reduction in winter bonuses last year or in the wage payments which resulted from this year's spring offensive. The decreasing size of the cuts to bonuses over this period may be a sign of recovery in business performances.

Human Resources Management

Corporate Pension Schemes at a Turning Point

Pension schemes in the private sector are under pressure to change. Employees' Pension Funds and Tax-Qualified Pension Plans, Japan's two major types of corporate pension schemes, are both defined benefit systems. Because of the current low interest rates, the yield from fund reserves has been substantially lower than the expected interest rate, causing a serious deficiency in reserves.

The Employees' Pension Funds are schemes under which the funds partially provide pensions on behalf of a public pension (the Employees' Old-Age Pension — a substantial part of the remuneration-based portion) together with its own supplementary benefits. By the end of fiscal 1998, there were 1,858 funds with 12.11 million members and assets totaling ¥51.2805 trillion. The Tax-Qualified Pension Plans, on the other hand, are pension schemes whereby insurance premiums can be thought of as a necessary expense; in fiscal 1998 there were 85,047 contracts with 10.29 million members and total assets of ¥19.9879 trillion.

Deficiencies in reserves have not been made public in the past, but a change in the accounting standards from March 2001 will require enterprises to reveal their total liability for pension and lump-sum retirement payments and the accumulated capital position for meeting such liability. Firms will be required to correct any shortfall in their funds within 15 years. Estimates say that the shortfall in such reserves of listed companies now totals several

tens of trillions in yen, and companies will need to respond urgently to this problem.

Until recently, the expected deferral interest rate (the rate of return) to Employees' Pension Funds has been set at 5.5 percent. Even though deregulation has made it possible for companies to alter the rate, the majority have continued to maintain it at 5.5 percent. However, with the current ultra-low interest rates (the bank rate has been 0.5 percent for four successive years), many firms will have trouble making up for these shortfalls. Accordingly, in response to changes in the pension system which allow funds to lower the amount of pension they pay out under certain conditions from fiscal 1997, an increasing number of Employees' Pension Funds have cut their payments. Seven funds did so in fiscal 1997; 16 in fiscal 1998; and 34 in fiscal 1999. Moreover, giant companies such as Hitachi Ltd. and Japan Air Lines have begun to take action both to lower their deferral interest rates and to cut the amount of pensions they will pay. At the same time, a growing number of Employees' Pension Funds have been dissolved over the past few years: seven cases in fiscal 1996, 14 in fiscal 1997, and 18 in fiscal 1998. There has also been a sharp upward trend in the number of enterprises giving up their Tax-Qualified Pension Plans (the scheme utilized largely by Japan's small and medium-sized enterprises). A record 3,263 firms did so in fiscal 1998.

In July, four ministries (Health and Welfare, Finance, International Trade and Industry, and Labour) outlined a new type of pension plan with defined contributions (known as Japan's 401(k) Plan). The government aims to put this plan into effect from autumn 2000. The government is also considering the means by which enterprises might transfer assets pooled in their Employees' Pension Funds and the Tax-Qualified Pension Plans to the 401(k) Plan. Such a move would relieve firms from the burden of making up for the remaining shortfalls in their current funds. However, details have not yet been provided on how funds in the new scheme should be treated for tax purposes in relation to funds in other schemes. Discussion of the defined contribution system has prompted consideration of the need to fundamentally reform corporate pension schemes as a whole.

Rengo (Japanese Trade Union Confederation), Japan's largest trade-union confederation, supports the defined benefit system as the premise for corporate pension schemes. It also pushes for the enactment of a basic corporate pension law (a Japanese version of ERISA) so as to secure the right of all retirees to receive retirement benefits and corporate pensions and to clarify the responsibilities of those who manage such funds.

Women in Managerial Posts

The results of the Survey on Women Workers' Employment Management were released by the Ministry of Labour on August 5. The survey covered 6,055 private enterprises with 30 or more regular employees at their head offices. It asked about the situation as of January 1999. The survey found that 7.1 percent of companies had female general managers (*buch-o*), 20.1 percent had female managers (*kach-o*), and 39.6 percent had female assistant managers (*kakarich-o*). Compared with figures from the survey three years earlier, the proportion of companies with female general managers had dropped by 1.3 percent, while those with female managers had increased by two percent, and those with female assistant managers has decreased by 2.8 percent. With large-scale companies with 1,000 or more employees, however, the proportion of those with women in managerial posts had increased. In particular, 19.3 percent (up from 17.5 percent three years earlier) of companies with 5,000 or more employees had female general managers, revealing a huge difference according to the size of the company.

On the other hand, the percentage of managers who were women was only 1.2 percent at the general manager level, 2.4 percent at the manager level, and 7.8 percent at the assistant manager level. In response to a question allowing for multiple answers concerning the absence of female managers in their hierarchy, 51.5 percent of companies in which less than 10 percent of managers were women felt that there were no female employees with the requisite knowledge, experience, judgment ability and so on. Another 36.9 percent of the firms felt that female employees did not stay with the firm long enough to attain managerial posts. Another 32.9 percent answered that there were promising female candidates, but that none currently satisfied conditions (such as length of tenure) for promotion to a managerial post.

Some enterprises have recently taken positive steps to assign women to managerial posts. Motorola Japan (an affiliate of Motorola USA) has introduced a new training program for managers, targeting female employees. Under the program, potential managers (i.e., competent employees currently assigned to posts just below the managerial level) are selected for regular workshops. They are given the evaluations of their colleagues and superiors in respect to their leadership and other managerial attributes for comparison with their own self-evaluations. The company is planning to increase the proportion of female managers from less than 10 percent at the present to around 20 percent by 2003.

On August 3, Mazda Motor Corp. announced a personnel strategy whereby it would be promoting half of approximately 1,000 female employees in its offices and engineering works. This is intended as an incentive which will encourage female employees to work and to fully utilize their abilities. Of about 500 women, three will be appointed as assistant managers. In

March 1997 Mazda had adopted a personnel system based on achievement in which age and gender would not be major criteria. The recent move, which is part of this shift in personnel policies, has drawn a response from Mazda's female employees. A survey of female workers not on the production line conducted this spring concerning the gap between their duties and abilities showed that nearly half felt they should be utilizing their skills at a higher level.

Apart from the promotion of female employees to managerial posts, some companies are making efforts to provide a better working environment for women. Matsushita Electric Industrial Co., Ltd., for example, is (1) installing product monitors below eye level to reduce strain on the neck; (2) bringing operation benches forward so as to enable the work to be done without stretching the arms unnecessarily; and (3) introducing mobile shelves so that parts can be picked up without bending down. These alterations were carried out as a model case at a VCR factory which saw a substantial drop in complaints about shoulder pain and backaches, as well as a reduction by more than a half in the rate of operational errors. The overall result was a 10 percent increase in productivity.

As Japanese society ages and couples have fewer children, it will be necessary to make fuller use of female workers. It will be interesting to see how successful companies will be in assigning women to managerial posts and in improving the working environment in which many women are employed.

Public Policy

New Standards for Workers' Accident Compensation Insurance for Mental Disorders and Work-related Suicides

The Ministry of Labour has set new guidelines in respect to mental disorders and suicides due to work-related fatigue which are covered by workers' accident compensation insurance. On September 14 the ministry officially notified the Labour Standards Bureaus and Labour Standards Inspection Offices across the country about the changes.

Mental disorders had previously been classified as psychogenic, temperamental or internal. Under that arrangement, disorders of the internal type did not qualify for compensation. The new standards incorporate a new set of classifications in line with those promoted by the World Health Organization (WHO). The standards extend the scope of workers' compensation to all types of mental disorders. As for suicides due to overwork, only cases where workers killed themselves while of unsound mind caused by depression qualified for compensation under the old guidelines. However, the new standards will allow for

compensation when suicides are committed in a state of mind where the worker's normal judgment has been impaired as a result of their duties at work.

In addition, the actual procedures for assessing compensation claims were wholly overseen by the Ministry of Labour. Now the Labour Standards Inspection Offices are authorized to swiftly assess and judge each case in accordance with a table for evaluating the degree of stress (Table 1) and with a flow-chart enabling offices to make efficient decisions.

The guidelines set three requirements for suicides to be defined as work-related: (1) the person in question must be suffering from one of the specified mental disorders; (2) he or she must have experienced a high level of psychological stress due to his or her work duties during the six months before showing the first symptoms of the disorder; and (3) the symptoms must be diagnosed as work-related and not as having arisen from other psychological stress or from temperamental reasons. The guidelines also note the high possibility that chronically long working hours are a factor which may create the pre-conditions for such a mental disorder. They also require Labour Standards Inspection Offices to handle cases from a comprehensive viewpoint.

The number of applications for recognition as qualifying for insurance has increased, from 18 cases in 1996 to 41 in 1997 and 42 in 1998. However, the number of cases actually qualifying for compensation has remained low: two in both 1996 and 1997 and four in 1998.

In August this year the Ministry of Labour decided to treat the suicide of a scout for the Orix BlueWave baseball team last November as a work-related death. The ministry approved an application for compensation filed by the bereaved family of Mr. Katsutoshi Miwata, 53, who was in charge of recruitment for a professional baseball team. When Mr. Miwata committed suicide during a tough round of negotiations, the ministry applied the new standards to the case, prior to the release of the new guidelines. The ministry acknowledged that he had shown symptoms of serious stress before the suicide. Aided by the cooperation of the baseball team, the decision was made unusually quickly, accepting the claim just seven months after it was filed with the Eastern Kobe Labour Standards Inspection Office.

Meanwhile, according to the National Police Agency, 32,863 people committed suicide in 1998, a record high since 1947. Suicides due to economic and livelihood difficulties — such as debt, poor business performance and unemployment — accounted for 6,058 deaths, a surge of 70 percent from the previous year. Suicides attributed to problems or difficulties at the workplace such as errors by the individual and reprimands by superiors, numbered 1,877, up 50 percent from the previous year.

Table 1. Evaluation Table for Assessing the Degree of Stress (excerpt)

Stress at the Workplace		
<p>● Degree Three (High Level of Stress)</p> <ul style="list-style-type: none"> • Serious illness or injury • Road accident (resulting in serious injury, death or serious damage) • Direct involvement in a workers' accident (resulting in serious injury, death or serious damage) • Error at work causing a serious loss for the company • Forced to leave the company 	<p>● Degree Two (Medium Level of Stress)</p> <ul style="list-style-type: none"> • Experiencing or witnessing a tragic accident • Charged with responsibility for an accident (or incident) occurring at the company • Failure to achieve a quota • Given responsibility for setting up a new business or for restructuring the company • Substantial change in duties or pressure at work • Extension of working hours or time on duty • Farming-out to a different company • Demotion • Discriminatory treatment or treatment in disadvantageous manner 	<ul style="list-style-type: none"> • Transfer involving a regional move • Reallocation to a different branch or section • Sexual harassment • Trouble with a superior <p>● Degree One (Low Level of Stress)</p> <ul style="list-style-type: none"> • Trouble with customers • Change in the nature of working hours • Reduction in the number of subordinates • Trouble with colleagues • Trouble with subordinates • Change of superior • Promoted later than colleagues or juniors
Stress from Outside the Workplace		
<p>● Degree Three (High Level of Stress)</p> <ul style="list-style-type: none"> • Divorce or separation • Serious illness or injury, or miscarriage • Death of spouse, child, parent or brother • Serious illness or injury of spouse or child • Large financial loss or unexpected expenditure • Involvement in natural disaster, fire or crime 	<p>● Degree Two (Medium Level of Stress)</p> <ul style="list-style-type: none"> • Illness or injury to self • Delay or difficulty in repaying debt • Road accident • Moving house • Betrayal by friends, trusted older acquaintances, etc. 	<p>● Degree One (Low Level of Stress)</p> <ul style="list-style-type: none"> • Trouble or discord with spouse • Discord with parents or children; children's misconduct or delinquency • Housing mortgage or consumer loans

Special Topic

The Silence of Stockholders: Japanese Labor Law from the Viewpoint of Corporate Governance

Ryuichi Yamakawa
Associate Professor of Law
University of Tsukuba



1.0 Introduction

The term “*shain*” means a shareholder of a corporation in the legal sense. Literally translated, *shain* means “a member of a corporation.” Although the Commercial Code of Japan itself uses the term “stockholder” with regard to a joint-stock corporation, *shain* is commonly understood in commercial law theory to refer to a shareholder of any corporation. For example, the right of shareholders to participate in the decision-making of corporations, such as the right to vote at their meetings, is called *shain-ken*, that is, “the right of *shain*.”

Outside the legal context, however, the term *shain* is used in Japan to refer to an employee of a corporation. For example, *sei-shain* means a regular employee, as opposed to a part-time or other kind of atypical employee. Other examples are abundant: *shain-shokudō* (employees' cafeteria), *shukkou-shain* (farmed-out employee), or even *shain-kabunushi* (employee stockholders), which would make a superfluous expression,

“stockholder-stockholders,” according to the terminology of commercial law.

Thus, for the Japanese, it is the employees who are members of the corporation, not the stockholders. This reflects the reality of the structure of corporate control in Japanese companies. This structure of control has necessarily had a significant impact on Japanese labor relations, whether collective or individual, through the behavior of corporations. We can assume that Japanese labor law, in turn, has been influenced by this structure. This article describes the relationship between the structure of corporate control in Japan and features of Japanese labor law. It also examines whether recent trends in Japanese corporate behavior are related to changes in the structure of corporate control and whether they will modify the distinctive features of Japanese labor law.

2.0. The Structure of Control in Japanese Corporations

2.1 The Reality of Stockholder Control

2.1.1 Stockholders' Right to Control under the Commercial Code

In Japan, there has been much discussion about who has or should have control over corporations. In this context, the notion of “control” is closely related to the notion of ownership, as the right of ownership includes the right to control. Thus, stockholders as the owners of the corporation have the right to control the management of the corporation.

The Commercial Code of Japan provides stockholders with such rights. In addition to the right to vote at stockholders' meetings, an important stockholders' right is to appoint and dismiss the directors of the corporation (Article 254(1)). Directors appointed by stockholders constitute a board of directors and have the right to appoint and dismiss the president or chief executive director (Article 261(1)). An important task for the board of directors is to oversee the operation of the management carried out by the president and other executive directors (Article 260(1)). Thus, through the board of directors, stockholders can exercise the right to control their corporation.

2.1.2 Absence of Stockholder Control

In reality, however, most stockholders of large corporations have not been enthusiastic in exercising their right to control. As for their right to appoint and dismiss directors, it is often pointed out that the president actually controls their appointment ⁽¹⁾. As well, in Japanese companies, managerial employees are often appointed or “promoted” to directorships; not many directors are appointed from outside the corporation. As a result, in many cases the board of directors does not effectively determine the appointment of the president. In such cases, it is the retiring president or chairperson of the board who actually appoints the next president.

Thus, the president has become very powerful. Whereas the board of directors is supposed to supervise the conduct of the president, it is the president who supervises the directors⁽²⁾. Moreover, statistical data indicate that actual decision-making power over other important matters resides with the president rather than the board of directors (Table 1).

Table 1. Actual Decision-making Authority Over Important Matters of Corporations (%)

	President	Chair-person	Board of Directors	Executive meeting	Others
Evaluation of directors	80.9	8.2	3.2	7.9	5.6
Appointment of presidents of affiliated companies	72.7	10.9	8	7.9	6
Policy for restructuring organization	62.1	3.6	11.8	21.6	3.3
Determination of financial strategy	55.2	4.8	13.8	23.7	6.3
Determination of dividends	54.3	5.8	18.9	18.9	6
Determination of wage levels	51.9	2.7	11.8	24.9	11.2
Implementation of new business plan	50.8	2.5	14.9	28.4	6.1
Determinations of mergers and acquisitions	61.6	7.4	14.1	16.8	5.2
Change of corporate culture	68.9	5.2	7.8	18	4.1

Source: KEIZAI DOYU KAI, NIHON KIGYŌ NO KEIEI KŌZŌ KAIKAKU-DAI 12 KAI KIGYŌ HAKUSHO (Structural Reform of Management of Japanese Companies: White Paper on Corporation no. 12), 1996.

2.2 The Structure of Stockholding

As stated above, stockholders of large Japanese companies have refrained from exercising their rights to control their corporation, although the Commercial Code provides them with such rights. One reason for this behavior lies in the structure of stockholding. In Japan, it has been quite common for large companies that routinely do business with each another to own each other's stock (cross-stockholding). When such cross-stockholding evolves among banks from which other companies obtain long-term credit, these banks become "main banks" for other corporations.

Although the corporations that own the stock of other corporations can be classified as "institutional investors," the purpose of cross-stockholding is to build a long-term, stable relationship rather than to gain short-term profit. The percentage of such long-term investors is quite high when compared with the situation in the United States, though not very different when compared with the number of such investors in Germany (Table 2).

Table 2. Ratio of Stockholders in the U.S., Japan and Germany (by presumed purpose of investment) (%)

	U.S.	Japan	Germany
Individuals	30-35	20	4
Institutional owners (stable and long-term)	2	40	27
Institutional agents (for pure investment)	55-60	6	3
Corporations	27	30	41
Government	negligible	negligible	6
Foreign investors	6	4	19

Source: MICHAEL PORTER ET AL., CAPITAL CHOICES: CHANGING THE WAY AMERICA INVESTS IN INDUSTRY, 1992.

Quite often, large corporate groups (keiretsu) are formed around main banks or large insurance companies, and member companies own each other's stock. These companies are called "stable stockholders."

A number of factors constitute the background of this structure of stockholding ⁽³⁾. For example, after World War II, large financial combines were dissolved under Occupation policy. This resulted in the disappearance of influential stockholders. Moreover, as Japan has relaxed the regulation of foreign investment, Japanese companies have developed a pattern of cross-stockholding to protect themselves against mergers and acquisitions.

These stable stockholders are not very interested in short-term profit. Thus, stockholders of large Japanese companies tend to be "silent." One commentator has stated that Japan is not a capitalist country, since under capitalism, stockholders control corporations⁽⁴⁾. Of course, it must be noted that this is not always the case with Japanese companies; the situation described above does not necessarily apply to small or closed companies. Moreover, certain European countries such as Germany have had a similar structure of stockholding. There are some similarities in corporate behavior in these countries.

2.3. Influence on Corporate Behavior

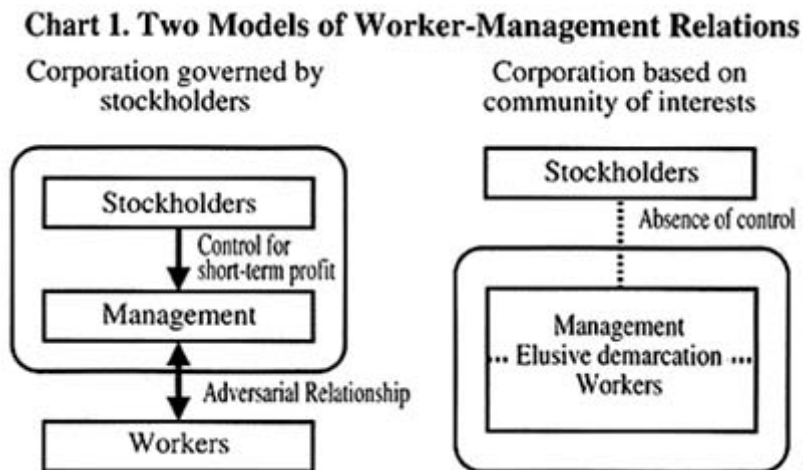
2.3.1 The Relationship between Management and Workers: Two Models

The structure of corporate control necessarily influences corporate behavior, especially that of management ⁽⁵⁾. Where the stockholders exercise their rights and actually control the corporation, management has no choice but to follow the direction set out by stockholders through the board of directors. In this sense, the president and other management staff are the "agents" of the stockholders and have an obligation to maximize stockholders' interests. If the interests of stockholders conflict with those of other stakeholders (such as workers), the

former takes precedence. Thus, the relationship between management and workers often becomes adversarial.

In contrast, where stockholders are not interested in exercising their right to control, management can enjoy wide discretion in administering the corporation. More often than not, management is influenced by other stakeholders. They share many interests with workers. For example, the long-term development of their corporations is beneficial to both management and workers, as it provides stable positions for both of them. This is especially true when directors (and eventually the president) are promoted from managerial employees.

Thus, the relationship between management and workers becomes more cooperative. Corporations that have such a structure, in contrast with corporations controlled by stockholders, can have an element of an “employees' community” (Chart 1).



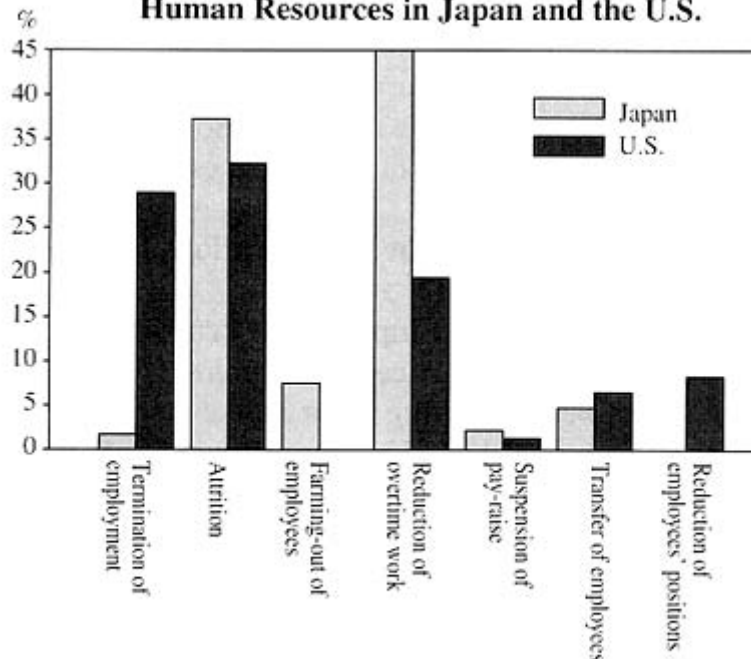
2.3.2 The Behavior of Japanese Corporations

The “employee community” model, or the sharing of many common interests by management and workers, can explain a number of the distinctive behaviors of large Japanese corporations. One such feature is the policy of long-term employment. Although various factors constitute the background of long-term employment, this policy fits the mindset of Japanese management since it emphasizes the stable development of corporations and attaches importance to employees' interests.

Under the policy of long-term employment, Japanese employers have tried to maintain workers' jobs when the performance of the corporation turns down. In such times, Japanese corporations have tried to avoid reducing human resource costs as well as cutting down unprofitable divisions⁽⁶⁾. Even when reducing the workforce is inevitable, however, employers have tried to rely on less drastic measures than dismissal, such as the reduction of overtime

work or the transfer of employees (Chart 2).

Chart 2. Most Likely Measures to Reduce Cost of Human Resources in Japan and the U.S.



Source: Ministry of International Trade and Industry, *Nichi-Bei no Kigyō Kodo Hikaku Jittai Chōsa (Comparative Survey on Corporate Behavior in Japan and the U.S.)*, 1988.

In collective labor relations, the system of joint consultation is one of the distinctive features of Japanese corporations. Although the right to bargain collectively is guaranteed under the Constitution (Article 28) and the Trade Union Law (Article 7), parties to industrial relations in Japan have developed more peaceful means of communication. While joint consultation is not supposed to develop into strikes when the parties do not achieve an agreement, it sometimes covers certain managerial matters such as production schedules and staff planning. In this sense, the system is also based on the notion that management and workers have many interests in common.

3.0 Features of Japanese Labor Law Influenced by the Structure of Corporate Control

3.1. Distinctive Features of Japanese Labor Law

3.1.1 Individual Labor Relations Law

One of the most distinctive features of individual labor law in Japan is the doctrine of abusive dismissal established by case law. Article 627 of the Civil Code provides that parties to an employment contract without a fixed term may cancel the contract with two weeks' notice. There is no limitation on the grounds for the cancellation. This means that employers have a right to dismiss their employees at will. Although the Labour Standards Law of 1947

extended the period of notice to 30 days (Article 20), it did not add any provision that would generally restrict employers' right to dismiss.

Meanwhile, after World War II, courts developed the doctrine that a dismissal without a reasonable cause constitutes an abuse of the employers' right⁽⁷⁾. Under this case law, the employers' right to dismiss has been effectively limited. This is especially true in the context of economic or collective dismissal. To carry out such a dismissal, an employer must prove: (1) the necessity for a reduction in the workforce; (2) that the employer tried in good faith to avoid dismissal by resorting to other measures, such as transfer or encouragement of voluntary retirement; (3) the establishment of a reasonable standard for the selection of workers to be dismissed and its fair implementation; and (4) consultation with trade unions or workers⁽⁸⁾. Many countries now have a general protection against unfair dismissal, but Japan is distinctive in that it was the judiciary rather than the legislature that created such protection.

On the other hand, it must be noted that Japanese employers exercise a wide discretion or flexibility in human resource management. Case law has also established that employers have a right to transfer their employees to new workplaces or positions unless employment contracts, work rules or collective agreements provide otherwise. The Supreme Court held that an employee must accept a transfer to a distant workplace even if he had to move without his family because of his wife's work commitments ⁽⁹⁾. Japanese employers also exercise such flexibility with respect to overtime work. The Supreme Court held that an employer may compel its employees to do overtime work if the employer had a collective agreement as required under the Labour Standards Law (Article 36) and work rules that provided for a reasonable basis for the order to work overtime⁽¹⁰⁾. Management flexibility in these respects is a means of reconciling employment security with business necessity ⁽¹¹⁾.

3.1.2 Collective Labor Relations Law

The Trade Union Law is one of the most fundamental statutes in collective labor relations law. Originally enacted in 1945, it was considerably amended in 1949 under the strong influence of the National Labor Relations Act (Wagner Act) of the United States (NLRA). However, the courts and Labor Commissions have interpreted and administered the Trade Union Law so that it has several distinctive Japanese features ⁽¹²⁾.

One such feature is the elusive demarcation between management and labor. For example, Article 2 of the Trade Union Law provides that a trade union is not entitled to its protection: (1) if the union organizes supervisory employees representing the employer's interest who have direct authority on hiring, promotion, dismissal, etc.; or (2) if the employer

provides financial assistance to the union. Moreover, Article 7(3) declares that an employer's financial assistance to union management constitutes an unfair labor practice.

However, Japanese courts as well as labor law scholars have attempted to construe Article 2 of the Trade Union Law narrowly. For example, a very recent case held that only the head of the human resource management department is a supervisory employee representing the employer's interest ⁽¹³⁾. This is the case also with the provision prohibiting an employer's financial assistance as an unfair labor practice. Many commentators and courts share the view that even if assistance may seem to be within the scope of the proscription, it may not constitute an unfair labor practice, unless it substantially disturbs the independence of unions ⁽¹⁴⁾.

These provisions are based on the Western notion embodied in the NLRA that the labor-management relationship is adversarial. In the United States, where an adversarial model has prevailed, clear demarcation should be made between labor and management. For example, the National Labor Relations Board (NLRB) has held that an employee committee initiated by an employer violates Section 8(a)(2) of the NLRA as an illegal domination and assistance to the labor organization if such a committee deals with the employer regarding working conditions ⁽¹⁵⁾.

3.2. Relationship with the Structure of Corporate Control

The distinctive features of Japanese labor law described above have been basically created by case law or the judicial interpretation of statutes. In general, case law develops rules that statutory law does not provide or clarify in order to adjust legal systems to socio-economic reality. Thus, these features of Japanese case law are based on the reality of employment systems and industrial relations. Since, as described above, the structure of control in terms of stockholding has influenced employment systems and industrial relations in Japan, this structure is ultimately one of the bases of Japanese labor law.

More specifically, since the doctrine of abusive dismissal is based on the practice of long-term employment in Japanese corporations, this practice has its basis in the structure of corporate control, in which both employers and employees place a high value on the stable long-term development of their companies. In this sense, the doctrine is grounded in such a structure. In a similar vein, the narrow interpretation of Trade Union Law regarding the exclusion of supervisory employees from union membership and the prohibition of employers' assistance to unions are based on the notion that it is difficult to make a clear demarcation between labor and management. This notion is also derived from the structure of corporate control in Japanese companies.

4.0. Recent Trends and Their Implications for Labor Law

4.1. Trends in Japanese Employment Practices

4.1.1 Time-honored Practices Undergoing Change

Japan has been suffering from an economic slump since the collapse of the bubble economy in 1991. Since then, a great number of companies have carried out reductions in their workforces. The situation has become quite serious in the last few years. As the unemployment rate reached 4.9 percent in June 1999, the ratio of involuntary resignation also increased. This reflects the fact that employers have begun to carry out more drastic measures of downsizing, such as collective dismissal. Moreover, Japanese companies are increasingly relying on atypical employment such as part-time workers, workers with fixed-term employment contracts, or dispatched workers. While the number of regular workers decreased for the first time since the current style of statistics began in 1954, part-time workers have been consistently increasing. Furthermore, it has become quite common for Japanese companies to change their compensation or wage systems. Such new systems are usually more performance-oriented, as in the case of the annual wage determination system. Because of the economic slowdown, coupled with the aging of the workforce, Japan's seniority-based wage system is now changing.

Of course, the changes are not limited to employment practices. Japanese companies are now trying to change their behavior in many respects. With regard to directors, the changes include speedy decision-making as well as a mandatory retirement system for directors. Significantly, a number of companies are now beginning to reduce the number of directors, while introducing an “officer” (*shikkou yakuin*) system. The officers are supposed to focus on administration rather than participation in board meetings, while directors are encouraged to make decisions that are more prompt as the board becomes smaller.

4.1.2 Practices That Have Not Changed

However, a number of Japanese features appear to remain in place. For example, reliance on long-term employment will basically continue for regular core employees. In 1995, Nikkeiren (Japan Federation of Employers' Associations) published a document titled “Japanese Management in a New Era.” While encouraging more effective and broader use of fixed-term employment contracts for professionals and clerical employees, Nikkeiren stresses the importance of long-term employment for “core” employees whose ability is supposed to develop as they accumulate years of service ⁽¹⁶⁾. In addition, Mr. Okuda, the new chairman of Nikkeiren and the former president of Toyota Motor Corp., stated in his inauguration speech in May 1999 that it was deplorable that a number of employers in recent years easily resorted to the drastic measure of downsizing as a means of corporate restructuring.

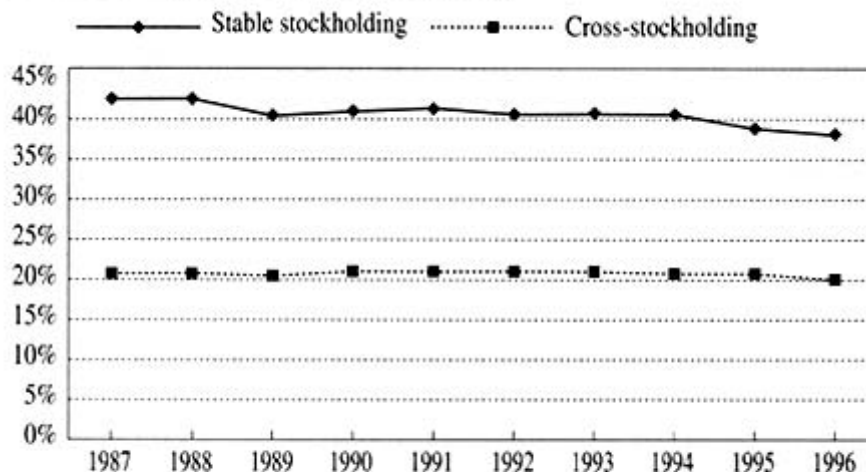
This is also the case with the situation of corporate directors. Although, as stated above, Japanese companies are now beginning to implement significant changes with directors, such as reducing their numbers, there has been little change in the relationship between directors and presidents. According to the survey conducted by the Japan Institute of Labour in 1999, 75.9 percent of the respondents (690 companies with 1,000 or more employees) stated that the president has a strong influence over the appointment of the senior vice-president or other directors. In addition, 62.0 percent stated that this situation was desirable.

4.1.3 Background: Changes in Corporate Governance or Response to Competitive and Global Market?

What is the background of the recent trends? As the structure of corporate control has been one of the most distinctive factors explaining the behavior of Japanese companies, change here, if anywhere, would provide an important background of the recent trends.

However, there have not been drastic changes in the structure of stockholding. Although the ratio of cross-stockholding is declining, the pace of change is still slow. In 1987, the ratio of cross-stockholding was about 21.2 percent; by 1996, it had fallen by only 1.6 percent. This is also the case with the ratio of stable stockholders such as banks or insurance companies (41.6% in 1987; 37.8% in 1996) (Chart 3).

Chart 3. Trends in Stockholding



Note: "Stable stockholding" consists of cross-stockholding, stockholding by financial institutions and stocks of financial institutions held by other corporations.

Source: Nissei Kiso Kenkyujo, *Kabushiki Mochiai Chōsa* (Survey on Cross-stockholding), 1996.

Such a situation can explain why there have been few changes in the relationship between the president and directors. If such changes were to take place, stockholders would

be more likely than the president to take the initiative in exercising control over their companies through the board of directors of their appointing. However, this has happened in only a small number of cases. In this sense, many stockholders in Japan remain “silent,” even though presidents and directors are beginning to stress the “sovereignty” of stockholders.

Rather than change in the structure of control, it appears to be the competitive and global market that has driven Japanese companies to change their management style. To survive in today's market, companies must make speedy decisions and reduce operational costs, including that of human resources. Of course, there are other significant factors. For example, as the role of “main banks” has deteriorated after the collapse of the bubble economy, Japanese companies have turned to the stock or bond market to obtain finance. This explains why Japanese companies have become sensitive to their stock prices.

4.2 Implications for Japanese Labor Law

In short, Japanese companies are trying to survive in the competitive global market by becoming more profit-oriented, making decisions more speedily, changing seniority-based wage systems, relying on atypical employment, and so forth. However, many have not abandoned their long-term employment practices, although the coverage of such practices is now shrinking. As well, the relationship between presidents and directors has not changed drastically. One reason for this is that the structure of corporate control has remained basically unchanged.

This suggests that one of the important bases of Japanese labor law is still in existence. If so, there is little reason to discard the distinctive features of Japanese labor law in their entirety. Thus, the restriction on the exercise of the employer's right to dismiss will not disappear. In addition, the community of interest between labor and management will continue to play an important role in collective labor relations law.

Of course, Japanese labor law needs reform and innovation. For example, Japanese labor law has put too much emphasis on regular employment. Since the use of atypical employment has become very common, it is necessary to reexamine this emphasis and respond to the diversification of employment contracts. In addition, in the present competitive market, it may become difficult to give priority to the maintenance of employment within the company. If so, the priority of labor policy may shift from the maintenance of employment to the smooth transfer of workers from one company to another, or from one industry to another.

In fact, such a response is already beginning in Japanese labor law. For example, to prevent individual employment disputes that will increase along with the continuing

diversification of employment contracts, the amendment of the Labour Standards Law in 1998 considerably enhanced the requirement for the clarification of working conditions at the time of hiring ⁽¹⁷⁾. As well, the 1999 amendment of the Worker Dispatching Law strengthened the protection of dispatched workers in terms of their privacy and grievance processing systems, while relaxing the limitation on permissible jobs for worker dispatching ⁽¹⁸⁾. Furthermore, the amendment of the Employment Security Act, also passed by the Diet in 1999, abolished stringent limitations on private employment agencies in order to stimulate the external labor market, while providing for protection for workers similar to the Worker Dispatching Law.

It must also be noted that stockholding is subject to market mechanisms. A recent survey conducted by the Economic Planning Agency indicated that many Japanese companies predict that the cross-stockholding relationship will become weaker in the future ⁽¹⁹⁾. If this comes about and stockholders begin to exercise their rights to control more actively, Japanese corporations may face more serious changes, in which case it might be necessary to consider more drastic changes to the framework of Japanese labor law.

5.0 Conclusion

Although a great number of Japanese corporations are now changing their management styles in response to today's global competitive market, the structure of corporate control has not been changed dramatically. As this structure comprises the background of labor law, most of the distinctive features of Japanese labor law still apply. While the response to continuing changes, such as the increase in atypical employment, is necessary even at present, more drastic changes in the framework of labor law remain to be seen.

Notes:

- (1) See Mitsuhiro Fukao & Yasuko Morita, *Kigy-o Gabanansu Kozo no Kokusai Hikaku* (International Comparison of the Structure of Corporate Governance) 64-65 (1997).
- (2) *See id.* at 66.
- (3) Tetsuji Okazaki, *Gendai Nihon Keizai Shisutemu no Rekishi Teki Keisei* (Historical Formation of Present Japanese Economic System), in Masahiko Aoki, Masahiro Okuno ET AL., *Keizai Shisutemu no Hikaku Seido Bunseki* (Institutional Comparison of Economic System) 299-318 (1996).
- (4) Tadanori Nishiyama, *Shihai Kozo Ron* (Structure of Corporate Control) 8-49 (1980).
- (5) *See generally* Fukao & Morita, *supra* note 1, at 38-59. For features of Japanese companies, see Masahiko Aoki, *Information, Incentives and Bargaining in the Japanese Economy* (1988).
- (6) *Nihon Keieisha Dantai Renmei, Shin-Jidai no Nihon Teki Keiei* (Japanese Style of Management in a New Era) 25-26 (1995).
- (7) *Kochi Hoso* case, 268 Rodo Hanrei 17 (Sup. Ct. Jan. 31, 1977).
- (8) *See generally* Kazuo Sugeno, *Rodo Ho* (Labor Law) 450-53 (5th ed. 1999).
- (9) *Toa Paint* case, 1198 Hanrei Jiho 149 (Sup. Ct. Jul. 14, 1986).
- (10) *Hitachi Seisakujo* case, 45 Minshu 1270 (Sup. Ct. Nov. 28, 1991).
- (11) *See* Ryuichi Yamakawa, *The Role of Employment Contract in Japan*, in *The Employment Contract in Transforming Labour Relations* 108-16 (Lammy Betten ed. 1995).
- (12) *See* Ryuichi Yamakawa, *Strangers When We Met: The Influence of Foreign Labor Relations Law and its Domestication in Japan*, 4 Pac. Rim Law & Pol'y J. 6-10 (1995).
- (13) *Semedain* case, 763 Rodo Hanrei 163 (Tokyo Dist. Ct. Jun. 11, 1999).
- (14) *See* Sugeno, *supra* note 8, at 674.

- (15) E.g., Electromation, Inc., 309 NLRB 990 (1992), *enfd*, 35 F.3d 1148 (7th Cir. 1994).
(16) Nihon Keieisha Dantai Rennmei, *supra* note 6, at 31-33.
(17) See Ryuichi Yamakawa, Overhaul After 50 Years: *The Amendment of the Labour Standards Law*, Japan Labor Bulletin, vol. 37, no. 11, pp. 5-12 (1998).
(18) See Takashi Araki, 1999 Revision of Employment Security Law and Worker Dispatching Law: *Drastic Reforms of Japanese Labor Market Regulations*, Japan Labor Bulletin vol. 38, no. 9 pp. 5-12 (1999).
(19) Keizai Kikakucho, Keizai Hakusho 1999 Nen Ban (White Paper on Economy of 1999) 127-28 (1999).

JIL News and Information

Summary of the 1998 Survey on Occupations and Lifestyles of Japanese Employees Who Are Sent by Japanese Companies in Japan to Work in Their Affiliates Abroad

With the ongoing globalization of economies, the number of Japanese enterprises extending their activities overseas is tending to increase. For some years, the Japan Institute of Labour has been conducting surveys of the problems such firms face in foreign countries. Recently, it has released the results of a 1998 “survey on occupations and lifestyles of Japanese employees posted to company affiliates abroad.” This particular survey has been carried out every five years since 1988 to give a comprehensive picture of employees' lives, both at work and at home, when they are working at Japanese-affiliated companies abroad. The survey covers, amongst other items, working conditions, living environments and outlooks. The 1998 survey is the third of this type.

This survey monitored the situation as of September 1998, and was conducted with the cooperation of Japanese chambers of commerce and industry and Japan clubs around the world. There were 3,736 people questioned, in 56 countries and two regions, with valid answers from 2,220 people (59 percent) in 50 countries and two regions.

The survey revealed that the number of employees per Japanese-affiliated company abroad has increased compared with the previous surveys (365.0 in the 1988 survey, 458.5 in the 1993 survey, and 475.4 in the 1998 survey), but the proportion of Japanese employees from Japan has decreased from 6.4 percent in the 1988 survey to 4.1 percent in the 1993 survey, and to 3.4 percent in the latest. In addition, the number of Japanese employees from Japan per company has decreased (23.4, 19.0, and 15.9, respectively).

Where the types of jobs being performed by Japanese employees from Japan are concerned, out of 11 possible answers (multiple), “management of the whole company” (top managerial work) accounted for the highest proportion (42.8 percent), followed by “business operations” (42.2 percent), “general affairs” (32.3 percent), “accounting” (28.5 percent), and

“personnel affairs” (27.4 percent). As for the number of these 11 jobs performed by each individual, approximately one-half of Japanese employees dispatched abroad have more jobs than they used to have in Japan, the average number of jobs per employee increasing from 1.4 at home to 2.5 abroad.

The highest proportion of these employees had the official positions “chairmen and presidents” (27.7 percent), and 14.2 percent were “executives,” which means that around 40 percent of the Japanese employees are engaged in top managerial posts.

Reflecting the number of jobs and the positions of Japanese employees from Japan, the total working hours per week — scheduled and non-scheduled working hours combined — showed a tendency to be longer overseas; 31.4 percent, the highest proportion, worked for 50 to 55 hours per week, and the second highest, 26.3 percent, for 60 hours or more. By region (Asia, Europe, North America, Central and South America, Africa and Oceania), average working hours per week were between 52 and 53 hours, with little variation. The highest proportion of all respondents (47.4 percent) indicated that their scheduled working hours were “40 to 42 hours or less,” followed by “37.5 to 40 hours” (17.4 percent), and “42.5 hours or longer” (17.4 percent). The survey also revealed that 60 percent of respondents engaged in holiday work on an average of one day or more per month. The main reasons for such long working hours (multiple answers) were “periods when business is particularly busy” (70.9 percent) and “many duties which cannot be left to others” (50.8 percent), together with “receiving and entertaining visitors from Japan” (50.5 percent), as well as “liaising with offices in Japan” (32.7 percent).

When asked about the support systems of their companies in Japan, 87.7 percent of respondents said they received “help in paying medical expenses,” followed by 60.1 percent who were “provided with information related to companies and business at home.” On the other hand, only 10.2 percent of respondents said their companies provided “support for their career after return to Japan.” It seems that organized backup for careers of employees who have returned from duties abroad is not satisfactory.

However, when asked whether they wished to work overseas again, the highest proportion (48.3 percent) answered “yes, depending on the region” and 18.6 percent answered “yes, if the position and treatment were good.” As many as 66.9 percent were positive about the idea of working abroad again, although there were some conditions. An outstanding feature of the 1998 survey results is that 22.3 percent of respondents “would definitely like to work abroad again” without any conditions — approximately a 10-point increase from the previous survey (13.5 percent) — whereas those who “did not wish to go abroad again”

accounted for only 9.7 percent.

Invitation to the IIRA 12th World Congress

May 29 - June 2, 2000, Tokyo

The IIRA 12th World Congress will be held in Tokyo, Japan, from May 29-June 2, 2000. Anyone wishing to participate is encouraged to register soon, to take advantage of the special early registration rates, which will apply until December 15, 1999.

Congress Overview

Five tracks under the overarching theme of “Global Integration and Challenges for Industrial Relations and Human Resource Management in the Twenty-First Century” will make up the agenda:

Track 1: Exploring Trends in Employment Relations and New Approaches to Work in the Twenty-First Century

Track 2: The Impact of Globalization on National and Regional Systems of Industrial Relations and Employment Relations

Track 3: Changing Patterns of Employee and Union Participation: Toward New Systems of Industrial Relations?

Track 4: Search for Flexibility, Fairness and Prosperity: Alternative Employment Policies in the Twenty-First Century

Track 5: Asia in the Twenty-First Century: Challenges and Opportunities in Work and Labor

The Congress will comprise Pre-Congress activities (symposium and visit to a production site) focusing on “The present situation and future problems of Japanese practices in industrial relations and employment”, a number of Special Seminars, IIRA Study Group Meetings and various other events. In addition to a Welcome Reception, the social program will include a special Japan Night, featuring traditional Noh drama, to be held at the National Noh Theatre. Early booking is recommended for this. A sightseeing tour of Tokyo and a Japanese Culture Afternoon are also being organized for accompanying persons.

Venue Keio Plaza Inter-Continental Tokyo & JIL Shinjuku Office

Date Monday, May 29-Friday, June 2, 2000

Organizers IIRA 12th World Congress Organizing Committee

The Japan Industrial Relations Research Association

The Japan Institute of Labour

Languages English, Spanish and Japanese

Web Site <http://www.jil.go.jp/jil/iira12th>

Registration

The registration and hotel booking forms are included in the Second Announcement brochure, which will be mailed by the IIRA 12th World Congress Secretariat upon request. On-line registration will also be available at the following web site:
<http://www.jil.go.jp/jil/iira12th/reg.htm>

Registration Fee

Categories	Early postmarked by December 15, 1999	Regular postmarked by March 31, 2000	Late/On Site postmarked on or after April 1, 2000
Member	¥40,000	¥45,000	¥50,000
Non-Member	¥45,000	¥50,000	¥55,000
Students (up to 32 years old)	¥5,000		
Accompanying Person	¥10,000		

ContactIIRA 12th World Congress Secretariat c/o The Japan Institute of Labour

4-8-23, Kamishakujii Nerima-ku, Tokyo 177-8502, Japan

Tel: +81-3-5991-5195 Fax: +81-3-3594-1115

E-mail: iira12th@jil.go.jp

Statistical Aspects

Recent Labor Economy Indices

	August 1999	July 1999	Change from previous year
Labor force	6,831 (10 thousand)	6,815 (10 thousand)	-11 (10 thousand)
Employed	6,511	6,497	-35
Employees	5,345	5,308	-14
Unemployed	320	319	23
Unemployment rate	4.7%	4.7%	0.4
Active opening rate	0.44	0.47	0.02
Total hours worked	149.7 (hours)	158.0 (hours)	0.9
Total wages of regular employees	(¥ thousand) 263.0	(¥ thousand) 264.1	0.2

Note: * Denotes annual percent change.

Source: *Rōdōryoku Chōsa* (Labour Force Survey), Management and Coordination Agency, *Shokugyō Antei Gyōmu Tōkei* (Report on Employment Service), *Maittsuki Kinrō Tōkei* (Monthly Labor Survey), Ministry of Labour

