JAPAN LABOR BULLETIN

ISSUED BY THE JAPAN INSTITUTE OF LABOUR

May 1, 2002 （毎月1回1日発行） 昭和44年10月8日　第3種郵便物認可

JIL homepage: http://www.jil.go.jp/index.htm

Vol. 41 — No. 5 May 2002

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HUMAN RESOURCES MANAGEMENT

IBM Japan Increases Number of Employees Working from Home

IBM Japan Ltd. will increase the number of employees who pursue their duties at home to 2,000 by the end of 2002, up from the 300 employees currently taking advantage of the work-at-home scheme. This will bring the number of employees who work from home to nine percent of all employees (22,000), making IBM Japan the first Japanese firm to have thousands of employees working from home.

For some time, IBM Japan has allowed its research and development employees and those affected by special circumstances — such as the need to take care of children or other family members — to work from home two days a week. The company is convinced that the work-at-home scheme helps improve business efficiency, and they subsidize (up to ¥2,000 per month) fees for broadband connection (such as ADSL and CATV) for such employees.

The newly stepped-up work-at-home scheme will be applied to the human resources management, accounting and marketing sections, and will affect 10,000 employees with the title of deputy chief (*fuku shunin*, the highest non-managerial post) or higher with tenures of one year or more. To take advantage of the scheme, employees must obtain the approval of their superiors and the consent of the human resources management section.

On average, IBM employees spend two and one-half hours commuting. Personnel managers believe that working from home will create extra time for their employees, enabling them to work more efficiently and better take care of their health. However, they do not expect many workers to spend all five working days at home, and anticipate that many will come to the office more than half of the weekdays to attend staff meetings, consult with clients, and so on.

The spread of personal computers and the development of information communication technology (ICT) encourages varied working styles, including working from home. According to a survey conducted by the Japan Telework Association, 1.13 million employees worked from home in 2000. "Telework" employees (those assigned to "satellite offices" — small offices in residential areas or rural areas — or to other locations making use of laptop computers and cellular phones) totalled 2.46 million for the same year. This figure is expected to increase to 4.45 million within five years. The proportion of firms hiring employees on such a "telework" basis accounted for 12.7 percent, and some 50 percent of firms surveyed answered that they plan to adopt "telework" employment in five years' time.

It has been said that Japan lags behind other developed countries in terms of the use of personal computers

and the Internet, which, together with small homes, would make it difficult for firms to provide work-at-home employment opportunities. Despite this, with broadband access rapidly becoming easily available, Japan IBM's work-at-home experiment is likely to draw attention as a new working style. (See "Telework in Japan" in the August 2000 issue of the *Japan Labor Bulletin* for more information on telework.)

Tokyo District Court Rules Gender-Specific Jobs are Illegal

The Tokyo District Court ruled on February 20, 2002 that the personnel management scheme which differentiates in the hiring and treatment of males and females — men destined for core duties ("management career track" or *sogoshoku*) and women for non-core duties ("general track" or *ippanshoku*) — is illegal. The Equal Employment Opportunity Law (EEOL)(1) revised five years ago, opened *sogoshoku* positions to female employees, stipulating that employers must provide equal opportunities to both males and females in terms of recruitment and hiring. The revision also stated that it is illegal to differentiate between female and male workers in terms of posting and promotion. The newest verdict is expected to greatly impact the business environment as this is the first time tracking of employees based on gender has been ruled illegal.

This case involves Nomura Securities Co., Ltd. The verdict states that in the 1960s — when the female employees who are the plaintiffs began working at the company — the distinction between male and female workers had a certain rationality. However, since implementation of the revised EEOL, different treatment based on gender has been against the law and has been regarded as constituting unreasonable discrimination. The ruling included an award of some ¥56 million, out of a claim of about ¥667 million, for the plaintiffs.

The revised EEOL has had little impact in the work place. This is borne out by a survey conducted by the Ministry of Health, Labour, and Welfare via Equal Employment Opportunities Offices of Prefectural Labour Bureaus across the country, targeting firms which have adopted personnel management schemes classifying jobs into various "tracks" that indicate a worker's potential future in the firm. Survey results showed that as of October 2000, an extremely high proportion of firms (91.3%) responded that all of their "general track" employees were women (see Statistical Aspect on page 3). Firms which had women occupying "more than zero but less than 10 percent" of "management career track" positions accounted for 72.6 percent, and those that answered they had no women in management career positions stood at 13.1 percent of the whole. This means that in 85.7 percent of the firms surveyed, women occupied less than 10 percent of the "management career track" posts(2). The figures reveal the extreme disparity between reality on the one hand, and court decisions resolving individual disputes and the legal foundations on which the decisions rely on the other. It is expected that this verdict brought against Nomura Securities Co., Ltd. will gradually effect other work environments.

Notes:

(1) For details of the revised Equal Employment Opportunity

Statistical Aspect

Recent Labor Economy Indices

	February 2002	March 2002	Change from previous year (March)
Labor force	6,604 (10 thousand)	6,676 (10 thousand)	-46 (10 thousand)
Employed	6,371	6,377	-82
Employees	5,321	5,343	-45
Unemployed	357	353	-33
Unemployment rate	5.3%	5.2%	0.5
Active opening rate	0.50	0.51	-0.11
Total hours worked	151.1 (hours)	p150.4 (hours)	p-1.6
Total wages of regular employees	(¥ thousand) 280.9	(¥ thousand) p301.7	p-0.8

Notes: p: Preliminary figures
US$1= ¥128 (May 1, 2002)

Source: Ministry of Public Management, Home Affairs, Posts and Telecommunications, *Rōdōryoku Chōsa* (Labour Force Survey); Ministry of Health, Labour and Welfare, *Shokugyō Antei Gyōmu Tōkei* (Report on Employment Service), *Maitsuki Kinrō Tōkei* (Monthly Labour Survey).

Law, see the "Human Resources Management" column in the June 1999 issue of the *Japan Labor Bulletin*; for a detailed analysis of the law, see the "Special Topic" column in the January 2000 issue; and for "matters for special attention" concerning personnel management by status, see the "Public Policy" column in the September 2000 issue.

(2) Concerning the working situation of female workers on a management career track, see the "Human Resources Management" column in the December 2001 issue of the *Japan Labor Bulletin*.

LABOR-MANAGEMENT RELATIONS

2002 Spring Offensive: Main Negotiating Points and Results

Three consecutive years of price deflation and concern over the decreasing international competitiveness of Japanese firms directly affected labor-management negotiations during this year's spring offensive.

Leading companies, including even Toyota Motor Corp. whose consolidated profit for fiscal 2001 is estimated at a record high of ¥1 trillion, reached an agreement for no basic pay increase. Instead, management tended to reflect improvements in business performance in temporary bonus payments. For example, Honda Motor Co. Ltd., whose profit is expected to mark a record high along with Toyota's, agreed to an annual bonus payment exceeding ¥2 million.

On the other hand, Nissan Motor Co. Ltd., with the prospects of successful management restructuring in sight, repaid the help given by union members by fully accepting union demands for a basic pay increase of ¥1,000 and an increase in bonus payments as well.

Meanwhile, a substantial majority of unions have given up the conventional demand for a basic pay hike, turning this year's spring offensive negotiations into a "*shunto* struggle for job maintenance." In metal and other industries, where maintenance of and securing jobs was confirmed in the form of agreements or declarations, labor-management agreements have helped check the worsening labor market. More concretely, unions at Japan's five major steelmakers called for an accord providing for employment maintenance at the expense of a basic pay raise, securing a "memorandum of confirmation concerning employment maintenance" from management. This memorandum specifies the obligatory efforts that companies must take, such as efforts to sustain and secure employment levels for the next two years. At the same time, unions affiliated with Denki Rengo (Japanese Electrical Electronic & Information Union), which did not bargain for higher wages, and the companies where their members work agreed to a joint declara-

Statistical Aspect

Percentage of Females to Newly Hired "General Track" (*Ippanshoku*) Employees As a Whole

(Company,%)

Industry/Company Size		Number of Companies	1998			2000		
			less than 50%	more than 50% but less than 100%	100%	less than 50%	more than 50% but less than 100%	100%
Total		103	4.9%	6.8%	88.3%	2.9%	5.8%	91.3%
Industry	Manufacturing	30	6.7%	20.0%	73.3%	3.3%	10.0%	86.7%
	Financing and insurance	31	6.5%	3.2%	90.3%	0%	3.2%	96.8%
	Wholesale and retail trade	14	7.1%	0%	92.9%	14.3%	7.1%	78.6%
	Construction	14	0%	0%	100%	0%	0%	100%
	Others	14	0%	0%	100%	0%	7.1%	92.9%
Company Size	1,000 or more	48	4.2%	10.4%	85.4%	2.1%	4.2%	93.8%
	300 - 999	44	4.5%	4.5%	90.9%	4.5%	9.1%	86.4%
	299 or less	11	9.1%	0%	90.9%	0%	0%	100%

Note: The figures are for 103 firms which set different recruitment courses for "management career track" (*sogoshoku*) and for "general track" (*ippanshoku*) employees, and which hired one or more new workers as general track employees in 1998 and 2000.

Source: Ministry of Health, Labour and Welfare, *Report on the Current Situation and Administrative Action concerning Personnel Management Schemes Employing "Tracks"*, 2001.

tion concerning employment stability.

In response to these developments, Kiyoshi Sasamori, chairman of Rengo (Japanese Trade Union Confederation), criticized management for refusing to grant basic pay hikes regardless of the business performance of individual companies, saying "Management, while criticizing *shunto* negotiations as a reflection of pernicious herd instincts, has itself demonstrated such behavior."

On the other hand, Hiroshi Okuda, chairman of Nikkeiren (Japan Federation of Employers' Associations), highly evaluated the results of this year's spring offensive, giving it "90 out of 100 points." "When companies are seeking to correct high-cost management, a basic pay raise is not necessarily a must. If business performance is good, the company can reward its employees by temporary payments," he added.

In line with negotiation results at major firms in the metal industry, Japan Railways, private railway companies, electricity companies, and NTT similarly ended their negotiations with no basic pay hike. Therefore, the growth rate of wages in major companies this year is likely to fall short of the previous year's 2.01 percent (survey by the Ministry of Health, Labour and Welfare), and will inevitably fall under the crucial level of two percent that is needed for the continuation of Japan's seniority wage system. As additional companies adopt an achievement-centered wage system, in a period of deflation unions need to find new reasons to justify regular wage hikes and increases in basic pay.

PUBLIC POLICY

Trial-based Employment Scheme: New Categories Added for Job Placement

In February 2002, the Ministry of Health, Labour and Welfare launched a "Scheme for Employment on a Trial Basis," which increases the number of job categories that job placement businesses can handle. When the Worker Dispatching Law was revised in 1999, a new scheme was simultaneously launched that attempted to reduce mismatch between the supply and demand for labor. This scheme allows dispatching firms to introduce their registered workers to client firms as permanent regular workers after a temporary job contract. (Concerning the temp-to-perm services, see the March 2001 issue of the *Japan Labor Bulletin*.)

However, the temp-to-perm service did not work as well as hoped. Firms seeking temporary staff could not directly choose dispatched workers (for example, through interviews), and could only judge the suitability of a particular worker to a specific job after accepting that worker. Accordingly, when a dispatched worker was not suited to a particular job, the firm would not hire the worker as a permanent employee after the temporary contract had expired, so that in the end the dispatching agency did not receive the fee for the introduction. What is more, temp-to-perm services were largely intended for workers in younger age groups, not for middle-aged or older workers, many of whom are unemployed.

Employment on a trial basis offers the following advantages for job-seekers, firms looking for workers, and worker dispatching agencies. A job-seeker is introduced to a firm wanting to hire a temp worker via a dispatching agency. If the firm judges that the worker is competent and suitable, after a "trial" temporary contract, the worker may be taken on directly by the firm as a regular employee (i.e., with a contract that does not have a fixed period). Secondly, under the new scheme, firms seeking workers are allowed to select their candidate temporary workers in advance through an interview — a practice previously banned under the temp-to-perm service scheme. This means that they are now able to evaluate the ability and suitability of temporary workers during the fixed-term employment contract. (In this case, incidentally, unlike cases concerning employment contracts for dispatched workers, firms must bear legal responsibility for such workers, and pay the social insurance premium.) Thirdly, the manpower supplier involved can receive the handling charge from the company as soon as the job contract between the firm and the temporary worker is signed, even if the two parties do not sign a permanent job contract later. The types of jobs covered by this scheme (that is, jobs in which job placement businesses can receive the handling charges by filling in the vacancies with workers registered with them) are science engineering and business management, which means that the scheme is virtually designed for middle-aged and older workers.

It is not yet known whether the scheme will play an effective role in eliminating mismatch in the labor market, but the prospects are not entirely negative. At the same time, however, the scheme may well present some legal problems if previous Supreme Court cases are taken into account. The Supreme Court has ruled on cases concerning temporary workers who were refused permanent employment after termination of the fixed-term job contract: If the term of a contact is fixed when a new worker is hired — the purpose of which is to give the employer a period of time in which to evaluate and judge the suitability of the worker in question — the period covering the fixed-term contract will not be included in the worker's tenure but will be regarded as a "trial period," except in special circumstances where the employer and worker have a clear agreement on the termination of employment upon expiry of a fixed-term contract.

When an employment contract with a trial period — whereby the temporary employee works in the same workplace, engages in the same duties as, and is treated by the employer not very differently from regular employees — is not followed by a permanent employment contract, it is regarded that the employer reserves the right to terminate the contract.

While the criteria to terminate the contract should be broader than those needed for the right to dismiss, they must still be "objectively justifiable and generally acceptable by society." In other words, in taking advantage of the scheme for employment on a trial basis, enterprises should bear in mind that they should secure an unambiguous agreement that the employment contract in question will eventually come to an end on expiry of the fixed contract. On the other hand, when enterprises have failed to take such action and they wish to terminate the employment contract of someone hired under a fixed-term contract who has been treated in a way similar to a regular employee, the reason must be objectively justifiable and socially acceptable.

Assuming that the scheme for employment on a trial basis is used and functions well in practice, it will be important to avoid problems involving these legal issues.

Recruitment Practices of High School Graduates to be Revised

On March 5, a study group submitted its final report calling for revision of various recruitment practices involving high school graduates. The group was established jointly by the Ministry of Health, Labour and Welfare, and the Ministry of Education, Culture, Sports, Science and Technology. The practices include the "school specific system" whereby companies confine their recruitment activities to students at specified high schools, and the "one-on-one system," whereby students seeking jobs are allowed to respond to only one job advertisement at a time.

The process of recruiting high school students, explained below, is tightly regulated by Public Employment Security Offices and high schools.

Enterprises wishing to hire new high school graduates submit job vacancy notices to Public Employment Security Offices every June; the offices sort them out and in July send vacancy cards to the high schools specified by the enterprises. The high schools inform their students of these vacancies so that, with the advice of teachers, they can decide which jobs to apply for. By the beginning of September, the personal records of those students are sent to the enterprises, which then conduct selection tests in the middle of the month. The enterprises are then allowed to send letters of acceptance to the students they wish to hire.

Based on a stable relationship of mutual trust between school and enterprise, the "school specific" and "one-on-one" systems, and the "internal selection" method whereby each school selects only one student to apply for each vacancy, have so far played a crucial role in bringing together smoothly and in a short period of time a large number of young job seekers and enterprises looking for workers.

However, the current situation among high school graduates is substantially different from the period when these practices were first established. Until the beginning of the 1990s, the number of high school graduates who began work after graduation numbered some 600,000 each year. But due to a declining youth population and an increase in the number of students going on to higher education, the number of work-oriented high school students who graduated in March 2001 was about 240,000, a mere 18.4 percent of graduating students as a whole. At the same time, fewer job vacancies due to the current recession, the tendency of companies to replace regular employees with non-regular ones, and an increase in the number of firms wishing to hire young workers with higher education have combined to make it increasingly difficult for high school graduates to find work.

The rate of success among high school students who graduated in March 2002 — the ratio of those who were promised jobs after graduation to the total number of those wishing to work — stood at 67.8 percent as of December 2001, five points down from the same month the previous year. At the same time, the 130,000 or so young people who did not go on to higher education and did not begin work after graduation, but are doing nothing in particular or working as part-time or *arubaito* (side jobs) workers are beginning to constitute a social problem. In addition, of the high school graduates who land a full-time job, one-fourth quit within one year, and half have done so within three years.

Under these circumstances, the report notes shortcomings in the current system of job mediation, including gaps among schools and regions created by the system, and the fact that students are not necessarily satisfied with the results. (For example, "internal selection" tends to rate academic records and school attendance as more important than the wishes of students or their suitability.)

To deal with these problems, revisions to the "school specific" system have been proposed. These include sharing information on job vacancies for high school graduates, together with information on recruitment meetings held across the country and workplace visits, thus enabling young job seekers at any high school to search for job information through the Internet from July 2002.

The report recommends a relaxation of the "one-on-one system" by either (1) allowing students to apply for two or more jobs simultaneously from the initial stage, or (2) allowing them to initially apply for one job, but if not accepted, say, by around October 1, then to apply for more than one vacancy. Finally, concerning "internal selection," the report emphasizes the importance of returning to the basic principle that "career selection should be made by the students themselves spontaneously and on their own initiative," and the importance of creating an environment which encourages students to form their own views concerning working life. Where employment practice as a whole is concerned, since this varies depending on the region, the report calls for reviews of individual prefectures rather than the establishment of general rules applicable to the whole country, and to release results of the discussion to the public.

Special Topic

Re-examining the Role of Labor Unions in the Era of the Diversified Workforce

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1. Introduction

This article deals with the role of labor unions in the era of diversified workforces from a comparative perspective. Primary focus will be placed on the situation in Asian nations, including Japan[1]. However, Asia is a region of diversity. In addition to cultural, religious and political diversity, quite large differences in economic situations exist among Asian countries. Asia includes economically advanced and developed countries, rapidly developing countries, countries shifting from planned economies to market economies, and underdeveloped countries[2]. Therefore, it is a very difficult task to discuss the role of labor unions in Asian countries in general. Limited information on the contemporary situations of industrial relations in Asian countries further increases the level of difficulty. Therefore, this article will not confine its discussion to Asia alone, but extend to address situations in North American and European countries where labor unions face similar challenges. Through this comparative analysis, this article will examine the new role of labor unions in the 21st century.

Table 1. Labor Union Density, Its Change, Level of Collective Bargaining, and Collective Bargaining Coverage in 1995

Country	Union density (wage and salary earners, %)	Change in union density (wage and salary earners) 1985-1995 (%)	Dominant level of collective bargaining over past 10 years	Proportion of employees covered by collective agreement (%)
Asia				
Australia	35.2	-29.6	C	65.0
China	(NA) 54.7	(NA) -7.8	C	15.1
India	(1991,NA) 5.4	(NA) -18.2	N/S	<2
Japan	24.0	-16.7	C	(1994) 25.0
Korea	12.7	2.4	C	
Malaysia	13.4	(86-95,NA) -13.4	C	2.6
New Zealand	24.3	(86-95) -55.1	C	23.1
Philippines	38.2	84.9	C	3.7
Singapore	15.9	(84-95) -18.1	C	(1996) 18.8
Taiwan, China	33.1	(87-95) -22.8		3.4
Thailand	4.2	-2.5	C	26.7
America				
Canada	37.4	(85-93) 1.8	C	(1996) 37.0
United States	14.2	-21.1	C	11.2
Europe				
France	9.1	-37.2	N/S	90.0
Germany	28.9	(91-95) -17.6	N/S	(1996) 90.0
Netherlands	25.6	-11.0	N/S	(1996) 80.0
Spain	(1994) 18.6	(85-94) 62.1	N/S	(1996) 82.0
Sweden	91.1	(85-94) 8.7	N/S	85.0
United Kingdom	32.9	27.7	C	25.6

Source: ILO, *World Labour Report 1997-98* (Table 1.2, 3.1 and 3.2)
Notes: NA = Non-agricultural labor force; C = Company/plant level; N/S = National/sectoral level.

2. Challenges Labor Unions Face

2.1 Quantitative and Qualitative Challenges in Developed Countries

Labor unions in most countries around the globe face two, intertwined challenges: "quantitative challenge" or the decrease in union membership and union density; and "qualitative challenge" or the diminishing influence and effectiveness of collective bargaining and activities undertaken by labor unions to protect workers interests.

Regarding the quantitative challenge, with some exceptions in Scandinavian countries, most developed countries have suffered from a drop in union density between 1985 and 1995 (see Table 1)[3]. Quantitative challenges often lead to qualitative challenges, but not necessarily so. For instance, the union density in France is only about 10 percent, but union activities attract more people's participation and support than the number of members. Countries with systems extending collective agreements to non-union members are not necessarily subject to direct detrimental effects by the decrease in membership. On the other hand, countries which maintain union membership also face qualitative challenges and are forced to reconsider the effectiveness of current collective bargaining systems. For instance, in many European countries, the traditional centralized collective bargaining system cannot meet the requirements of contemporary employment relations, such as a swift and flexible adjustment of working conditions to secure employment. Consequently, the importance of negotiations moved from the national or industry level to the company or establishment level[4]. Such a decentralization trend is not directly related to a decrease in membership but is relevant to the quality and structure of negotiations.

2.2 Factors of the Challenges

Quantitative and qualitative challenges are caused by a series of complex factors. First, the decrease in union density is attributable to structural changes, the shift from primary and secondary industries to the tertiary, or service, industry, where union organizing has been difficult. Second, intensified competition in the global market has caused deindustrialization or relocation of production in the non-competitive, high-wage industries, which has contributed to the loss of union members. At the same time, the fear that jobs will disappear has detrimentally affected the bargaining position of labor unions. Third, deregulation trends in the 1990s changed the labor law picture significantly in a number of countries. Some countries experienced drastic deregulation of their labor laws. In Asia, de-collectivization of labor law occurred in Australia and New Zealand with deregulatory reforms[5]. Deregulation and privatization have also caused the shrinking of the public sector which traditionally boasted high union density. Fourth, and most relevant to our theme, the structure and nature of the workforce has changed. Tertiarization of industry has led to a change from blue-collar workers to white-collar workers, the latter of which have tended to be less attracted to unions.

More importantly, workers have become increasingly diversified and individualized. Workforce diversification is brought about by the increasing non-standard forms of employment, such as part-time workers, temporary workers, fixed-term workers, etc. These non-standard or atypical workers are difficult to organize with traditional methods. Their interests sometimes, or rather, often conflict with those of standard or regular workers. As a result, traditional labor unions are hesitant, or sometimes even refuse, to organize non-standard workers. Once labor unions organize these non-standard workers, they face the difficulty of how to accommodate and coordinate such diversified interests. As discussed below, workforce individualization also requires re-consideration of the methods of representing the diversified interest of workers.

2.3 Situation in Asia

The above-mentioned two challenges are generally true of most Asian countries[6]. One of the conspicuous features of industrial relations in Asian countries is that the proportion of workers covered by collective agreements is significantly limited. In India, Malaysia, the Philippines and Taiwan, collective agreements cover merely two to four percent of the workforce. This is especially striking when compared with the high coverage (more than 80% except for the U.K.) under collective bargaining in European countries (See Table 1).

The most important reason for such low collective bargaining coverage is that collective bargaining in most Asian countries, except India[7], takes place at the company or plant level. The lack of a mechanism to extend a collective bargaining agreement to non-union members also contributes to the limited collective bargaining coverage. In Japan, the Trade Union Law provides for a system extending normative effect of collective agreements to non-union members in a region. The regional extension system was modeled after the German general binding effect system (*Allgemeinverbindlichkeit*). However, since collective agreements in Japan are mostly concluded at the enterprise level, it is very rare that a particular collective agreement covers a majority of workers in a region. Consequently this provision is rarely used. As a result, only union members are covered by collective agreement and thus union density (24.0%) and collective agreement coverage (25.0%) are about the same.

Another reason for low collective bargaining coverage is the unions' weak bargaining position. In Taiwan, a scholar has noted that, "Each of the individual labor unions has too limited a number of union members to put the union in a strong bargaining position in negotiating with their employer, thus easily enabling their employer to deny their demands."[9] In Malaysia, the law prohibits collective bargaining to cover a number of subjects considered to be the sole prerogative of the employer, namely dismissals, transfers, promotions and work organization issues[10].

One reason for low collective bargaining coverage also lies in the relationship between collective agreements and labor protective law. When there is little difference between the terms and conditions of work provided under labor protective legislation and those in collective agreements, labor unions and union members have little incentive to engage in collective bargaining. For instance, the low collective bargaining coverage in Taiwan is said to be attributed to the fact that, "There is limited room for the labor union to bargain with their employer since the Labor Standards Law has provided considerable protection for workers in the areas of overtime pay, separation pay and retirement benefits(11)." Similarly, in the Philippines, it is pointed out that negotiated pay levels are very close, if not equal, to the minimum wage(12).

3. Labor Unions' Various Functions in Contemporary Society

When discussing the role of labor unions in relation to a diversified workforce, one should remember that labor unions play a multi-faceted role at the three levels of industrial relations (national, industry and company)(13). This section will briefly review the various roles of unions in industrial relations in Europe, the U.S. and Japan.

3.1 European Centralized Social Market Model

In the European centralized model, labor unions have been organized and collective bargaining has spread at the industry level. At the national level, the social partner (central labor and management organizations) developed large-scale collaboration among social partners and the government in the formulation and implementation of economic, industrial and social policies (neo-corporatism). At the decentralized level, namely at the company or establishment level, there were struggles between labor unions who wanted to increase their influence within companies and employers who endeavored to keep the unions out. As a result of political compromise between labor and management, works councils or other participatory mechanisms have been introduced and developed.

As noted above, under the European centralized model collective agreement, coverage is very wide (see Table 1). This is a result of both the extension mechanism for collective bargaining agreements and the widespread practice of using terms of collectively-bargained agreements even in individual, non-union employment contracts. However, the weakness of this model lies in its lack of flexibility and inability to swiftly respond to particular problems in individual companies. This is why decentralization has given rise to crucial issues in European countries(15). The general attitude of social partners in coping with this issue in Europe seems to be one of cautious reserve. The introduction of flexibility or derogation from industry-level collective agreements requires the consent of the industry-level labor unions ("negotiated" or "coordinated" flexibility).

3.2 American Decentralized Free Market Model

In the United States, collective bargaining takes place at the company or plant level. Although non-union members in a bargaining unit are covered by a collective bargaining agreement concluded between the employer and their representative union under the exclusive representation system, the bargaining unit is normally smaller than a company or plant size. There is no expansion mechanism of collective agreement at industry or national level. As a result of this decentralized bargaining system, the coverage of collective bargaining is limited and depends on the unionization rate. Union density has continuously declined. As of 2000, in the private sector only nine percent of the workforce was organized(16).

In the U. S. where the ideology of free competition in the free market is firmly rooted, government has refrained from designing and implementing active social policies. Certainly, the Congress has enacted the National Labor Relations Act and has introduced an unfair labor practice system, including the duty to bargain in order to promote collective bargaining. However, as far as legislation to protect individual workers is concerned, the main forms of government intervention have been confined to anti-discrimination legislation in order to guarantee equal opportunities. Protection of workers was provided not by the government but by labor unions, and not through legislation but through collective bargaining.

The lack of legislative protection for individual workers functioned as an incentive for them to support or enroll in labor unions in the past.

However, in accordance with the decline in labor unions, individuals have been increasingly directly exposed to the market function. This situation required the U. S. government to enact labor legislation protecting individual workers beginning in the 1970s. This legislation includes OSHA (Occupational Safety and Health Act of 1970), ERISA (Employment Retirement Income Security Act of 1974), WARN (Worker Adjustment and Retraining Notification Act of 1988), and FMLS (Family and Medical Leave Act of 1993). Anti-discrimination laws have developed further since the 1960s. Prior to the passage of these acts, protection of individual workers remained the domain of labor unions. As Clyde Summers states, the guard has changed from labor unions to legislature(17). Compared to the European and Japanese situation, however, government intervention in the market is limited and it is still the market that governs terms and conditions of employment in the U.S.(18)

3.3 Japanese Decentralized and Coordinated Model

Some Asian countries seem to have adopted as their model for industrial relations policies the Japanese system of decentralized, cooperative labor relations. However, industrial relations in a nation cannot be confined to the enterprise level. Therefore, the multi-faceted functions of labor unions must be examined(19).

i) Enterprise Unionism

"Enterprise unionism" is a hallmark of Japanese industrial relations. This is a system in which unions are established within an individual enterprise, collectively bargain with a single employer, and conclude collective agreements at the enterprise level. Enterprise unions within the same industry often join an industrial federation of unions, and the industrial federations are affiliated with national confederations. However, industry-level collective bargaining is very rare. Enterprise unionism is not required by law. The Trade Union Law envisages not only enterprise unions but also industrial unions or other types of unions as seen in other countries. As of 1997, however, 95.6 percent of all labor unions in Japan were enterprise unions, and they consisted of 91.2 percent of all organized workers(20).

Apart from historical reasons(21), the main reason that enterprise unionism has continued to predominate to date lies in the functional excellence of enterprise unions in Japanese long-term employment relations. Under the long-term employment system, dismissals are avoided at all costs. In turn, workers are subject to the flexible adjustment of working conditions. Workers are transferred within a company and receive in-house education and on-the-job training. The promotion and wages of each worker are decided mainly by that individual's length of service and performance. In this highly developed internal labor market, industrial-level or national-level negotiations have made little sense. Enterprise-based unions and enterprise-level collective bargaining have been the most efficient mechanism to reconcile the requirements of an internal labor market with the workers' demands.

Enterprise unionism has several defects, such as weak bargaining power, the lack of a universal impact across the industry or nation, and the lack of social and political influence on national labor policy. Therefore, in Japan, the following compensatory systems have developed.

ii) Industry Level Coordination and *Shunto* (Spring Wage Offensive)

To compensate for their weakness in bargaining power and the fact that collective bargaining has little industry- or nationwide impact, union leaders devised in 1955 a unique wage determination system called *shunto* (spring wage offensive)(22). Under the *shunto* system, every spring industrial federations of enterprise unions and national confederations set the goal for wage increases and coordinate the time schedule of enterprise-level negotiations and strikes across enterprises and industries. According to the schedule, strong enterprise unions in a prosperous industry chosen as a pattern setter start negotiations first and set the market price for that year. Other unions then follow suit. The market prices established during *shunto* have also been reflected in the public sector where strikes are prohibited, and also in regional minimum wages which are revised every fall by the tripartite Minimum Wages Council within the framework of the Minimum Wages Law. In this manner, the *shunto* strategy has compensated for the limitations of enterprise unionism in terms of bargaining power and establishing social standards across companies.

iii) Development of Macro and Meso-Corporatism

Under enterprise unionism, where union influence is confined to particular enterprises, issues which should be dealt with by national legislation or national labor policy cannot be properly addressed(23). In order to fill this void and respond to these issues, Rengo (Japanese Trade Union Confederation) was established in 1989 by absorbing four former national confederations. Rengo has eight million members, two-thirds of all union members in Japan.

Another important compensatory mechanism is joint labor-management consultation at the industry and national level. At the national level, the tripartite council called "Sangyo Rodo Konwa-Kai" (Industry and Labor Round Table Conference) was established in 1970. In this forum, representatives of labor, management, and the public interest (the government and academic experts) meet periodically to discuss and exchange opinions on industrial and labor policy.

In addition, the government also establishes several official tripartite councils to advise on government labor and social policies. They have become the most important fora in determining the content of new labor legislation or labor policies. The content of drafts proposed to the Diet by the government is deliberated and decided in these Councils.

At the industry level, major companies and federation of labor unions in the same industry voluntarily establish labor-management councils. They exchange information and opinions on the state of the industry, working conditions and future strategies for the growth of the industry and enhancement of workers welfare.

Japanese macro and meso-corporatism is unique in that, in spite of the institutional and financial weakness of labor organizations at the national level, labor has had a significant impact, comparatively speaking, on the outcome of social policy(24). In other words, although Rengo and former national confederations of unions have never resorted to direct economic or political pressure to promote labor legislation for the labor side, the developments of labor legislation and labor policies in the past substantially reflected voices of labor through the consultation mechanism at the industry and national level. Therefore, those looking to the Japanese model of industrial relations should not overlook the fact that Japanese industrial relations based on the enterprise unionism is supplemented by the foregoing quasi-corporatist mechanism.

The Japanese experience seems to illustrate that even in a decentralized collective bargaining system, labor unions can play various roles at different levels. It is important to keep this in mind, when considering the roles of labor unions in a diversified workforce. The following sections divide the issue of workforce diversification into two categories: the issue of non-standard workers (§4) and that of

the self-employed (§ 5).

4. Non-standard Workers and the Roles of Labor Unions

An increase in the number of non-standard, non-regular, peripheral, contingent, atypical workers, as opposed to standard, regular, or core fulltime workers with open-ended contracts, is a universal trend both in developed and developing countries[25]. Unlike self-employed people, these non-standard workers can enjoy the same rights to organize labor unions. However, in reality, they are often not organized and not covered by collective agreements.

Typical examples can be found in Japan. Enterprise-base unions in Japan organize both blue and white-collar workers of a company irrespective of their functions. However, Japanese enterprise unions have traditionally not targeted non-regular workers, i.e. workers with fixed-term employment contracts or part-time workers. Legally speaking, there is no obstacle to organizing these non-regular workers. However, many labor unions deprive non-regular workers of an opportunity to join unions by limiting their membership to core workers either through union constitutions or other policies. This is because the interests of regular or core workers and those of non-regular workers conflict.

When a company needs to reduce the number of workers for economic reasons, both Japanese employers and enterprise-based unions have resorted to the termination of non-regular worker employment in order to secure regular worker employment. If enterprise unions organize non-regular workers as well and are to represent non-regular workers interests, they will be in a difficult situation to accommodate conflicting interests of regular and non-regular workers.

Taiwan and South Korea, where collective bargaining also takes place at company level, have experienced similar problems. In Taiwan, the labor unions have been hostile to non-standard employees, since they are seen as competitors in employment opportunity and counter-productive to the improvement of employment terms and conditions. "Since the interests of trade unions differ with [sic.] those of non-standard employees," Taiwanese experts on industrial relations state, "It should not be expected that non-standard employees will be fully accepted and protected by the traditional trade unions."[26]

Therefore, it is unlikely for enterprise-based unions or unions at the company level to successfully absorb non-regular workers into their organization[27]. General unions, which organize workers across firms in a region, or industry level unions might successfully represent interests of non-regular workers. Rengo changed its organizational policy in 1996 and started to organize part-time workers and workers in unorganized small firms by incorporating them into regional branch organizations[28]. So far, however, their organizing campaigns have met with little success[29].

Where labor unions at company and industry levels have not sufficiently protected non-standard workers' interests through the collective bargaining process, the need for state intervention through legislation surfaces. In Japan, in accordance with the increase in the number and percentage of non-regular workers, a number of statues concerning non-regular workers have been enacted. These statutes include the Worker Dispatching Law of 1985 and its revisions in 1999, the Part Time Workers Law of 1993, and the revisions of the Labour Standards Law concerning fixed term contracts. Labor unions at the national level (national confederations of labor unions) were not necessarily a main promoter of this legislation and these amendments. However, they had exerted enough pressure to make such legislation favorable to non-regular workers in the deliberation at councils and in the legislative processes in the Diet. While on the decentralized level, enterprise unions have not directly represented the interests of non-regular workers, on the national policy-making level, confederations of enterprise unions have been effective advocates for non-standards workers.

5. Self-employed and the Informal Sector

5.1 Self-employed and Industrial Relations

Self-employed people are independent and not subordinate to another party with a contract. Since the self-employed are not "employees," as a principle, they do not enjoy the right and protection given to employees.

Under pressure from global competition, some employers have changed employment relations into independent contract relations in order to avoid the high costs associated with the application of labor law. For such pseudo-independent workers, whether they shall be regarded as a worker or not is determined in the light of the notion of subordination.

In contemporary employment relations, however, it is difficult to distinguish employees from the self-employed by applying the traditional notion of subordination. More and more employees work free from concrete direction and control by an employer. In Japan, the Labor Standards Law introduced the so-called "discretionary work scheme" under which workers perform their duties without concrete direction and control by their employer and they are exempted from overtime pay regulations[30]. Since those who engage in discretionary work schemes are still regarded as "employees" according to the Labor Standards Law, the traditional subordination notion needs to be modified. Thus, the demarcation between employees and self-employed people becomes more and more ambiguous[31].

Here, a fundamental question should be discussed as to whether the concept of "worker" or "employee" is universal throughout all areas of labor law. In Japan, it is generally understood that the concept of a worker (employee) in collective labor relations law is broader than in individual labor relations law[32]. For instance, while professional baseball players are not generally regarded as workers in the sense of individual labor relations law (e.g. in terms of regulations on working hours, rest day, paid leave, work-related accident compensation, etc.), they are regarded as workers under the Trade Union Law. Therefore, they can bargain collectively

and engage in collective actions and seek administrative remedies against refusal to bargain under the unfair labor practice system. Another example is a case concerning sandal makers[33]. In this case, subcontractors engaged in the manufacturing of sandals at home using their own tools and received payment at piece rates. They employed their family members or neighbors, and received orders from more than one client-manufacturer. Although multiple factors supported the view that they were not workers but independent contractors in the sense of individual labor relations law, the Central Labour Relations Commission held that they are workers under the Trade Union Law[34].

The appropriateness of this approach, defining a "worker" differently in different contexts, is well worth asking. However, whether self-employed people want to organize labor unions and raise their collective voice or not is a separate issue since the self-employed often have an orientation to be independent and individualistic. This issue will be discussed below.

5.2 Informal Sector and Labor Unions

When discussing the informal sector, one must first face the problem of its definition or concept[35]. In 1993, the Fifteenth International Conference of Labour Statisticians (LCLS) adopted an international statistical definition of the informal sector. It defined the informal sector in terms of the characteristics of the enterprises (production units) in which the activities take place, rather than in terms of the characteristics of the people involved or of their jobs. Accordingly, people employed in the informal sector were defined as comprising all people who are employed in at least one production unit of the informal sector, irrespective of their status in employment[36].

However, establishing a precise and universal definition is not important here. As Professor Schregle describes, the image of the informal sector is as follows:

"Whatever the wording of the definition may be, what I have in mind here are the small barbershop, the shoeshine boy, the food stall in the street, the taxi-driver who owns his car, the small shop in the bazaar, the small artisan's shop, and so on. I am thinking of the manifold production and distribution units in southern Asia that are outside the formal industrial or labour relations system because of their smallness, because of the fact that they are often operated exclusively by family members and because of the frequent absence of an employer-employee relationship in the Western sense (either by law or in practice)[37]."

People employed in the informal sector typically engage in work processes and arrangements which are highly precarious and to a great extent unregulated and unregistered. By definition, they are outside the net of state regulations and control. Hence, traditional industrial relations principles do not extend to informal sector workers. Nevertheless, these informal sector workers face the same challenges of economic integration, social cohesion, and democracy as formal sector workers[38].

What makes the informal sector so important in Asian developing countries is the large number of people who belong to it, especially in urban areas. The informal sector in India, Myanmar and Thailand absorbs an estimated 50 percent of the urban labor force (see Table 2).

The issues of whether or not formal sector industrial relations can be extended to the informal sector, and whether or not informal sector workers' association can perform functions similar to those of labor unions and employers' organizations in the formal sector need to be raised and discussed.

In order to organize workers in the informal sector, several constraining factors must be addressed. The characteristics of the informal sector — such as heterogeneity of activities and employment status, smallness of their activities and instability, informality and often, illegality of their existence, family or ethnic loyalties that are stronger than working class solidarity — make it difficult for either traditional labor unions or informal workers' associations to organize them. When autonomous dialogue and negotiation systems do not work, the state role in improving informal sector situations becomes indispensable. One observer states that in developing countries with an underdeveloped unemployment benefit system and social security system, people who lose their jobs are forced to enter the informal sector[39]. Establishing a social safety net to protect unemployed people and informal sector workers is an important role the state should play. Here again labor unions can play an important role by conveying the voices of those people in the informal sector.

Table 2. Informal Sector Employment

Country	Urban informal sector employment as a percentage of total urban employment		
	Total	Male	Female
Bangladesh (1993)	10.0	10.0	16.0
India (1993)	44.2		
Indonesia (1995)	20.6	19.1	22.7
Myanmar (1996)	54.2	52.6	56.9
Philippines (1995)	17.0	15.8	19.4
Thailand (1994)	47.6	46.1	49.4

Source: ILO, *World Labour Report 2000*, 285.

Table 3. Levels of Bargaining and Participation in Europe, Japan and the USA

Level of bargaining	Europe	Japan	USA
Supranational	Social dialogue at EU level		
National	Labor union confederation (Neo-corporatism)	Quasi-corporatism in governmental councils	
Sector/Industry	Labor union	Industry level coordination (e.g. *shunto*)	
Company/ Establishment	Works council/employee representative	Enterprise union	Exclusive bargaining representative
Individual			Market

6. Individualization and Labor Unionism

In developed countries, the individualization of the workforce has yielded individualized human resource management, such as performance-based wage systems. Under the performance or merit-based wage system, the amount of wages depends more upon individual performance appraisal than collective bargaining for total wage increases. Thus in Japan, a sort of apathy among union members has developed recently concerning the general wage hike struggle, or *shunto*, which simply sets an average wage increase.

In Australia and New Zealand, labor unions have experienced more serious challenges. However decentralized, collective bargaining by enterprise unions is still collective negotiation. In the 1990s, by contrast, New Zealand, and to a somewhat less extent Australia, experienced de-collectivization of industrial relations in the process of a broader program of free market economic reform. The role of labor unions was reduced to a bargaining agent for an individual contract.

Too drastic and too extreme individualization in New Zealand ushered in re-regulation via the Employment Relations Act 2000. However, re-regulation does not mean a return to the previous system[40]. Together with diversification of the workforce, individualization will continue to develop in many countries. What role labor unions can assume in such a situation will be an important issue. One possible role for labor unions might be the role of an agent to support individual negotiation and to resolve disputes arising from individual contracts.

7. Conclusion: Diversified Workforce, Labor Unions and Labor Law in the 21st Century

Labor unions across the globe face qualitative and quantitative challenges. Labor unionism and the collective bargaining system are currently in a transformational stage all over the world. In Europe, the traditional centralized collective bargaining system is shifting towards focusing on the company level. Simultaneously, the perspective of EU member states is that they are experiencing super-centralized social policy through EC legislation. In the United States, the collective bargaining system is shrinking. In place of labor unions, the market and, to a limited extent, labor legislation rules employment relations. In Asian countries, decentralized collective bargaining has become dominant, and some countries in the region have experienced de-collectivization and individualization of industrial relations.

As indicated in Table 3, labor unions serve various functions at various levels. In the European model, social partners (labor unions and employers' organizations) at the centralized level play a central role in the formation of industrial relations and social policy. At the company level, by contrast, labor unions' influence has been limited. However, to cope with rapid socio-economic changes, decentralized bargaining has become increasingly important. To fill the vacancy of participatory democracy at the decentralized level, new mechanisms of works councils and employee representatives have been introduced and labor unions have gradually increased their control over them. However, works councils and employee representatives are not labor unions and not allowed to go on strike. Therefore, whether, and to what extent, the social partners should delegate and transfer their power to regulate working conditions to the parties at the decentralized level is a focal point of debate in Europe.

In contrast, the decentralized bargaining system in Japan and the U.S. is flexible and adaptable enough to cope with the problems in a particular company's situation. However, the effect and coverage of decentralized bargaining is narrowly limited and the system cannot establish social norms across industry nor a nation. The U. S. model entrusts the issue largely to the adjustment by the free functioning of the external labor market. Such a system might be good for a small number of competitive workers but it entails the risk of a widening gap between rich and poor and social instability.

Japanese enterprise unionism has endeavored to compensate for the defect of the decentralized system through industry level coordination and national level participation in social policymaking. However, the Japanese model is also

subject to several criticisms. Centralized coordination is said to be too slow to accommodate changing socio-economic circumstances. At the decentralized level, enterprise unions are incapable of representing the interests of emerging non-standard workers. There is no such thing as a perfect model.

When unions have low density and little influence, however, as some experts have noted, the development of tripartite, labor-management councils is a viable alternative forum to increase employee participation. However, these experts concede that none of these forums have been totally successful to date[(41)].

This general report focuses on diversification of workforces, one of several factors of quantitative and qualitative challenges facing labor unions. A diversified workforce raises a challenge not only to labor unions but also to the relationship between labor law and labor unions or worker representatives. Traditionally, labor law has treated workers en masse. Labor protective laws have established uniform minimum standards of working conditions which cannot be derogated by agreements between labor and management. However, in accordance with the diversification of the workforce, uniform mandatory norms have become inappropriate and flexibilization of the norms is required. In the flexibilization process, labor unions and worker representatives play an important role. Conventionally, overtime (working hours exceeding maximum hours as stipulated by law) is allowed on the condition that a labor union agrees to such a derogation. In Japan, similar methods and procedures have been introduced to make labor standards more flexible and adaptable to the changing reality of the workplace. Here, the role of a majority union or a worker representative is not simply increasing wages or shortening working hours. They are expected to adjust working conditions to reflect the various, sometimes conflicting, interests of a diversified workforce, considering many factors such as employment security and a company's competitiveness.

In the era of diversified workforces, the role of labor law and that of labor unions must be reconsidered. It is no longer appropriate for labor law to regulate substantive working conditions, such as maximum working hours. When it maintains substantive regulations, labor legislation must provide many exceptions and the law will become extremely complex. State intervention should be more procedural rather than substantive to prevent unilateral action by employers. For instance, labor law can require employers to consult, negotiate with or obtain consent of worker representatives in order to introduce flexibility. In this context, labor unions and worker representatives will remain important actors in the regulation of labor and employment relations. Even in individualized employment relations, labor unions can be an agent supporting individual negotiations.

In any event, the functions which labor unions have traditionally fulfilled, particularly democratic, economic and social functions, will continue to be important in the future[(42)]. When the decline of unions disrupts these missions and the market cannot replace them, we must seek to reallocate the functions to another player or a new compensatory mechanism. This is the challenge that labor unions and contemporary labor law systems in every country are now facing.

Note:

The author expresses his sincere gratitude to Brian Hersey (University of Tokyo, Faculty of Law) for his invaluable comments on the original draft, and to Minawa Ebisui (ILO) for her assistance in collecting materials.

References:

(1) This paper is based on the general report submitted to the 7th Asian Regional Congress of the International Society for Labor Law and Social Security held in Manila, the Philippines November 22-24, 2001.

(2) ILO's World Labor Report 1997-98 notes "there is no such thing as an Asian model of industrial relations. A distinction should be drawn between three main groups, at least: countries with socialist system, such as China and Viet Nam; India; East and South-East Asia. There are noticeable differences even within these three groups." ILO *World Labor Report 1997-98: Industrial Relations, Democracy and Social Stability*, 164 (1997).

(3) ILO, *supra* note 2, 5.

(4) Roger Blanpain, "The world of work and industrial relations in developed market economies of the XXIst century. The age of the creative portfolio worker," 35 Bulletin of Comparative Labour Relations 39 (1999); European Commission, Transformation of Labour and Future of Labour Law in Europe (General reporter: Alain Supiot), 86 (1998); ILO, *supra* note 2, 82.

(5) Richard Mitchell, "Juridification and Labour Law: A Legal Response to the Flexibility Debate in Australia," 14 International Journal of Comparative Labour Law and Industrial Relations 113 (1998); Anthony Forsyth, "Re-Regulatory Tendencies in Australian and New Zealand Labour Law," Japan International Labor Law Forum Special Series No. 14 (2001).

(6) In the Philippines, union members increased exceptionally, by 69.4% and union density by 84.9% in between 1985 and 1995. See ILO, *supra* note 2, 6. However, the collective agreement coverage in the Philippines is limited to only 3.7%. Therefore, the Philippines does not seem to be free from qualitative challenges.

(7) In India, collective bargaining agreements are concluded at national, industry-wide and enterprise levels. ILO, *supra* note 2, 167.

(8) Article 18 Paragraph 1 of the TUL stipulates that when a majority of the workers of the same kind in a particular locality come under the application of a particular collective agreement, the Ministry of Labour or the prefectural governor may, at the request of either one or both parties to the collective agreement concerned and pursuant to resolution of the Labour Relations Commission, decide that the collective agreement concerned should apply to the remaining workers of the same kind employed in the same locality and to their employers. Takashi Araki, Japan (The Process of Industrialization and the Role of Labour Law in Asian Countries), 34 Bulletin of Comparative Labour Relations 62 (1999).

(9) Liou Chih-Poung, "Taiwan (The Process of Industrialization

and the Role of Labour Law in Asian Countries)," 34 Bulletin of Comparative Labour Relations 145 (1999).

(10) Dunston Ayadrai, *Industrial Relations in Malaysia*, 63, 105 (1998); ILO, *supra* note 2, 166.

(11) Liou, *supra* note 9, 145. This results in the disincentive to be a union member. According to Liou, "since the law has imposed a legal obligation on an employer to provide reasonable labor conditions for his employees, it is no longer necessary for the employees to rely on the labor union for any collective bargaining purposes, which certainly reduces their willingness to join the labor union." (ibid, 154).

(12) ILO, *supra* note 2, 166.

(13) See Kazuo Sugeno, "Unions as social institutions in democratic market economies," 133 International Labour Review 511 (1994); Kazuo Sugeno & Yasuo Suwa, "The three faces of enterprise unions: The Status of unions in contemporary Japan" 6 Japan International Labour Law Forum Paper 1 (1996).

(14) As to the German experience, see Manfred Weiss and Marlene Schmidt, *Labour Law and Industrial Relations in Germany*, 187 (3rd ed. Kluwer, 2000).

(15) In Germany, some employers, who cannot afford to follow the high terms and conditions of employment established by an industry-level collective agreement, have started to withdraw from employers' organization (*Flucht aus dem Arbeitgeberverband* [escape from employers organization]). Others have dared to conclude company level agreements to reduce working conditions violating the industry-level collective agreement in order to save employment with majority of their workers. See BAG v. 20.4. 1999, Neue Zeitschrift für Arbeitsrecht 1999 S. 887.

(16) Bureau of Labor Statistics, Union Members Summary. <http://www.bls.gov/news.release/union2.nr0.htm>

(17) Clyde Summers, "Labor Law as the Century Turns: A Changing of the Guard" 67 Nebraska Law Review, 7, 11-12 (1988).

(18) Takashi Araki, "Accommodating Terms and Conditions of Employment to Changing Circumstances: A Comparative Analysis of Quantitative and Qualitative Flexibility in the United States, Germany and Japan" C. Engels & M. Weiss (Ed.) *Labour Law and Industrial Relations at the Turn of the Century, Liber Amicorum in Honour of Prof. Dr. Roger Blanpain*, pp. 509 (1998).

(19) Kazuo Sugeno and Yasuo Suwa, "The Three Faces of Enterprise Unionism: The Status of Unions in Contemporary Japan" 6 Japan International Labour Law Forum Paper 1 (1996).

(20) Ministry of Labour, Basic Survey on Trade Unions 1997.

(21) Historically, Japan had little experience with industry-wide unionism before World War II, and the experience of the wartime regime that mobilized all workers into units at the enterprise level may have had some influence. After the war, when employers could no longer suppress union activities, workers freely used the enterprise-level workplace facilities as the most convenient unit of organization. See Tadashi Hanami, *Labour Law and Industrial Relations in Japan*, 41 (Kluwer, 1985).

(22) As for the details of historical development and economic analysis of *Shunto*, see Akira Takanashi et al., *Shunto Wage Offensive* (Japanese Economy & Labor Series No. 1), (The Japan Institute of Labour, 1996).

(23) Such issues include the rapid aging of society, offshore movement of industries to developing countries caused by the appreciation of the yen, international trade conflicts and the increased flow of migrant workers into Japan's labor market.

(24) See Toru Shinoda, "Ima Mata Corporatism no Jidai Nanoka? (The Era of Corporatism Again?)," in Takeshi Inagami et al, *Neo-Corporatism no Kokusai Hikaku* (International Comparison of Neo-Corporatism), 357 (Japan Institute of Labour, 1994).

(25) Tadashi Hanami, "Universal Wisdom through Globalization" IIRA 12th World Congress Tokyo 2000, Congress Proceedings, IIRA Presidential Address, 7 (2000). <http://www.jil.go.jp/bulletin/year/2000/vol39-09/09.htm>

(26) Felix Chen & Stephan Kang, "Taiwan (Non-Standard Work and Industrial Relations)" 35 Bulletin of Comparative Labour Relations 144 (1999).

(27) In spite of such problems, several unions and confederations of unions have been endeavoring to organize part-time workers and other non-regular workers. See Yasuo Suwa, "Why Are Part-time Workers Not Well Organized?" 28-2 Japan Labor Bulletin (1988).

(28) Kazuo Sugeno & Yasuo Suwa, "Part-time and other Non-regular Workers in Japan: An Issue in a System centered on the Internal Labour Market" 8 Japan International Labour Law Forum Paper 35 (1997).

(29) Tadashi Hanami, "Japan (Non-Standard Work and Industrial Relations)" 35 Bulletin of Comparative Labour Relations 116 (1999).

(30) Takashi Araki, "Regulation of Working Hours for White-collar Workers Engaging in 'Discretionary Activities,'" 35-7 Japan Labor Bulletin (1996).

(31) Blanpain, *supra* note 4, 41; Manfred Weiss, "Employment versus Self-employment: The Search for a Demarcation Line in Germany," in Yamaguchi, K. et al, New Trends of Labour Law in the International Horizon, Liber Amicorum for Prof. Dr. Tadashi Hanami, 251 (2000).

(32) Kazuo Sugeno, *Japanese Labor Law*. Seattle: University of Washington Press, 425 (1992).

(33) The *Tokyo Heppu Sandaru Ko Kumiai* case, 357 Chuō Rōdō Jihō 36 (1960).

(34) Ryuichi Yamakawa, "New Wine in Old Bottle?: Employee/Independent Contractor Distinction under Japanese Labor Law" 21 Comparative Labor Law and Policy Journal 108 (1999).

(35) The World Labor Report 1997-98 admitted that the meaning and scope of the informal sector still remain a matter of controversy. ILO, *supra* note 2, 177.

(36) See ILO, *World Labor Report 2000: Income Security and Social Protection in a Changing World*, 194 (2000).

(37) Johannes Schregle, *Negotiating Development — Labour Relations in Southern Asia*. ILO 80 (1982).

(38) ILO, *supra* note 2, 175.

(39) Mitsuko Horiuchi, "Shinkoku-ka suru Asia Keizai Kiki no Naka de: ILO no Torikumi to Kadai" (In the deteriorated Asian economic crisis: the ILO's measures and challenges) (Speech at JIL on Nov. 6, 1998) <http://www.jil.go.jp/kouen/no_12.html>

(40) Forsyth, *supra* note 5, 26.

(41) Hanami, *supra* note 25, 19 quoting Campbell, "Recovery from the Crisis: The Prospects for Social Dialogue in East Asia;" Gatchalian, "Employee Representation and Workplace Participation (Focus on Philippine Labor Management Councils);" and Ofreneo, "Globalization and the Asian Economic Crisis: An Assessment of the Social Accord Initiatives in the Philippines."

(42) ILO, *supra* note 2, 27.

JIL NEWS AND INFORMATION

Symposium: Human Resource Development of IT Workers

A symposium sponsored by the Japan Institute of Labour concerning the development of skilled IT engineers, currently in short supply, was held on March 15 in Tokyo. The event began with keynote speeches by Dr. Kevin McCormick (University of Sussex, U.K.) and Prof. Yoshiki Kurata (Hitotsubashi University). The presentations were followed by a panel discussion focusing on ideal strategies for human resource development of IT workers. Panelists included Mr. Kazuaki Sakamitsu (Ministry of Health, Labour and Welfare), Mr. Masami Konoue (Argo 21 Corporation) and Mr. Shingo Tatsumichi (JIL). This article is based on Professor Kurata's report.

IT engineers face several problems that are unique to the Japanese labor market, including an external unorganized labor market in terms of job type, and the difficulty engineers have developing steady careers within their companies. In recent years, some progress has been made in organizing the labor market. For example, the spread of standards such as "software process assessment" had a secondary effect of establishing the market value of engineers. This has motivated the Ministry of Economy, Trade and Industry to standardize or create seven levels for 38 specific IT skills, linking each level to a particular annual income. Meanwhile, some industrial unions have begun to make their activities more compatible with job switching, and they also plan to organize unions by particular occupational category. Enterprises, too, are beginning to understand that in order to keep their workers (i.e., prevent them from quitting to join a different company), it is necessary to create criteria for IT skills that are applicable at all companies.

Currently, the IT industry faces three difficult problems which lead to a shortage of IT engineers. The first is the failure of human resource management to evaluate specialized workers. At small and medium-sized enterprises, which constitute a majority in the IT industry, the main criteria in personnel management remains, surprisingly, an employee's tenure. Schemes applicable to specialized duties have only been adopted on a limited scale. Therefore, since specialization is not subject to fair evaluation, workers tend to be more mindful of building careers within their own company, which in turn checks the development of skilled workers required by the external labor market.

Denki Rengo (Japanese Electrical, Electronic and Information Unions) conducted an opinion survey this year targeting union members in the information service industry. The majority of IT engineers responded that they joined their present company because "it was stable and made them feel secure in their work." Among the engineers surveyed, this preference for stability accounted for 60 percent, whereas the possibility of switching companies in the future was mentioned by a mere 20 percent. The survey also found that the number of those who hoped to be promoted to a managerial post was the same number as those who wanted to specialize in their own profession.

The second concerns unorganized training systems at each enterprise level. A survey conducted by the Japan Information Technology Services Industry Association showed that of the entire amount of IT industry sales, less than two percent was invested in research and development, and training. This meagerness of investment in education and training creates an increasing number of engineers who are unable to keep pace with the latest developments in technology.

The third problem is the deep-rooted preconceptions concerning IT engineers. To date, IT jobs have been regarded as something special, a view which persists obstinately. This results in only "special" students applying for these jobs.

The industrial policies of the government that affect the training of IT workers are still based, more or less, on the same approach as in 1986, when the number of researchers in this field increased extensively. The main targets for human resource development of the basic "e-Japan" plan are (1) improving information literacy; (2) creating IT educators; (3) creating IT engineers able to engage in technology development; and (4) fostering creators of web contents. The first three categories are exactly the same targets set by the government in the 1980s. At the same time, within the framework of employment policies, the government is trying to remove the negative factors in human resource development by discussing such issues as (1) long working hours, *karoshi* (death by overwork) and mental illness, (2) insecure job contracts, including those of dispatched workers, and (3) the low rate of unionization. All of these, of course, have been issues since the advent of industrialization.

Unlike Japan where emphasis is placed on the development and protection of individual industries, in the U.K. the primary focus in reinforcing competitiveness is on taking advantage of private sectors. Good examples include business-linked services — a means of supporting small and medium-sized enterprises by setting up counselling and information-provider centers across the country — and other positive supportive measures, which have succeeded in turning many IT engineers into independent entrepreneurs, and have highlighted individual regions for promoting the incubation of entrepreneurships concerned with the IT industry. There are, it seems, many lessons that Japan can learn.

Marco Biagi Has Gone Too Early

by Tadashi Hanami
Chairman, The Japan Institute of Labour

It was a real tragedy and a great shock for all of us in the world who have been engaged in labor studies for these few decades. On the evening of March 19, Marco Biagi, Professor of Labor Law at the University of Modena was assassinated in front of his apartment. He was a great scholar, a very sincere and amiable person, the most reliable working partner and such a wonderful warm-hearted friend.

He became another victim in a series of assassinations carried out by Italian terrorists in recent years against advisers of the Italian Labor Minister. He has sacrificed his most precious life for his contribution to governmental efforts to deregulate and rationalize Italian labor law. He was a leading defendant of reforming the inflexible Italian labor market. The terrorists regarded him as an enemy of job security, that had become vested interests protected by rigid regulations under the rather notorious Italian labor law.

He was not only a leading labor law scholar in Italy but also internationally highly respected as an influential comparative scholar. He played a great role in organizing the most successful World Congress of the International Industrial Research Association (IIRA) in Bologna in 1998 in his capacity as President of the Italian Industrial Research Association. He had also done a good job as the Managing Editor of the *International Journal of Comparative Labor Law and Industrial Relations*. In his capacity as an editor of this internationally prestigious journal, he ran the International Club of Labor Law Journals which organizes 10 of the leading labor journals in the world, including this *Japan Labor Bulletin*.

(AP/Wide World Photos)

In a good number of international joint projects in the past I had the privilege to work together with him. He was such a reliable paper writer and discussant who played always the most leading role during the discussion by his highly intelligent wisdom, great knowledge in the field of labor and splendid eloquence in his fluent and precise English. He was also a thoughtful and warm host, providing very well organized logistics to our participants whenever meetings for such international projects were held in Italy.

Thus we had so much enjoyed his company not only as a reliable working colleague but also more as a most adorable friend. The more we had enjoyed his presence in the past the deeper we miss him today with tremendous sorrow and anger. He was only 51 years old. He has gone too early. The IIRA and the International Society of Labor Law and Social Security will publish a *Liber Amicorum* in his memory. It is so absurd that this is only thing we can do now.

OPINIONS REQUESTED

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

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