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CONTENTS

General Survey

30 Percent of all Employees Non-regular: Ministry of Labour Special Survey

In June 2000 the Ministry of Labour released the preliminary results of the *General Survey on Diversified Types of Employment*. Administered in October 1999 to assess the situation of so-called "non-regular" employees, the survey was sent to some 15,000 business establishments listed on the Japan Standard Industry Classification with five or more regular employees. The response rate was 74.0 percent. Another survey was sent to 30,000 employees working in the surveyed businesses, and the response rate to that survey was 81.7 percent.

The results revealed that the proportion of non-regular employees to all employees in the establishments was 27.5 percent, up from 22.8 percent recorded in the previous survey in 1994. Part-timers accounted for 20.3 percent of all employees (73.9% of non-regular employees). Other non-regular employees included contract employees (8.4% of all employees), farmed-out workers (4.6%), and dispatched workers (3.9%). For this survey farmed-out workers are referred to as employees temporarily working for one of the firms surveyed but still employed by a different firm. The employee's allocation was the result of a contract between the two firms. Irrespective of the worker's basic affiliation, if he is an employee of the original firm under a non-fixed term of employment contract, then he is also regarded as a "regular employee" of the original firm engaging in the work of the other firm.

By industry, part-timers accounted for a large proportion of the labor force in wholesale and retail, including food and drink (36.1%) and in manufacturing (61.1%). On the other hand, contract employees and dispatched workers seem to be more prevalent in finance (20.2%) and insurance (25.9%). In response to a question concerning the reasons for making use of non-regular employees (a question with multiple replies), 61.0 percent of the firms surveyed replied that they used such employees "to reduce labor costs."

The survey of individuals indicated (1) that the majority of male non-regular employees were in their 20s (as compared with 31.9% of all respondents), and that the majority of the female non-regular employees were in their 40s (as compared with 31.9% of all employees); (2) that clerical jobs accounted for 23.3 percent of all non-regular employees, sales for 20.3 percent, and services for 19.1 percent; (3) that the proportion of non-regular employees who "had worked for a different firm" was high at 75.3 percent; (4) that 76.1 percent of the non-regular employees wished to continue working as non-regular employees; and (5) that the reasons given for being non-regular employees (multiple replies) include "to earn extra income" (34.2%), "to be able to choose one's hour"" (32.8%), and "to work shorter hours" (30.5%). The average monthly wage of non-regular employees was found to be some ¥140,000;

45.3 percent earned "less than ¥100,000" per month. However, the monthly average wage of contract employees was ¥230,000, and that of dispatched workers was ¥240,000.

The survey of individuals allows for regular and non-regular employees to be compared in terms of their "satisfaction with the workplace." This was done by using the diffusion index (DI), a diagnostic measure calculated by subtracting the number of workers who are "not satisfied with their workplace" from the number of workers who feel "satisfied," and then expressing the difference as a percentage of the total number of respondents. The DI for "general working conditions" was 38.7 percent for regular employees and 55.5 percent for non-regular employees, whereas the DI for "human relationships in the workplace" was 38.0 percent for the regular employees and 43.3 percent for the non-regular employees. This means that regular employees were more satisfied with working conditions when compared with non-regular employees, but that they were less satisfied with their interpersonal relationships at work than were the non-regular employees.

Working Conditions and the Labor Market

The "*Freeters*" Issue

The number of high school and university graduates in the spring of 2000 who neither went on to further education nor became employed on a regular basis was approximately 324,000. The number started to increase in 1993 following the collapse of the bubble economy and 9.2 percent of all graduates joined that category. Nearly half of those who took a job after graduation left their job within three years. Reflecting the increasing number of graduates who are not gainfully engaged, Japan's "*freeters*" have been drawing attention as a social phenomenon.

People who are not employed as regular employees and make their living as non-regular employees have come to be known in Japan as "*freeters*." The word "*freeter*" has been concocted by combining the English word "free" with the German word for worker, "*arbeiter*" The term first came up in the late 1980s during the period of the bubble economy. Although the term is not precisely defined, the White Paper on Labour defines "*freeter*" as chiefly men and unmarried women aged between 15 and 34 who work on a part-time basis or in side jobs (*arubaito*) continuously for less than five years. This year's *White Paper on Labour* estimated that the number of "*freeters*" in 1997 totaled 1.51 million, roughly twice as many as in 1987. Another definition, however, also includes dispatched workers. By that definition, the number is estimated at 3.4 million.

Behind the growing number of "*freeters*" is the traditional recruitment practice, which efficiently located new graduates in the job market during the period of high economic growth, is no longer suited to the current situation. So far, new graduates have been hired en masse each April and this − an acclaimed employment practice in Japan − has partly checked an increase in unemployment among youth people. Now the practice seems to be declining, and "*freeters*" seem to be one by-product accompanying the collapse of the old and stable system of allocating the supply of young labor.

On the demand side, however, the increased number of "*freeters*" seems likely to be attributable in some measure to the overall reduction in employment due to the recession and to the increased number of middle-aged and elderly workers, as well as a greater tendency for firms to hire workers with experience as needed throughout the year. Consequently, even if young people wish to have a regular job, they are often obliged to work part-time or in side jobs (arubaito). On the supply side, higher levels of education seem to have come with a change in attitude towards work. Many graduates are not attracted by prospects of full-time regular employment immediately after graduation from high school or university. However, an acute problem for the "*freeters*" is that they fail to acquire proper vocational skills so long as they remain employed on such a basis.

Against this backdrop, the Japan Institute of Labour (JIL) conducted a small study based upon interviews with 97 men and women under 35 years old who were neither housewives, students, nor regular employees. Each interview lasted one hour. The results found that the average number of working days per week of "*freeters*" was 4.9, and that their monthly income averaged ¥139,000. As for their educational level, 47.4 percent were high school graduates, 13.4 percent were university graduates, and 11.3 percent had dropped out of a technical school or a two-year college. Their average age was 22.7, and 63.8 percent of them lived with their parent(s). Together with these survey results, JIL pointed out that there are three types of "*freeters*:" the "moratorium types" ("or-the-time-being") who have no immediate future vision; the "*freeters* with a dream" are those who are anxious to work in show business or in other professional areas; and the "dead-end freeters" who are obliged to stay in such employment because they have failed to get regular work.

Meanwhile, the Ministry of Education, Science, Sports and Culture conducted a questionnaire survey on the recruitment of high school graduates, with emphasis on "*freeters*." The survey was given to 4,000 individuals who had graduated from high school by the end of March 1996 and March 1998 and to 3,000 parents and personnel in charge of recruitment in enterprises and at high schools. The valid response rate was about 75 percent. The results showed that 27.1 percent of the "*freeters*" surveyed said that they were employed as a

"*freeter*" "because they did not know what they really wanted to do;" another 21.5 percent replied that they "did not regret their employment status because there was something they wanted to do (apart from getting regular work);" 15.9 percent thought that "they should have thought more seriously (about their future);" and 13.5 percent felt that "they were glad that they did not get a regular job because they were now free to do what they liked."

National Personnel Authority Recommends Record Low Basic Wage Raise for Government Employees

The National Personnel Authority (NPA) makes recommendations each year on behalf of Japan's government employees to the Diet and Cabinet on the salaries of civil servants for the purpose of keeping a balance with salaries in the private sector. Its recommendations are based on surveys of salaries in the private sector which are conducted every April. In a sense, it speaks for national government employees who have only a limited right to bargain collectively.

In fiscal 2000, the NPA recommended a basic wage raise of 0.1 percent, lower than the previous record low of 0.28 percent in fiscal 1999. The recommendation was based on its survey of the private sector where the rate of wage increases remained rather low this year. This would mean that bonus payments would be reduced by an amount equivalent to 0.2 month's pay, and that the average annual salary (monthly payments plus bonus payments) would be reduced for the second consecutive year with an average reduction of ¥69,000 (a decline of 1.1%). Family allowances, which are paid to workers with children and other dependents, would be slightly increased from ¥5,500 to ¥6,000 per month per dependent, up to two dependents. The recommendations will be backdated to April 1, 2000.

Based on this year's recommendations, the Ministry of Finance has estimated that the total labor cost for the nation's civil servants (borne by the National Treasury) in fiscal 2000 would be approximately ¥95 billion below the initial budget allocation. The Ministry of Home Affairs announced at the same time that the costs for local civil servants (which are borne by local governments) would be reduced by approximately ¥165 billion.

Meanwhile, the NPA has decided not to incorporate in its recommendations a reform of the salary payment system to reflect workers' achievements and ability. Concerning the often-stressed need to "tie the salary system for public servants to their actual duties, their skills, their experience and their actual achievement," it proposed "continued consideration of the opinions of those concerned, with a view to realizing reform in the near future," together

with a fundamental revision of the promotion system.

Human Resources Management

Relationship between Personnel Systems and Mental Stress

Workers under non-lifelong employment systems (or life-long employment systems which are about to be revised) feel more stress than workers at firms which are maintaining their systems. This was the finding of a survey recently conducted by the Ministry of Labour.

The questionnaire survey was sent to 2,610 white-collar employees at 522 firms with 1,000 or more regular employees that had previously answered another survey concerning business and personnel management strategies. Valid answers were returned by 1,127 individuals. Among the male respondents, 55.0 percent of those working at firms which had answered in a survey the previous year that they planned to maintain the life-long employment system answered that they had experienced mental stress. The corresponding figure for employees at firms planning to reconsider their life-long employment system was 62.6 percent, and for employees at firms without such an employment system the figure was 72.7 percent. At the same time, only 52.4 percent of workers at firms which planned to adopt a reemployment or employment extension system stated that they were stressed, as against 61.3 percent at firms which did not have such plans. In addition, among workers whose “goals were all set by their superiors” and those who “were not satisfied with the objectives they were given,” 72.0 percent and 81.3 percent respectively felt they were stressed. It was also found that 71.1 percent of those who were not allowed to raise objections to their superiors' evaluation of them were under stress. The survey has revealed that the nature of the personnel management system as a whole, including employment patterns and evaluation systems, has a strong relationship with mental stress among workers.

The survey points out that the deterioration of the business environment has resulted in a large number of workers feeling anxious about losing their jobs; about changes in personnel management systems, about salaries, about their workplace, and about their future in general. It warns that mental stress among workers due to personnel management practices has grown, concluding that measures to alleviate workers' stress have become more important than ever. With firms adopting new personnel management policies on account of the recession or for the purpose of strengthening their competitiveness, it is possible more workers are being put under increased stress.

Growing Number of Corporate Pension Funds Dissolved

The number of corporate pension funds dissolved in fiscal 1999 hit a record high at 3,603. This was attributable, among other things, to a declining yield from fund reserves, and to the increased number of bankruptcies. The reform of public pension schemes has already been carried out, and it is likely that more private firms will take action to reconstitute their own private pension schemes.

Pension schemes in Japan consist of the National Pension Plan and the Employees' Pension Funds. As an adjunct to those pension schemes, in some private companies, corporate pension schemes have been established (Employees' Pension Funds or Tax-qualified Pension Plans). There are legal conditions which firms must meet to be allowed to set up these two types of corporate pension plans. First, they should have 500 or more members to establish an employees' pension fund, and 15 or more members to establish a Tax-qualified Pension Plan. With the corporate pension plan, firms pay premiums on a monthly basis, and their employees, upon retiring, receive an extra pension benefit on top of the benefits they receive from the Employees' Pension Funds. Such corporate pension plans are regarded by many firms as a part of their welfare program for employees. However, the number of these plans has been decreasing every year since 1994 when the bubble economy collapsed. This has also been true in terms of the number of newly participating firms and the number of employees covered.

One reason for this is the increasingly low yield from fund reserves. This has resulted in a shortfall in terms of the benefits which must be paid, and many firms are no longer able to cover the shortfall. Moreover, the amount that private firms have had to pay in premiums to make up such shortfalls totalled a record ¥1.015 trillion in fiscal 1999. The number of corporate pension funds given up because of bankruptcies is also increasing.

Such terminations have also been brought about by the new accounting standards which will come into force next year. These new standards will require enterprises to reveal their financial affairs so that their capital position is readily apparent. In relation to the specific issue of corporate pension funds, the total liability for pensions will be included in the account for each firm, and poor performance in pension funds will negatively affect firms in terms of their corporate ratings and make it harder for them to raise funds. Accordingly, many firms are making up the deficiency in their pension fund reserves when they can afford it, and dissolve their corporate pension funds when they cannot.

The termination of corporate pension funds means that employees, who in theory

participate in the funds, receive upon retirement lump-sum payments whose amount is linked to their tenure, but no extra retirement payments. Moreover, such payments are tax-exempt if workers receive them as retirement pension, while simple lump-sum payments are not eligible for such exemption.

Under such circumstances, four ministries (Health and Welfare, Labour, Finance, and International Trade and Industry) have come to recognize the need for a fundamental reform of corporate pension schemes. They have outlined plans for a new type of pension plan, with an eye to having the new type in place during the next fiscal year. This plan is designed to provide retirees with a more varied choice of income sources and to put the financial management of corporate pension schemes back on a sound footing.

Special Topic

Karojisatsu — Suicide as a Result of Overwork

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1.0 Introduction

The issue of *karoshi* (death by heart or brain disease as a result of overwork) has been recognized as a problem in Japan for about 20 years(1) and the issue of *karojisatsu* (suicide as a result of overwork) has recently been recognized as a problem.

Under the Japanese Workmen's Accident Compensation Insurance System, when a worker dies by a willful act, the government is not permitted to pay an insurance benefit (Workmen's Accident Compensation Insurance Law, Art. 12-2, Par. 1). However, some recent judicial decisions have recognized a survivor's right to receive insurance benefits in regard to *karojisatsu*. Other judicial decisions have ordered employers of former employees who committed suicide due to depression from overwork to pay compensation in damages to the survivors of the victims.

On March 24 this year, the Supreme Court ruled for the first time that a company has a legal responsibility for an employee's suicide caused by depression from overwork (*Dentsu* case)(2).

This article examines the meaning of this Supreme Court decision as well as how the law concerning *karojisatsu* has evolved in Japan.

2.0 *Karojisatsu* in Workmen's Accident Compensation Insurance System and Damage Claim

In Japan, there are two kinds of relief measures for labor-related accidents. These are relief through the Workmen's Accident Compensation Insurance System, and relief by civil court reparations (Damage Claim). The survivors of the workers who committed suicide as a result of excessive work hours can use one or both of these relief measures.

2.1 Workmen's Accident Compensation Insurance System

Chapter 8 of the Labour Standards Law, "Accident Compensation," provides that in the event that a worker suffers an injury, illness or death resulting from employment, the employer is required to furnish medical compensation (Labour Standards Law, Art. 75), compensation for lost time (Id., Art. 76), compensation for discontinuance (Id., Art. 81), compensation for disabilities (Id., Art. 77), survivors' compensation (Id., Art. 79), payment of compensation in installments (Id., Art. 82), and funeral expenses (Id., Art. 80).

The Workmen's Accident Compensation Insurance Law was enacted and promulgated at the same time as the Labour Standards Law, and established a Workmen's Accident Compensation System that placed workers' compensation obligations on enterprises for workers' accidents under the Labour Standards Law(3). The Labour Standards Law provides that in the event payments equivalent to accident compensation are to be made under the Workmen's Accident Compensation Insurance Law for matters that would give rise to accident compensation under the provisions of the Labour Standards Law, the employer would be exempt from the responsibility of making compensation under the Labour Standards Law (Id., Art. 84).

Thereafter, after repeated revisions, the Workmen's Accident Compensation Insurance Law improved the content of insurance payments, and became the principal law governing compensation for workers' accidents in place of the Labour Standards Law(4).

The Workmen's Accident Compensation Insurance System provides the necessary insurance benefits to workers suffering injury, disease, disability or death arising from employment, or their survivors. On due application, insurance benefits are paid to the workers, or their survivors. The decision to pay, or not to pay, is made by the Chief of the Labour Standards Inspection Office (*Rokishocho*) (Workmen's Accident Compensation

Insurance Law Ords., Art. 1, Par. 3). Only after this payment decision is made does the afflicted worker, or his/her survivors, acquire a concrete right to claim insurance benefits against the government.

In 1996, the Kobe District Court reversed the Kakogawa *Rokishocho*'s decision which denied the survivor's right to receive benefits under the Workmen's Accident Compensation Insurance System concerning *karojisatsu*(5). It was the first case in which survivors of the worker who committed suicide caused by depression from overwork were acknowledged as eligible for labor-related accident compensation. In 1999, the Nagano District Court also reversed the Omachi *Rokishocho*'s decision, which denied the survivors' rights to receive benefits as a consequence of *karojisatsu*(6).

These District Court judges acknowledged that the workers had committed suicide while of unsound mind caused by depression due to overwork. They believed that in cases where injuries suffered by the deceased result in a depression so severe as to lead to a state of mental instability in which the decedent was in fact unable to resist the impulse to take his or her own life, the suicide cannot be termed as willful.

Last year, the Ministry of Labour set new guidelines with respect to mental disorder and suicide due to work-related fatigue that are covered by Workmen's 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(7).

2.2 Damage Claims

If an employer has paid compensation for a worker's accident under the Labour Standards Law, the employer will be exempt, up to the amount of such payments, from responsibility for damages under the Civil Code based on the same grounds − that is, for the same worker's accident (Labour Standards Law, Art. 84, Par. 2). If payments equivalent to accident compensation under the Labour Standards Law are to be made under the Workmen's

Accident Compensation Insurance Law, the employer will also be exempt from responsibility for making compensation under the Labour Standards Law (Id., Art. 84, Par. 1). As a result, payments received under the Workmen's Accident Compensation Insurance Law are similarly interpreted as limiting the amount of civil damages recoverable by a worker involved in an accident or that worker's survivors.

On the other hand, an employer is not exempt from responsibility for that portion of a loss that exceeds the amount of workers' accident compensation or workers' accident insurance benefits. This means that the worker involved in an accident or that worker's survivors may claim damages under the Civil Code against the employer(8).

There are three legal contexts in which an employer's responsibility for damages can be pursued(9). First is the ordinary exploration of the responsibility in tort under the Civil Code. Second is the exploration of the responsibility of an owner or occupier for defects in the construction or maintenance of a structure on land. The third context is an exploration of liability for non-performance of an obligation in a contractual relationship.

Until about 1971, the majority of damage claims were made in the first or second context, and were upheld(10). The third context was established in a 1975 Supreme Court decision which declared a direct “duty to care for safety” on the part of the government towards civil servants (members of a self-defense unit), but held more generally that “on the basis of certain legal relations, the aforesaid duty to care for safety when the parties have entered into relations involving special social contacts will also be generally recognized as devolving on one or both parties toward the other based on the good-faith principle(11).” Thereafter, the third legal context became the main vehicle for asserting damage claims against employers(12).

In 1996, the Tokyo District Court ordered Dentsu Inc., a major advertising agency, to pay ¥120 million in damages to the parents of a former employee who committed suicide at the age of 24 as a result of excessive work hours(13). This was the first decision to recognize civil liability on a company's part concerning *karojisatsu*. The High Court decision in this case appeared in 1997(14) and the Kurashiki Branch of Okayama District Court(15), the Sapporo District Court(16), and the Osaka High Court(17) also made orders against former employers to pay compensation to survivors in 1998.

Those decisions examined whether the victim was suffering stress from overwork or work, and whether there was a relationship between stress from overwork or work and the suicide. In most cases the relationship was examined to differentiate the relationship between overwork or stress and depression, and the relationship between the depression and the

suicide. As there is medical evidence to suggest that those who suffer from depression tend to commit suicide more often, once the former relationship is established, the relationship between the overwork or stress and the suicide is assumed.

3.0 *Dentsu* Case

The District Court decision in the *Dentsu* case is the first in which the company was ordered to pay compensation to the survivors of a victim of *karojisatsu*. The Supreme Court decision in this case was also the first made at the Supreme Court level. An examination of the Dentsu case is important to understand the civil liability of employers concerning *karojisatsu*.

3.1 Summary of the Case

Mr. Ichiro Oshima graduated from university and started to work for Dentsu Inc., a major advertising agency on April 1, 1990. Because of his excessive workload, from August he had to work far into the night and sometimes could not return home. Although in March 1991, the chief of his group advised him to return home to sleep, he worked until 6:30 a.m. several times during July and August in 1991. Around this time, he began to show abnormal behavior, such as driving in a meandering manner. On August 27, 1991, he killed himself at home just after the project he was in charge of was completed.

The case was filed by his parents claiming that Mr. Oshima committed suicide as a result of depression arising out of exhaustion from working extraordinarily long hours. They explored both responsibility in tort under the Civil Code, and liability for non-performance of an obligation under labor contract, demanding a total of ¥220 million in damages.

On March 28, 1996, the Tokyo District Court accepted the plaintiff's claim in almost full measure and ordered the former employer, Dentsu, to pay ¥120 million yen[18] . Noticing that the work report the employee had submitted to the company strongly contradicted the file that reported the time he actually left the firm, the court concluded that the company's "health-care measures" based on the work report were meaningless. Pointing out the fact that the employee "worked long hours that far exceeded the limit widely accepted in society," the presiding judge said that, as the employer, the defendant "neglected to take appropriate measures to prevent him from becoming sick." The judge thus declared that the employer was to blame for the employee's death[19].

On September 26, 1997, the Tokyo High Court also declared that Dentsu was to blame for Mr. Oshima's death[20]. However, the court reduced the amount of compensation to about ¥89 million, ruling that his death was partly attributable to his mental and physical state,

including a proneness to depression, and that his parents who lived with him also bore some responsibility for his overworking(21).

On March 24, 2000, the Supreme Court returned the case to the High Court, which is expected to increase the amount of compensation that was reduced to about ¥89 million in the previous ruling(22). The Supreme Court judges acknowledged that employers, in general, have a duty under tort law to organize the work of their employees so that mental and physical illness would not result from the accumulation of excessive fatigue or stress. Although the company was aware of Mr. Oshima's chronic overwork and worsening health, the court ruled that it did not fulfill its responsibility concerning the former employee's excessive workload. The Supreme Court also reversed the High Court decision concerning the reduction in the amount of compensation for Mr. Oshima(23).

3.2 Meaning of the Supreme Court Decision

This Supreme Court decision is very important for several reasons. First, for the first time it clarified the content of the employers' duty of care under tort law towards their employees with regard to illness due to overwork. Second, it showed how to determine the existence of a relationship between overwork and suicide and the existence of negligence. Third, it set limits on the extent to which compensation to be paid by employers to employees who had become ill due to overwork, or their survivors, would be reduced.

3.2.1 Company's Duty of Care

One of the most important features of this Supreme Court decision is that for the first time the Supreme Court ruled that a company has a duty under tort law to organize the work of its employees so that mental and physical illness would not result from the accumulation of excessive fatigue or stress. This interpretation of the company's duty of care will have a great influence on future cases involving illness related to overwork.

The Supreme Court judges also ruled that the employees in administrative or managerial positions who are responsible for managing other employees have the same duty of care as the company and should exercise their rights as such.

The Supreme Court judges pointed out that employers must abide by the restriction of working hours set by the Labour Standards Law, ruled that they have a duty under the Occupational Health and Safety Law to make an effort to organize work so as to maintain the health of their employees. After doing so, they ruled that “a company has a duty to organize the work of its employees so that mental and physical illness would not result from the accumulation of excessive fatigue or stress.” This may explain why the Supreme Court judges

first clarified the duty of employers before examining the duty of employees in managerial positions. However, in the decisions concerning compensation for labor accidents, in general, judges first examine the liability of the employees in administrative or managerial positions and then argue the employer's liability.

3.2.2 The Relationship between Overwork and Suicide

The Supreme Court approved the High Court decision over the relationship between Mr. Oshima's overwork or working stress and his suicide. This decision acknowledged the relationship between his overwork and depression and underlined the weight of medical evidence that those who suffer from depression tend to commit suicide more often, as in the *Kawasaki Seitetsu Mizushima Seitetsujo* case(24).

Although Mr. Oshima had killed himself, the Supreme Court estimated he had not suffered from death by a willful act.

3.2.3 Negligence – Violation of the Duty of Care

The Supreme Court judges pointed out three matters concerning negligence. The first is that the company was aware of Mr. Oshima's chronic overwork. The second is that the company was aware of his worsening health. The third is that the company did not fulfill its responsibility concerning its former employee's excessive workload.

This means that the Supreme Court considers that the company must lessen its employee's workload only after it is aware of not only its employee's overwork, but also his or her worsening health.

3.2.4 Restriction of Reductions in the Amount of Compensation

In 1988, the Supreme Court ruled that when deciding the amount of compensation in a traffic accident case, judges can take into consideration the level of damage attributable to the victim's mental state (April 21, 1988)(25). The Supreme Court decision in the *Dentsu* case set limits on the extent to which compensation to be paid by employers to employees who had become ill due to overwork, or their survivors, would be reduced. It ruled that judges cannot take the victim's mental state into consideration when deciding the amount of compensation, unless the mental state is demonstrably abnormal.

This ruling is reasonable because, whereas in the traffic accident case the plaintiff and the defendant had not known each other until the accident happened, in the overwork case the employers had known their employees and their mental state very well.

This Supreme Court decision in the *Dentsu* case also ruled that judges should not take into consideration the possibility that members of the victim's family could prevent the suicide even if they lived together, since they could do nothing about the victim's working conditions.

4.0 Conclusion

In addition to being acknowledged as eligible for labor-related accident compensation under the Workmen's Accident Compensation Insurance System, the survivors of workers who committed suicide due to overwork have successfully claimed compensation from the victim's former employers under civil law. The Dentsu case was the first Supreme Court decision to order a former employer to pay compensation to survivors for *karojisatsu*.

This decision is important, not only because the Supreme Court clarified the content of the employer's duty of care to their employees concerning illness due to overwork, but also because it ruled that judges cannot take the victim's mental state into consideration when deciding the amount of compensation by employers of employees who become ill due to stress from overwork, unless the mental state is demonstrably abnormal.

Notes:
(1) *See* National Defense Council for Victims of Karoshi, *Karoshi* (1990).
(2) *Dentsu* case, Supr. Ct., 2nd Petty Bench, Mar. 24, 2000; 724 *Rodo Hanrei* 13.
(3) Kazuo Sugeno, *Japanese Labor Law* 319 (1992).
(4) Id., at 319.
(5) *Kakogawa Rokishocho (Kobe Seitetsujo)* case, Kobe Dist. Ct., April 26, 1996, 695 *Rodo Hanrei* 31.
(6) *Omachi* Rokishocho (Sanko) case, Nagano Dist. Ct., Mar. 12, 1999, 764 *Rodo Hanrei* 43.
(7) *See Japan Labor Bulletin*, vol. 38, no. 11, p. 5 (1999).
(8) Sugeno, supra note 3, at 335.
(9) Id., at 335.
(10) Id., at 336.
(11) *Jieitai Sharyo Seibi Kojo* case, Supr. Ct., 3rd Petty Bench, Feb. 25, 1975, 27 *Minshu* 143.
(12) Sugeno, supra note 3, at 336.
(13) *Dentsu* case, Tokyo Dist. Ct., Mar. 28, 1996, 692 *Rodo Hanrei* 13.
(14) *Dentsu* case, Tokyo High Ct., Sep. 26, 1997, 724 *Rodo Hanrei* 13.
(15) *Kawasaki Seitetsu Mizushima Seitetsujo* case, Kurashiki Branch of Okayama Dist. Ct., Feb. 23, 1998, 733 *Rodo Hanrei* 13.
(16) *Kyosei Kensetsu Kogyo etc.*, case, Sapporo Dist. Ct., July 16, 1998, 744 *Rodo Hanrei* 29.
(17) *Higashi Kakogawa Youjien* case, Osaka High Ct., August 27, 1998, 744 *Rodo Hanrei* 17.
(18) *Dentsu* case, supra note 13.
(19) *See Japan Labor Bulletin*, vol. 35, no. 6, p. 3 (1996).
(20) *Dentsu* case, supra note 14.
(21) *See Japan Labor Bulletin*, vol. 39, no. 6, p. 4 (2000).
(22) *Dentsu* case, supra note 2.
(23) *See Japan Labor Bulletin*, vol. 39, no. 6, p. 4 (2000).
(24) *Kawasaki Seitetsu Mizushima Seitetsujo* case, supra note 15.
(25) Supr. Ct., 1st Petty Bench, Apr. 21, 1988, 42 *Minshu* 4-243.

IIRA 12th World Congress Report

Rapporteur's Report
Track 2:The Impact of Globalization on National and Regional Systems of Industrial Relations and Employment Relations
Tokyo, May 31, 2000

Protecting Labor Standards in a Global Economy

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Introduction

The tear gas and riot police of Seattle in December 1999 may not have achieved much for the World Trade Organization (WTO) around whose meeting they took place. But they did succeed in drawing the public attention, as never before, to the profound significance of trade liberalization for employment. The talks foundered, ultimately, on President Clinton's call for trade liberalization to be made conditional upon the enforcement of international labor standards. Traditionally dominated by European and American influence, the WTO's 135 members now include a majority of developing countries who perceive high-minded talk about decent labor standards to be no more than thinly disguised protection by the developed world.

It is particularly notable for the International Industrial Relations Association that the 20th Century ended with efforts to establish international labor standards. The increasing pace of the international exposure of employment has been remarkable. Over the decade from 1985-1994, the average annual rate of growth of world GDP was, in round numbers, three percent. But the average annual rate of growth of world exports was more than twice as great, at seven percent. Furthermore, the average annual growth in flows of foreign direct investment, reflecting in large part the growth in multinational companies, was twice as great again, at 14 percent (Rodrik, 1999). The human effect of this has been that, throughout the world, a rapidly growing proportion of employees are having their jobs exposed to international competition. And a rapidly growing proportion of employees are finding themselves employed by foreign-owned firms. Both nations and their trade unions are losing control over employment.

Collective bargaining arrangements that have developed to support common labor standards within national product markets have come under increasing strain as those product markets have become internationally exposed. The response to this, at the end of the

century as it was at the beginning, has been to attempt to extend the regulation of labor standards beyond the reach of the bargainers. Because this is in the interests of nationally based employers as well as nationally based trade unions, such efforts have traditionally provided a strong common agenda for industrial co-operation.

So strong was this mutuality of interest at the start of the century that in 1919, spurred on by the experience of world-wide warfare, it gave birth to one of the most enduring international economic institutions, the International Labour Organization (ILO) to which this Congress is so indebted. Eighty years since the founding of the ILO, the international competitive pressures in both product and capital markets have become vastly greater. At the same time the mobility of labor between nations has been increasingly constrained. But while trade unions are just as concerned as when they participated in the founding of the ILO to protect domestic employment and jobs within their countries, many major employers have become so international that they have lost their commitment to the particular countries in which they might operate. The need that gave rise to the ILO is thus now stronger than ever, but the chances of it being met through co-operation between unions and employers become increasingly difficult (Kapstein, 1999).

The term "globalization" is used broadly in many contexts, but a useful starting point is to distinguish between the internationalization of the world economy through trade, on the one hand, and through multi-national companies, on the other. Although the two are closely linked through multi-national companies' necessary involvement in trade, they are quite distinct, and offer distinct challenges to both governments and trade unions (Jacoby, 1995).

In discussing the 20 papers being presented in this Track, I shall start with the relatively compact topic of multi-national companies, where the question of standardization or convergence appears as a key research issue, and linked to this the internal management of these companies. Then I shall consider papers that consider the wider impact of globalization on collective bargaining – how are employers responding and how far can trade unions cope? We then move on to look at government intervention – how far are internal legal structures sacrosanct, and what structures can cope supra-nationally to mitigate external pressures on national economies? This leads to the contrast of the North American Free Trade Area (NAFTA) and the European Union (EU), and then in greater detail to the continuing development of the EU itself. We then move on to the wider questions shaping governments' choice in protecting labor standards in the face of the external economic threat. The discussion ends where is started, with the moral issues involved in enforcing labor standards on desperately poor countries.

The Diffusion of Employment Practices in Multinational Corporations

For as long as there has been international trade, it has infiltrated competitive bench-marks into independent countries which have radically altered the lives of their citizens. But the growth of multinational corporations has been even more intrusive. With their entry into a country are imported whole new management systems and philosophies. How far do alien management practices adapt to the foreign host on arrival, and how do the immigrant corporations manage their adjustment? The first question is addressed by two papers, one concerned with how far non-American investors in the USA adapt to American practices, and the other with how far German companies retain their distinctive management characteristics when they establish workplaces outside Germany.

In his study of foreign firms establishing plants in the United States, **William Cooke** notes that, by comparison with most of their countries of origin, inward investors find a relatively unregulated regime, with neither government nor trade unions imposing substantial constraints. Whatever their habits at home, these immigrant companies appear to respond positively to this easier managerial environment. They are attracted by and soak up the union-avoidance culture of their American hosts. Indeed, the sharp decline in unionization within foreign-owned companies in the USA during the 1990s suggests that there may be an increase in this chameleon-like tendency of non-American companies to adapt to the local culture.

The extent to which German firms retain their national characteristics of labor management when they become established in other countries, in this case Britain and Spain, is addressed by Anthony Ferner, Javier Quintanilla and Matthias Varul. They find that German multinational companies are tending to react to the pressures of internationalization by adopting many “Anglo-Saxon” business practices, but that they are doing so in a distinctively German way. The incoming management in effect negotiates an acceptable *modus vivendi* with the institutions of the host country. They conclude that multinational companies act as a two-way vector of change, both bringing to the host country their own nationally distinctive way of doing things, and taking from the host country lessons for adoption at home. But the authors demonstrate that this does *not* necessarily imply international convergence. The innovations from abroad that companies adopt back home will be subtly adapted to fit their native business culture.

How do multinational companies manage their far-flung workforces? The management of professional employees is discussed by **A.V. Subbarao** in a literature review. He argues that effective management of a global workforce is tending to move companies away, not only from placing parent country nationals in management positions abroad, but also from relying on

home country nationals to run their local show. The challenge he sees ahead is one of developing managers for international careers irrespective of their national origin. Moving on from the development of individual employees to the systems within which they work is the focus of two papers on international Japanese firms. The global expansion of Japanese multinational corporations has recently been confronting unprecedented constraints. **Wellington Kuan** reports on developments in management practices in 30 Japanese firms and discusses the scope for greater decentralization of their decision-making. The issue is addressed with case study evidence by **Hirohisa Nagai** in his study of the regional headquarters that Japanese multinational companies establish in Europe. By means of interviews with 12 different companies, he was able to classify the degree of decentralization, finding considerable variations between companies with different managerial functions, but with personnel management issues generally most amenable to local control. There does not appear to be any settled way of managing an international business empire.

Collective Bargaining under International Strain

Collective bargaining systems have developed over the years in very nationally specific ways. They have been largely sheltered within national frontiers, legal systems and trade barriers. Globalization weakens these sheltering walls and threatens the bargaining institutions that have developed behind them. The strain is especially great where it is accompanying political change. **Tayo Fashoyin** is concerned with rapid developments in the countries of Southern Africa which, in the past decade, have had to face a sharp increase in exposure to international competition at the same time as they have been adjusting to democratic politics. At the level of individual firms, globalization and liberalization have brought upheavals at the same time as their autocratic management structures have been crumbling. In Southern Africa the new political regimes have generally encouraged collective bargaining, and trade union leaderships have been predisposed to build their institutional structures at sectoral, multi-employer levels. How far have they been able to succeed?

Fashoyin reports on five case studies of firms in Botswana, Malawi, South Africa and Zimbabwe. These explore how far labor relations at enterprise level respond to institutional arrangements at higher levels. He finds that pressures to survive under increasing competition force the firms to improve productivity through bargaining and innovation at the level of the individual firm. Some of the case study firms manage exclusively through bargaining at enterprise level or below. Those which still retain a link with sectoral bargaining also have extensive bargaining within the firm. Some of these firms have adopted more sophisticated human resource management strategies as they strive for greater efficiency, but these have been accompanied by, rather than being an alternative to, a commitment to collective bargaining.

National trade union leaderships remain apprehensive that this potent combination of HRM techniques and workplace bargaining will undermine industrial agreements and weaken union loyalty. But they are aware that the demands of competitive survival leave both sides with no choice but to tackle productivity issues jointly at the place of work. Thus effective industrial relations at the workplace is neither guaranteed by, nor necessarily greatly influenced by, apparently orderly collective bargaining arrangements at national or industry-level. These developments may be transitional, but it is likely that the transition of control is towards, rather than away from, the individual enterprise. Collective bargaining will become increasingly fragmented.

The shift to enterprise-based bargaining is equally evident when we turn from the emerging economies of Southern Africa to the highly developed countries of Europe. Accompanying it is the weakening of nationwide trade union organization. Trade unions are being forced increasingly into defensive strategies at enterprise level as countries effectively compete for jobs in the face of mobile capital and international markets. **Stefan Zagelmeyer** takes the example of the European car industry to assess how collective bargaining has changed. He focuses on the development of what has become known as "employment pacts." The most significant of these has been at the company level, where it has become common for unions and employers to negotiate a range of concessions in pay and job flexibility in return for increased job security. Management has generally initiated this process, but unlike comparable experience in the United States it has not been associated with union avoidance. Instead unions have been involved in a co-operative way, often in a form of joint crisis management, in an effort to prevent capital from moving on. Unions are increasingly helping employers to make their local businesses competitive.

International companies and international competition pose profound threats to nation-based trade unions. The threats to their members' jobs and employment conditions are more and more beyond the reach of their traditional economic, legal and political points of leverage. **Frank Borgers** examines the recent response of American unions to these threats by means of three nicely varied case studies. One is of collaboration with British unions in trying to develop a common strategy with which to confront the snowballing international mergers of the telecommunication industry. The second is of the Teamsters' campaign to mobilize against the potentially harmful impact upon American trucking of NAFTA. The third looks at the bitter campaign to protect contracts after the merger of American and Japanese rubber tire companies.

The cases reveal vividly the difficulties of building international trade union action when

movements of jobs between countries is at issue, and when the rhetoric of struggle can so easily slip into that of xenophobia and even racism. Success in an international campaign requires deep financial resources and also the careful strategic integration of foreign with domestic action. Such strategies demand more centralized authority than many unions are accustomed to. The international alliances that the case study unions developed in their campaigns were essentially temporary, fading as events moved on. Borgers speculates that there may be a more lasting role for third party labor strategy specialists to assist in designing campaigns and facilitating transnational links.

National Labor Law and International Pressures

The conventions of the ILO are not binding. Their effectiveness in upholding collective bargaining depends upon their adoption by national legislators. How far are national legal systems influenced by international considerations? One way of answering this question is by asking how far past impositions of alien labor law systems have come to dominate the indigenous legal traditions of the countries involved. This is addressed by **Sean Cooney and Richard Mitchell** in a comparative analysis of labor law in four newly industrialized countries in East Asia: Singapore, South Korea, Taiwan and Hong Kong. Their concern is with the durability of the hybrid legal systems that these countries acquired or inherited from the developed world 50 or more years ago. These legal implants are operating in a context quite different from which they were derived. They were generally introduced as part of the wider apparatus of colonial rule, and some of these control features were to be of use to the autocratic governments of these countries as they emerged after independence. But the implants appear to be fairly weakly embedded and to have a limited capacity to affect labor relations. In practice, indigenous legal concepts have generally become dominant. This suggests that we should not expect increasing globalization necessarily to lead to the convergence, and far less the international homogenization, of labor law.

It was a concern for continental peace which gave birth to the European Union; the motivations for NAFTA were both less ambitious and more purely economic. It is, despite this, instructive to compare their evolution and experience. **Marie-Ange Moreau and Gilles Trudeau** address this from the legal point of view. The global economy raises two related questions about a country's labor law. What are its effects on the country's competitiveness? How attractive will it appear to new investors? Increasingly intrusive global competition and increasing mobility of capital pose fundamental threats to the freedom of a country to ensure what it might consider to be a decent level of social protection for its own workers. If this threat is to be countered, labor law must begin to intervene at a supra-national level. They describe the severe limitations of attempts to do this on a global basis through the ILO and WTO. Drawing on the European and North American experiences, they suggest that the

prospects for co-ordination and harmonization are better at the regional level. Supranational legal standards are developing most effectively where they follow the contours of international economic integration.

Regional Groupings — Europe and NAFTA Compared

If both legal and economic considerations favor regional groupings, how do the political institutions of the EU and NAFTA operate? **Paul Teague** compares how they have developed their internal structures and political philosophies. European legal innovations are generally the outcome of untidy compromises and have had only limited success in setting labor standards, notably on health and safety issues and equal opportunities. The social dialogue process, a form of collective bargaining between the summit trade union and employer bodies, has generally been more effective. So also has been the recent development of national policy co-ordination. The result is that a common European understanding is developing which causes the established national systems to deliver policies that are in conformity with over-arching European Union regulatory frameworks. NAFTA, by contrast has no independent legal or administrative structure. No attempt has been made to transcend the boundaries of existing national systems and little attempt, beside a "side accord" on labor, to develop a supranational body of labor laws or rules. Whereas the European Union is seeking to create a "post-national" form of industrial relations, NAFTA is concerned to make national regimes more open and supportive to labor.

This contrast between the two free trade areas is nicely developed by other papers. How NAFTA implements labor standards is analyzed by **Mark Thompson** in his account of the regulation of health and safety in Mexico, Canada, and the USA. In this generally non-controversial field the NAFTA legislation requires each country to maintain standards within their own legislative frameworks. Complaints can be made by one country against conditions in one of the other two. In principle, complaints can go to an arbitration panel which can impose trade sanctions, although this has not yet happened. He shows there to be substantial institutional differences between the mechanisms employed in the three countries. The U.S. is a "regulation-based" system, with relatively specific regulations, and weak participation by labor and management in the workplace. Canada represents an "internal responsibility" model, with less specific regulations and reliance on joint labor-management committees in most large workplaces. Mexico is a "tripartite" system, with a more modest body of regulations and an extensive system of joint or tripartite committees required by law. He concludes that there are no prospects for NAFTA leading to greater institutional harmonization between its members.

The European Experiment

The European Union is the boldest experiment in seeking to develop common labor standards across a regional grouping of, currently, 15 independent countries. We should never forget that the underlying motive to forge a common market across Europe was political. It was quite simply to prevent a reoccurrence of the many wars which for hundreds of years have wrecked and torn European society. Economic unity was wisely seen to be a precondition of political harmony. But economic unity, with the free movement of labor and capital between frontiers, could only be achieved by upholding common standards under which labor is employed. The "social dimension" thus became, and remains, the cornerstone of the whole European experiment.

The development of the social dimension experiment is authoritatively described by **Berndt Keller**. With the opening up of the internal market in the early 1990s, and the introduction of a common currency to many members in 1999, the European Union has become, if not a national federation, at least the world's most tightly integrated regional trading block. He examines how far this has been accompanied by the development of a coherent system of industrial relations. From the start of European integration, the "Northern" member states, and especially their trade unions, have pressed for the strengthening of the social dimension of the internal market as a protection against "social dumping" by members with lower labor standards. The fear has been that, with very limited inter-state mobility of labor and of transfer payments, and with the removal of different exchange rates, member states will seek to protect employment through their collective bargaining systems, with the threat of a "race to the bottom" and a downward spiral in labor standards.

The development of the European Union's employment policy has been uneven and gradual. Initially in the 1950s and 1960s there was a belief that little central direction would be necessary and that increasing economic integration would drive the social dimension forward. But, partly because of the inflationary and employment crises of the 1970s and early 1980s, there was little early progress apart from the advancement of gender equality. Since 1985, however, there has been much more concerted development on a range of fronts. Part of the reason for this has been an increasingly flexible approach towards regulation. There has been a shift away from harmonizing standards and towards establishing minima. It has been found more effective to use "soft" regulations such as recommendations and "social dialogue" rather than "hard" legal directives. During the 1990s it became accepted, in place of centralized authority, to follow the principle of "subsidiarity," encouraging responses and solutions to EU policies at the lowest practical level, whether that is enterprise, sectoral or national.

It has generally been trade unions which have pressed the social dimension forward and the employers who have resisted, preferring to minimize intervention. Although the unions have achieved a sectoral pattern of organization within their Europe-wide confederation ETUC, the employers have deliberately, avoided this within UNICE, so that movement below the national level is limited. Partly because of this, the marked differences of both labor law and industrial relations systems between countries have changed relatively little. There has not been much national convergence. Furthermore, cross-border collective bargaining does not take place because employers see no benefit in it for themselves. With relatively little procedural change, European social policy remains, in substantive terms, a patchwork of minimum standards. While economic integration has accelerated, social integration has been much slower. The prospect of enlargement eastwards into countries with lower labor standards is likely to inhibit the EU's social integration further.

While Keller describes the rather stumbling process whereby European politicians have tried to develop a common employment policy, **Timo Kauppinen and Philippe Pochet** are concerned with the way in which external economic forces have shaped this process. In particular, they are concerned with the consequences of the recent adoption by most of the member states of a common currency. How far will this speed up or modify industrial relations change in Europe? As a monetary union, Europe is unusual by comparison with other federations with single currencies. Other federations generally have greater internal mobility of labor. They have considerably greater budgets in the hands of the federal government, not least because of centralized defense spending. They also have far greater financial transfers between states as a result of centralized social security spending on pensions, unemployment pay, health etc. They generally have a high degree of fiscal harmonization. Europe's weakness in these respects increases the strain that the labor market has to bear in coping with differential adjustments between the member states. Greater priority has to be given to controlling inflation than to the pursuit of full employment. This increases the demands placed upon the social partners within each country to control collective bargaining outcomes, and to co-ordinate their actions across Europe.

The spread of footloose multi-national corporations and the opening up of increasingly global markets both have the effect of increasing the areas over which labor market comparisons are made and over which productivity levels are bench-marked. Within Europe, increased competition tended to encourage internal coalitions between governments and capital during the 1980s. But in the 1990s, as unions have weakened, this has increasingly turned towards coalitions between capital and labor intended to increase competitiveness within their native economies. Trade unions have sought to cope with their diminished power at the national level through domestic amalgamations and Europe-wide co-operation. A

manifestation of this is “social unionism” whereby they try to link organized labor with the cause of those who are excluded or are on the margins of the labor market. Success in this venture is uncertain. What is evident is that international competition is the main force bringing wage moderation. Perhaps the most trade unions can expect is that improvements in their networks will bring better co-ordination of bargaining across Europe.

There is general agreement that there are conflicting trends both towards decentralization of collective bargaining and towards greater Europeanization. But there are also profound economic changes underway. The growth of a single capital market is causing shareholder-value driven “Anglo-Saxon” models of corporate governance to displace more socially oriented ones. The share of wages in total income has been declining across Europe. Market forces are driving industrial relations in Europe as never before, but they are product and capital market forces, rather than labor market forces. There is also a clear trend that is leading away from traditions of collective responsibility, with trust in the social state, towards a new individual responsibility. Where unions are still strong, this may bring a reaction, but the extent of such strength must be in doubt. EMU and globalization will not lead to convergence, but rather to a diversity of responses, specific to the different countries, while debate will grow about the creation of a new European social model which can better cope with these changes.

For all the emphasis of European Union politicians on achieving a convergence of labor standards, there is the paradox of a strong counter current: industrial relations institutions are increasingly becoming decentralized. Sectoral agreements are generally in decline, displaced by bargaining at or below the level of the enterprise. What is the outcome of this apparent tension? **James Arrowsmith and Keith Sisson** address it with a well targeted empirical study of how firms, in practice, manage issues of pay and working time. They combined survey and case study approaches to look at four very different sectors in Britain and, for three sectors each, France and Germany. They found that decentralization of authority served the function of signaling to local managers their responsibility for maintaining competitiveness. But, in exercising this decentralized authority, the local managers in practice paid great attention to what others within their sector were doing. This is partly because of distinctive technical characteristics of each sector. It is partly because such external comparisons are seen as “legitimate” in the eyes of employees. It is partly also because local managers are keen to imitate what is perceived to be current “best practice.” The result is that the variance of practice within sectors is, for many issues, less than the variance of practice *between* sectors, and this is so even between European Union countries. The interesting consequence is that, across the whole European Union, we may indeed be seeing convergence in substantive terms of employment, sector by sector, but not convergence

in the institutional arrangements that lie behind them.

The Scope for National Action to Alleviate the International Threat

Regional groupings offer the possibility that contiguous countries might be able to protect themselves from competing with each other by the ultimately self-destructive process of driving down the labor standards of their citizens. But what about individual countries for whom such alliances may not be an option? It is a question of acute relevance to those countries where strongly centralized political structures have lost their grip.

The countries of Central and Eastern Europe following the collapse of the Soviet bloc are being studied by **Michael Fichter and Bodo Zeuner**. Their concern is with the influences shaping the emerging industrial relations institutions as the central control of the state retreats. Their research concentrates upon five of the countries whose adjustment appears to be more rapid: Estonia, Poland, the Czech Republic, Hungary and Slovenia. They suggest that one critical condition influencing the development of new institutions is the extent to which trade unions can develop their own basis of support, independent of government. The second is the extent to which employers and their investors can develop bilateral relationships with unions at the workplace, also independent of government, and thereby adjust to a complete reliance on the market. For Central and Eastern Europe the proximity of the European Union is critical. The closer movement of these countries towards and into the European Union will bring two contrary pressures. On the one hand the relatively weakness of the trade unions of the Eastern countries will encourage investors to use them as a base from which to undercut the stronger trade unions of the Western member states. Running contrary to this, however, are the Social Dialogue traditions of the European Union which will tend to encourage the firmer institutional anchoring of both trade unions and employers associations. Which pressure will predominate will depend to some extent upon the speed of European Union enlargement.

Democratization encourages a shift from unitary to pluralistic approaches to industrial relations, concludes **Venkata Ratnam** from his literature review. A consequence is that economic development is to some extent linked to the protection of human rights. The trade unions of the developed world seek to link labor standards to international trade liberalization. But worker organizations in developing countries are generally opposed to this, preferring to press for improvements within their own countries. International pressure to raise labor standards will grow, with new actors such as consumer groups and non-governmental charities playing an increasing part. It is no longer enough for developing countries to sweep the embarrassment of workers with restricted labor rights behind the fences of export-processing zones. In a globalized economy the whole market, domestic and

international, has become an export-processing zone.

The massive canvas of India offers **Debashish Bhattacherjee** the opportunity to paint a picture of the way in which a truly national system of industrial relations has, and is, giving way to many local systems. How far was this an unavoidable response to external pressures, and how far was it a consequence of internal political factors? His authoritative historical account describes the background to the crisis in legitimacy that confronted the state-controlled industrial system in the 1970s, and the varied ways in which it is being resolved. Gradually, over a period of internal liberalization, the Indian state has withdrawn from the economic and industrial relations arena. The sectoral basis of bargaining and also the traditional trade unions have come under strain as enterprise based bargaining with plant-specific unions have delivered superior settlements in dynamic sectors. The resulting disarray amongst unions, political parties and regional governments has prevented agreement on national industrial relations reform that might provide comprehensive legal structures that would contain this fragmentation and its increasing neglect of unorganized workers. A consequence is increasing inter-regional variation in labor standards. This brings a growing concern that some regional governments may compete for investment with implicit promises of a union-free environment. In effect India is experiencing the internal development of the wider international problem of labor standards regulation. But Bhattacherjee argues that it is not the necessary consequence of globalization, but the avoidable result of political indecision at the national level.

Whatever the political success or failure of individual countries to tackle the problems brought by globalization, **Sarosh Kuruvilla and Christopher Erickson** discern a wider pattern. They examine the experience of seven Asian countries as the impact of international trade and inwards investment has intensified. They note a widespread shift in the focus of state regulation of industrial relations. Legal and institutional structures were initially developed, for both economic and political reasons, to contain and manage industrial conflict. But international competitive pressures have moved this focus. Governments are now more concerned to use their regulative influence in order to improve business competitiveness and the flexibility of labor. Labor law has itself become an instrument of international competition.

There is no single simple route for labor market regulation. **Erling Rasmussen and Jens Lind** note the sharp differences in recent policy direction of two countries with many social and economic similarities, Denmark and New Zealand. Their contrasting response of labor market regulation to heightened international competition in the past decade has been as antipodal as the countries' global position. Denmark's strong collective traditions continue,

while New Zealand's have been all but erased. As a result, Denmark's high union density has increased to over 80 percent while New Zealand's has plummeted to under 20 percent. The paper shows that both have achieved increased labor flexibility by these very different routes, but Danish employees still have access to a consultative union "voice" that has been largely lost in New Zealand

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The Enforcement of Labor Standards

International trade is the vehicle whereby the poor labor standards of one country threaten the labor standards and employment of another. But **Jose Pastore**'s paper challenges the logical jump by which it is often argued that labor standards should thereby be tied into international trade agreements. He questions both the motives of those calling for such links, and the consequences of such action.

The greater international mobility of capital than of labor inevitably weakens workers and sets the scene for an international "race to the bottom" in terms of labor standards. It is a race of profound significance because it not only impoverishes vulnerable workers, but also concentrates income and wealth in countries of high capital ownership. Economic globalization thus breeds the globalization of inequalities. There is, of course, a long history of richer nations trying to use constraints on international trade as a device for forcing poorer nations to raise labor standards. But their prime motive is generally not a concern for exploited workers in developing countries. Their prime motive is the protection of jobs in their own countries. The use of sanctions to uphold international labor standards may or may not protect jobs in developed countries. But it very rarely actually achieves any significant improvements in the developing world. Indeed, it may simply lead to job loss in poor countries where jobs are already scarce.

Child labor is the emotive issue which Pastore uses to develop his argument. It was an issue central to the international debate during the 1990s and to ILO action and WTO debate in 1999. He argues that children are forced to work largely because their families need the money to survive. Since the families cannot defer the consumption of food they are forced to defer, or abandon, investment in their children's futures. If trade sanctions deny the children the chance to work in jobs that compete with the developed world, these children will not go to school as an alternative. They cannot afford to do so. Instead they are likely to turn to crime, prostitution, drug dealing, or dependency on the state, all of which impose huge additional costs on the developing countries in which they live.

He illustrates his argument with data from Brazil, where there are already restrictions on employment under the age of 16, but where, as in many developing countries, they are

hard to enforce. He describes a social program in Brasilia intended to reduce the number of working children and to increase attendance at school. Families were paid the minimum wage if their children attended school regularly and got good grades. This program had a significant effect in reducing school drop-outs and failures. Furthermore, the cost to the state per child kept in school was nearly 20 times cheaper than that of keeping a child in a criminal reformatory. He concludes that it is far better to tackle child labor not by trying to ban it, but by tackling its root cause, the fact that families simply cannot afford to send their children to school. Removing their jobs by trade sanctions would certainly not put the children back in school, and would probably push them into crime.

Pastore is not arguing against international labor standards, which he sees to be necessary benchmarks for any society. His argument is that the imposition of labor standards through international trade sanctions is unlikely to succeed in its stated objective of helping workers on sub-standard objectives. Developing countries already lack the capacity to enforce existing standards, so there is little value in the international community pressing for them to be tightened. It is poverty in the developing world that creates the competitive threat to jobs in the developed world that lies behind the call for international labor standards. Only the alleviation of poverty will ease that threat.

Conclusion

These papers reflect a truly international research debate of far-reaching significance to the workers of the world. At the most basic level the issue is the growing inequality of the world's income. There is an increasing awareness that combating this is not only a moral, but also a practical necessity. Deepening inequality undermines democracy, and it increases the dangers of international conflict. It was the recent memory of the horrors of such conflict that was the driving force behind the creation of both the ILO and the European Union.

The growth of international trade and of international corporations will undoubtedly increase the world's wealth. But if it is unregulated, it will also increase the world's political instability. During the last century trade unions did much to reduce inequality through collective bargaining at national and sectoral level. These research papers leave no doubt that the scope for such bargaining will be greatly reduced as our new century proceeds. International labor standards will become increasingly important as the means of reducing international inequality. But, as this research also makes clear, their development will require great political sensitivity at national, regional and international levels. Trade unions are well-placed to play an important role in developing international labor standards. In doing so they will need to draw on their finest traditions of altruism towards the unorganized workers of the world.

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JIL News and Information

Briefing on Labor Issues: The Current State of Part-time Work

The Japan Institute of Labour (JIL) holds briefings on labor issues several times a year

for foreigners concerned with labor affairs to provide a background explanation of current labor issues in Japan. People attended mainly from foreign embassies, foreign chambers of commerce and industry, and foreign news agencies. On July 19, the first briefing for fiscal 2000 focused on "the current state of part-time work." The briefing was given by Sachiko Imada, Research Director at JIL.

The briefing was based on a report of the "Study Group concerning Employment Management of Part-time Workers" which had been established by the Ministry of Labour. Ms. Imada is a member of that group. She spoke on equal treatment for part-time workers, discussing their present situation and the challenges which policy-makers face with regard to the position of such workers.

In Japan, part-time work first came to the fore in the late 1960s. That was a time when the economy was growing at a rapid rate. Since then the number of part-time workers has increased at a consistent pace, regardless of fluctuations in the economy. In 1999, the number of workers who worked less than 35 hours per week totalled 11.38 million (of which females accounted for 7.73 million). That figure was equivalent to 21.8 percent of the number of employees as a whole. As the number of part-time employees expanded, the nature of part-time work changed substantially. Job categories for part-time workers increased in number and became more varied. As a result more part-time employees are now engaged in specialized and technical jobs or managerial posts, and there is a tendency for the tenure of such employees to become more prolonged. Part-time work now comes in various forms, including part-timers, secondary employees (*jun shain*), and contract employees.

As part-time work expanded both in variety and in quantity, several problems began to appear with regard to the employment of such workers. Accordingly, the Law concerning the Improvement of Employment Management, etc. of Part-time Workers (the Part-time Work Law) was enacted in 1993 to improve the treatment of part-time workers. The main features of the law were that (1) it defines part-time work primarily in terms of working hours which are shorter than usual, and (2) it clearly reaffirms that, since short-time workers are workers in the same way as ordinary workers, a whole range of legislation (including the Labour Standards Law, the Industrial Safety and Health Law, the Minimum Wages Law, the Equal Employment Opportunity Law, and the Child Care and Family Care Leave Law) apply to their treatment, as do the provisions for employment and social insurance, provided certain conditions are satisfied. In this sense, the Part-time Work Law set forth a fairly straightforward approach to the management of part-time workers.

The law included the supplementary provision that it should be reviewed three years

after it came into effect. Hence, in 1996, the Ministry of Labour set up the "Study Group concerning Part-time Work" that submitted a report on policies on part-time work in 1997. The report made four recommendations:

(1) "hiring notification" should be made obligatory for part-time work;

(2) consideration should be given to preventing employers from easily terminating employment contracts;

(3) consideration should be given to equal treatment in terms of "equal pay for equal work;" and

(4) consideration should be given to adjusting working hours in relation to the upper limit of non-taxable income laid down in the tax system.

As for the first recommendation, related laws were reinforced to make them more legally binding. The revised Part-time Work Law, which came into effect in April 1999, requires employers to provide a "hiring notification" when employing a part-time worker. Article 15 of the Labour Standards Law (revised at the same time as the Part-time Work Law), which requires the "clear statement of working conditions," added conditions apart from wages to those which should be clearly stipulated.

The second recommendation was related to the fact that most part-time workers in Japan are under fixed-term contracts. The termination of employment means that firms do not extend a contract after the expiration of a fixed-term of employment, such as three or six months. If a firm stops renewing its contract with a part-time worker after he or she has had the contract renewed several times and the worker has come to reasonably expect that the contract would be renewed again, there are now grounds for the case to be regarded as a dismissal under case law. Thus, there are already certain rules concerning the termination of employment.

The fourth recommendation involves the tax and social security systems also and thus goes beyond the normal scope of labor policy. The biggest challenge with the new legislation concerns the third recommendation which calls for equal treatment based on the general principle of equal pay for equal work. Ms. Imada referred to different interpretations of what "equal treatment" might mean in different countries. In the U.S., she suggested fairness may be seen as being valued the most, whereas in Europe "equality" is considered the important value unless there exist reasonable justifications otherwise. In Japan, fairness is seen in Article 3 of the Part-time Work Law, as a matter of maintaining balance. Here the focus is on the notion of maintaining a "balance." So far, although the issue of equal treatment has been discussed in the context of legislation related to part-time work, it has been shelved as far as actual measures are concerned. The challenge that exists here arises out of two opposing

opinions. One view is that because part-time and full-time work arise out of different work styles, it is impossible to argue about an equality or a gap existing between them. The other view is that the difference in their work styles cannot fully account for the wide gap which exists between the wages and other working conditions of each group of employees. While the merits of each position are being debated, the fact remains that a large and growing number of part-time workers are engaged in the same work as full-time workers for wages which are only some 60 percent of the wages received by those in the latter group.

The report of the “Study Group concerning the Employment of Part-time Workers" sets out views on the treatment of part-time workers with consideration being focused on the balance between them and regular workers. It recommends a procedure for realizing a balance. The report is significant in having taken a step forward towards putting the debate on equal treatment on a more concrete footing. It suggests a possible means of gauging the balance by dividing part-time workers into two groups: type A, engaged in the same duties as regular employees; and type B, engaged in different duties. It is estimated that part-time workers in type A account for 20 to 30 percent of part-time workers as a whole. The report suggests that firms should not offer these workers fundamentally different treatment and working conditions on the grounds that their working hours are shorter than those of full-time workers. The report also calls for there to be identical elements or criteria determining the wage structure and the amount of wages each employees receives and for the wage determination method for full-time and part-time employees engaged in the same duties with the same responsibilities and authority. The report allows the possibility that part-timers may still be treated differently when overtime, holiday work, transfers to different sections, and transfers to different offices or workplaces is required only of full-time workers. However, in such cases a balance between part-timers and full-timers should be achieved in terms of hourly wage rates and other similarly conceived working conditions.

The report is of significance in that it has sorted out problems and issues related to the equal treatment of full-time and part-time workers. It has also set out a proper approach to equal treatment in cases where part-time workers are engaged in identical duties as regular employees. However, its proposals provide no more than some general guidelines. In order for the balance to be achieved and generally accepted, it is hoped that individual firms, labor and management will be proactive in voluntarily tackling such issues in accordance with the peculiarities which characterize their own firm's situation or that of their industry.

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OPINIONS REQUESTED

The editor invites readers to send their views and comments on the contents of JLB via e-mail to ebisui@jil.go.jp or via fax to +81-3-5991-5710.

Statistical Aspects

Recent Labor Economy Indices

	September 2000	August 2000	Change from previous year
Labor force	6,800 (10 thousand)	6,791 (10 thousand)	-31 (10 thousand)
Employed	6,480	6,480	-34
Employees	5,397	5,356	42
Unemployed	320	310	3
Unemployment rate	4.7%	4.6%	0.1
Active opening rate	0.62	0.62	0.00
Total hours worked	155.3 (hours)	149.8 (hours)	0.9
Total wages of regular employees	(¥ thousand) 265.5	(¥ thousand) 264.9	0.6

Note: * Denotes annual percent change.
Source: Management and Coordination Agency, *Rōdōryoku Chōsa* (Labour Force Survey); Ministry of Labour, *Shokugyō Antei Gyōmu Tōkei* (Report on Employment Service), *Maitsuki Kinrō Tōkei* (Monthly Labour Survey).

Where to Find Basic Labor Statistics

Economy Planning Agency
http://www.epa.go.jp/e-e/doc/menu.html
Outline of the Policy Measures for Economic Rebirth
Revised Estimates of Economic Outlook for FY 1999
Economic Outlook and Basic Policy Stance on Economic Management for FY 1999
White Paper on the National Lifestyle
Monthly Economic Report & Main Economic Indicators
Index of Business Conditions
Economic Survey of Japan
Annual Report on the Asian Economies

Management and Coordination Agency, Statistics Bureau & Statistics Center
http://www.stat.go.jp/english/1.htm
Population Census
Population Estimation
Labor Force Survey
Special Survey of Labor Force Survey
Employment Status Survey
Establishment and Enterprise Census
Family Income and Expending Survey
National Survey of Family Income and Expenditure Prompt Report of Family Assets (for two or more person householods)
Consumer Price Index

Ministry of Labour
http://www. mol.go.jp. /english/outline/fgr-tbl/index.htm
Changes in Number of Part-time Workers Working Fewer than 35 Hours per Week
Changes in Total Annual Real Working Hours per Worker (Confirmed report)
Changes in the Number of Employees (all Industries)
Changes in the Rate of Diffusion of a Five-day Workweek System
Human Resources Development for the Disabled
Incidence of Disputes
Number of Members in Major Labor Unions
Occupational Abilities Development for Older Persons
Ratio of Married Women to Total Women Employees
Share of Part-time Workers by Industry (Non-agricultural Industries)

Ministry of Health and Welfare
http://www.mhw.go.jp/english/index.html

Japanese Trade Union Confederation (Rengo)
http://www.jtuc-rengo.org

National Confederation of Trade Unions (Zenroren)
http://www.iijnet.or.jp/c-pro/union/aa_e/index_e.html

Japan Federation of Employers' Associations (Nikkeiren)

http://www.nikkeiren.or.jp/english/top.htm

Japan Federation of Economic Organizations (Keidanren)
http://www.keidanren.or.jp