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GENERAL SURVEY

Suicides Exceed 30,000 for Fourth Year; One-fifth Due to Economic Problems

The number of suicides in 2001 was 31,042, marking the fourth consecutive year this figure has topped 30,000. Suicides resulting from economic and/or financial stress totalled 6,845, the highest ever.

From 1978, when the National Police Agency began collecting statistics, until 1997, suicides had hovered between 20,000 and 25,000 per year. Since 1998, however, the number has been over 31,000 per year. This number represents one out of every 4,098 people living in Japan.

More than 22,000 men killed themselves last year, accounting for more than 70 percent. By age, those over 40 accounted for 75.4 percent of all suicides: 10,891 people in their 60s and older committed suicide, the

highest for any age group; followed by 7,883 people in their 50s and 4,643 people in their 40s. By occupation, the breakdown revealed that the greatest number of people who took their own life, 14,443, were jobless, followed by 7,307 suicides by company employees, 4,149 self-employed, 2,705 housewives or househusbands, 749 students and 692 managers.

The majority of people killed themselves because of health problems, 15,131. This was followed by economic/financial difficulties at 6,845, family issues at 2,668 and work-related problems at 1,756. In 2001, more suicides were attributed to economic/financial problems — which includes debt, decline in business, financial stress and job loss — than in any other year and nearly doubled the 3,556 in 1997.

Of the 9,115 people who left suicide notes, 2,872 committed suicide due to economic/financial problems. Of them, 934 had been self-employed, 887 had been unemployed, 786 were company employees and 167

managers.

Looking at the 2,398 company employees who left suicide notes, economic/financial problems were cited most frequently as the cause at 786, followed by health problems (559) and work-related problems (418).

The Ministry of Health, Labour and Welfare, which considers the establishment of effective suicide prevention measures an urgent issue, formed a council composed of suicide prevention measure specialists in May. The interim report released by the council on August 13 called for two concrete measures to be immediately implemented: 1) inform and educate the public about psychological health problems, and 2) improve cooperation on a regular basis among health officials at the regional level and in the workplace, improve the quality of specialists, and develop a consultation system.

NPO Employment Environment Needs Improvement

On July 10, the Research Institute of Economy, Trade and Industry, an independent body under the jurisdiction of the Ministry of Economy, Trade and Industry, released the results of its *Survey of NPOs*.

Although 80 percent of all NPOs (non-profit organizations) employ office staff, the survey revealed that they worked limited hours and received wages that are quite a bit lower than wages at public institutions and private corporations. The report suggested that in order to attract higher quality employees, NPOs need to improve wage standards.

Volunteer work in the aftermath of the 1995 Kobe earthquake piqued interest in NPOs. However, at that time non-profit foundations and corporations could not

be established in Japan without the approval of the central bureaucracy and thus their numbers were small. An international comparison of NPOs undertaken in 1990 showed that NPO employees accounted for a mere 2.5 percent of the total work force, a much smaller percentage than in the United States or European countries. Following that report, the Japanese public expressed a desire for more non-profit activities and in 1998 the NPO Law was passed, making the formation of NPOs simpler.

This survey targeted non-profit organizations specified in the NPO Law. It was conducted in October 2001 and responses were collected from 1,418 of the 4,623 NPOs registered by the Cabinet Office and prefectural governments.

The average NPO is staffed with 6.3 workers. Most (3.8) are non-regular employees, while 2.5 are regular employees. Furthermore, 3.7 workers are paid while 2.6, or 40 percent, do not receive wages.

Thirty percent of the non-regular paid employees work one to two days per week and 40 percent work three to four days. Seventy percent of the unpaid workers work one to two days while 20 percent work three to four days per week. Overall, NPO employees work few days per week.

The annual salary — ¥1.34 million for regular employees and ¥510,000 for non-regular staff — is low, held down by the 40 percent that are unpaid. Looking at paid staff alone, however, more than half receive less than ¥2.5 million per year.

As far as working conditions are concerned, only a mere 30 percent of NPOs sign employment contracts with their employees. Only 20 percent or so have work

Statistical Aspect

Recent Labor Economy Indices

| | July 2002 | August 2002 | Change from previous year (August) |
|--------------------------------------|---------------------|---------------------|------------------------------------|
| Labor force | 6,725 (10 thousand) | 6,732 (10 thousand) | -48 (10 thousand) |
| Employed ⁽¹⁾ | 6,374 | 6,371 | -72 |
| Employees ⁽¹⁾ | 5,379 | 5,363 | -9 |
| Unemployed ⁽¹⁾ | 352 | 361 | 25 |
| Unemployment rate ⁽¹⁾ | 5.4% | 5.4% | 0.4 |
| Active opening rate ⁽¹⁾ | 0.54 | 0.54 | -0.04 |
| Total hours worked ⁽²⁾ | 158.1 (hours) | 149.0 (hours)* | 0.0 |
| Monthly cash earnings ⁽²⁾ | 409.7 (¥ thousand) | 298.4 (¥ thousand)* | -3.7 |

Notes: ⁽¹⁾ Seasonally-adjusted figures.

⁽²⁾ Figures refer to establishments employing five or more people.

*Preliminary figures.

US\$1= ¥122 (October 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).

rules and belong to social security insurance programs. A mere 10 percent have retirement allowance systems for their employees.

Despite the low pay, or in some cases the lack of any pay, many people work for NPOs because they feel it gives them a purpose in life. In February, the Research Institute of Economy, Trade and Industry projected that the demand for labor in the NPO sector was much greater than in other sectors. Therefore, NPOs need to swiftly improve working conditions. An interim report put out in May by the Industrial Structure Council inside the Ministry of Economy, Trade and Industry called for changes in the tax system to promote donations to NPOs by individuals and enterprises, and measures to lighten taxes on income of NPOs. Changes in the tax system that give overall support to NPOs are desired in part because they will promote improvements in the staff's working environment.

Number of Firms and Regular Employees Down; Number of Part-time and Temporary Workers Up

The results of the *Business and Corporate Statistics Survey in 2001* show that the number of business establishments nationwide and the number of employed people have declined since the last survey in 1997, while non-regular employees (temporary workers, part-timers, etc.) are increasing in number.

The survey, initiated by the Ministry of Public Management, Home Affairs, Posts and Telecommunications has been conducted every five years since 1972 to assess trends in the number of business establishments, and ups and downs in industry.

The decrease in the number of business establishments marked the second consecutive decline; while that of employees was the first ever.

Through the 1970s and '80s, the number of businesses rose rapidly, reaching 6.75 million in 1991, followed by a gradual increase until 1997, when the first decline was recorded (-0.6%). In 2001, the number fell to 6.35 million, a major 5.5 percent decline over the previous survey.

By industry, in 2001, 41.0 percent of firms were in the wholesale/retail/restaurant industry, 28.8 percent in the service industry, 10.3 percent in the manufacturing industry and 9.6 percent in the construction industry. While most industries showed a decline across the board or no change, the increase in businesses in the service industry was striking.

Until the 2001 survey, the number of employees had increased with each survey since registering 43.94 million in 1972. In 2001, the numbers fell to 60.18 million, a -4.1 percent change from the previous survey. Looking at employees by industry, the service industry accounts for 29.3 percent (17.65 million), the wholesale/retail/restaurant industry for 29.2 percent (17.62 million)

and the manufacturing industry for 18.5 percent (11.12 million). These top three account for 80 percent of all employees.

Similar to the number of business establishments, the greatest increase in employees was found in the service industry, particularly in information and survey services and social insurance/social welfare businesses.

Looking at the number of employees by employment status, growth is observed only in the number of non-regular employees such as part-time workers, showing a remarkable increase of 30.2 percent over five years. These non-regular workers are most prevalent in the wholesale/retail/restaurant industry, followed by the service and manufacturing industries.

The statistics on business establishments in this census do not give an accurate picture of new business start ups or failings. For one thing, businesses that start up and then quickly fail between the five-year censuses are not caught at all. Furthermore, when a business moves out of one location it is counted as a business closing and when an existing business moves into a new location it is counted as a new business. The data on employment insurance from the *White Paper on the Labour and Economy* provides a more accurate accounting of business start ups and closings. According to this data, business start ups outnumbered business closings in the service industry, whereas in the manufacturing industry business closings exceeded new businesses. On the whole, both start ups and closings were down by 10 percent, low by international standards.

The 2001 survey shows a growing shift in the industrial structure towards the service industries of information/communications and medicine. In these areas, the rate of business openings is greater than business closings, which is the main force driving the rise in non-regular employment even as the number of employees drops overall.

Along with a continued increase in employment in the service industry, further diversification of the employment structure is expected in the future.

PUBLIC POLICY

Countermeasures to Deal with the Financial Distress of the Unemployment Insurance System

The unemployment insurance subcommittee of the Labour Policy Council — an advisory body to the Minister of Health, Labour and Welfare — issued an interim report on July 19 regarding reform of the unemployment insurance system. As the financial situation of the unemployment insurance system worsens, the committee is calling for raising premiums and cutting benefits, and implementing emergency measures to create a diversified job market and make it easier to find re-employment.

In the past, Japan's unemployment insurance system was able to put away abundant funds since the low unemployment rate meant that premiums exceeded payments. In the 1990s, however, unemployment payments rose in tandem with the unemployment rate. Since 1994, the difference between income and expenditures has been covered by reserve funds, but these funds are expected to be exhausted sometime in FY2003.

Currently, one-quarter of unemployment insurance expenditures are covered by the national treasury (taxes), while most of the remainder is covered by unemployment insurance premiums that are paid fifty-fifty by labor and management. The council's report called for a 0.2 percent monthly increase in unemployment insurance rates from 1.2 percent to 1.4 percent starting this October. This increase, which would inflate revenues by ¥150 billion, would be covered equally by labor and management, so that each would be paying ¥75 billion more than before. For example, an employee with a monthly salary of ¥300,000 would pay ¥300 more per month in unemployment insurance, an increase from ¥1,800 to ¥2,100. Changing insurance rates requires going through procedures to revise the Labour Insurance Collection Law, but for emergency measures such as this, the so-called "elastic clause," which allows a change in rates within 0.2 percentage points, can be applied and rates raised without changing the law.

The interim report also calls for a review of unemployment benefits. For example, one proposal is to lower unemployment payments to alleviate a situation that might sap an unemployed worker's desire to find new work (when insurance payments are higher than what wages would be at a new place of employment) or when retired workers aged 60 to 64 are still receiving unemployment benefits but are not interested in finding re-employment. Secondly, reflecting on the recent diversification of working styles where both the premiums and benefits of part-time workers are less than those of regular employees, the report advised making them more equalized by, for example, increasing the payment days of part-time workers.

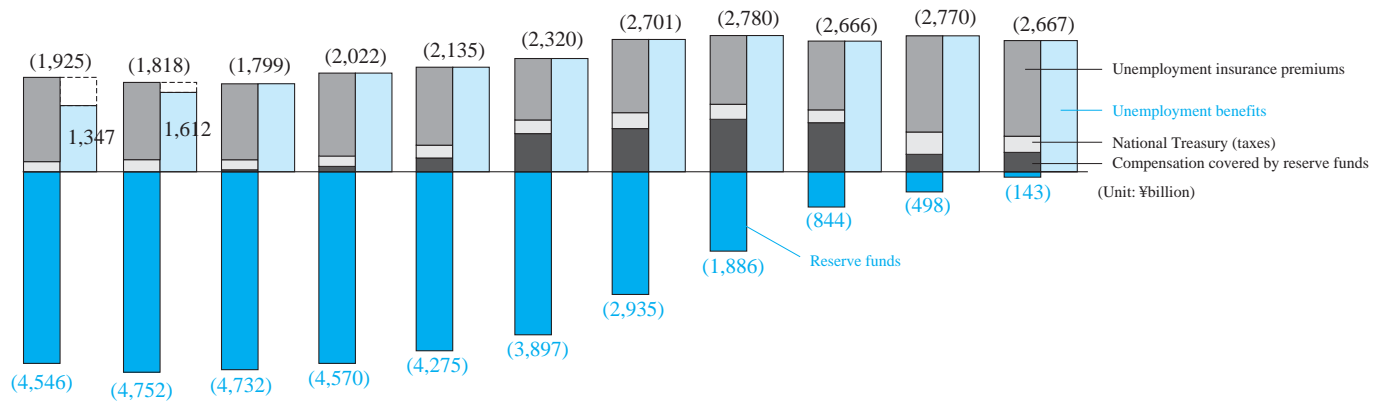
The Ministry of Health, Labour and Welfare will compile a final report in November and propose revisions to the Employment Insurance Law during the ordinary Diet session next year in hopes of amending the law by FY2003. (See the July 2000 issue of the *Japan Labor Bulletin* for a review of the existing unemployment insurance system.)

Guidelines for Balanced Treatment of Part-time Workers

A Study Group on Part-time Workers within the Ministry of Health, Labour and Welfare released in July

Statistical Aspect

The Financial Situation of the Unemployment Insurance System



| (FY) | 1992 | 1993 | 1994 | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 (forecast) |
|--|-------|-------|-------|-------|-------|-------|-------|-------|-------|--------------|-----------------|
| Unemployment rate | 2.2% | 2.6% | 2.9% | 3.2% | 3.3% | 3.5% | 4.3% | 4.7% | 4.7% | 5.2% | |
| Number of unemployed (Unit: thousand people) | 1,460 | 1,750 | 1,940 | 2,160 | 2,250 | 2,360 | 2,940 | 3,200 | 3,190 | 3,480 | |
| Number of unemployment benefit recipient (Unit: thousand people) | 570 | 700 | 780 | 840 | 840 | 900 | 1,050 | 1,070 | 1,030 | 1,110 | |
| Premium rate | 9% | 8% | | | | | | | | (Actual) 12% | |
| Government share of contributions | 22.5% | 20% | | | | | 14% | | | 25% | |

Source: Ministry of Health, Labour and Welfare.

its final report which puts forward guidelines for establishing rules to achieve balanced treatment of part-time workers.

In Japan, the number of part-time workers has been increasing in recent years. In 2001, workers with shorter working hours (less than 35 hours per week), excluding those in agricultural and forestry industries, totalled 12.05 million, accounting for 20 percent of all employees (excluding agricultural and forestry). Up until now, when the economy was in a downward trend, employers have checked any increase in the number of non-regular workers while continuing to increase the number of regular employees. In the current economic recession, however, the number of regular employees has fallen drastically whereas that of non-regular workers has increased greatly. This tendency necessitates consideration of employment opportunities for regular employees.

At the same time, part-time workers are also beginning to take more responsibility for core duties in the workplace. It is not unusual in the food service industry for part-time workers to be in charge of training new employees or to hold the post of branch manager. On the other hand, wage gaps between regular employees and part-time workers are not only large, but are expanding. (Concerning trends in wage differentials, see Statistical Aspect in the June 2002 issue of the *Japan Labor Bulletin*.)

In line with this, the study group's report proposes a multi-dimensional employment system covering the working style and treatment of regular employees while suggesting, in the form of guidelines, rules for Japanese-style balanced treatment of part-time workers.

First, the report notes that an increased variety of working styles is an irreversible trend and, to avoid a substantial imbalance in the overall labor market and a deterioration in labor conditions, it stresses the importance of diversification of the employment system, including part-time workers as well as regular employees. More concretely, it urges, as a means of establishing continuously varying forms of working styles which avoid the old dichotomy of "regular (full-time) employees firmly bound to the workplace" and "part-time workers as supplementary labor," the creation of short-time regular employees and other "in-between" types of workers who engage to some extent in core duties on either a full time or short time basis.

At the same time, the report cites the necessity for treatment of workers in accordance with the jobs they actually do, whatever form their labor contracts may take. When the treatment of workers in accordance with the jobs they actually do is guaranteed, and when workers do not need to choose one out of the two working styles but are given varied choices, regular employees will also be able to move between varied styles to match the needs of different stages in their life, such as raising children and taking care of family members. In addition, workers who are finished with child-care and have re-

entered the labor market but as part-time workers engaged in supplementary duties will then be able to take on more core duties in accordance with their enthusiasm and ability, which could be expected to motivate workers under such a new system.

Secondly, where balanced treatment for part-time workers is concerned, the report emphasizes the need to establish, and presents proposed guidelines for, Japanese-style rules which accord with the situation in Japan, where the idea of equal pay for equal work has not yet taken root. Details of the guidelines are as follows:

•Improve transparency and acceptability in personnel management

Rule 1: Provide sufficient explanation concerning differentials between part-time and regular (full-time) employees and the reasons behind them.

Rule 2: Devise ways of reflecting the wishes of part-time workers in the process of wage determination.

Rule 3: Create a system which gives better treatment to part-time employees as the nature of their duties or roles changes or as their ability improves.

•Make it possible for workers to move among varied types of labor contracts

Rule 4: Give part-time employees access to positions as full-time regular employees (or regular employees working shorter hours) conditional on their enthusiasm, ability, suitability and other factors.

•Guarantee fair rules for personnel management

Rule 5: Even when differences between full-time and part-time job contracts exist, when workers of the two types engage in identical duties, bear the same level of responsibility, and when their future career prospects as judged from, for example, the degree and frequency of reallocation, do not show any obvious distinctions, the wage determination system of the two sides should be linked to each other.

Rule 6: In line with Rule 5, in cases where there are logical reasons to apply different wage determination systems to these workers, employers should consider the balance of wage levels if the two types of workers currently engage in identical duties and bear the same amount of responsibility in practice.

"Balanced" treatment for part-time workers is hard to define in practice. The survey asked part-time workers, engaged in duties identical to those of regular employees what they considered to be acceptable wage levels. The part-time workers, full-time employees and employers surveyed responded that approximately 80 percent of the wages of regular workers was appropriate.

The report calls for the necessity not to delay establishing a legal infrastructure to encourage the observation of the rules for balanced treatment presented in the guidelines.

Special Topic

Should the Treatment of Regular and Part-time Workers be Equalized? Discrepancies in Conditions and 'Focused' Legal Regulations

Hiroya Nakakubo

Professor, Faculty of Law and Economics
Chiba University

1. Introduction

It is well-known that in Japan the term “part-time workers” refers not only to those who work shorter hours, but also to non-regular employees as a whole. These workers are treated in an inferior manner in terms of employment period, wages and other matters. In fact, a substantial number of “part-time” workers work as long as or even longer than regular employees and are thus sometimes referred to as “pseudo-part-time workers.”

What role should the law play regarding the discrepancies in working conditions between part-time workers and regular employees? The author believes that such inequalities are “unreasonable,” but cannot be considered “illegal” as such. Rather, my belief is that the law should focus on eliminating unfair discrimination when workers choose regular or non-regular jobs, and on guaranteeing them equal access to jobs.

2. Unreasonableness and Illegality

Let us begin with a simple case. Suppose there are 10 regular employees and 10 part-time workers employed in one factory. The latter are so-called “pseudo” part-time workers, meaning that their working days and hours are the same as their regular counterparts. The nature of their duties is also identical. The only difference is the method of determining wages: part-time workers are paid on an hourly basis; regular employees on a monthly basis determined by seniority, translating into a salary that can be as large as two or three times that of part-time workers. Such a gap can hardly be called “reasonable.”

To justify the discrepancy, employers put forward various reasons. According to them, despite the seemingly identical nature of the jobs, regular employees shoulder extra responsibilities in emergency situations, they are subjected to reallocation within the firm and so on; another is that the quality of the two categories of worker is different in that regular employees are hired from among new college or high school graduates on the basis of regular recruitment activities whereas no particular educational level is required of part-time workers, who are hired as necessary; and also the fact that part-time workers are employed on a fixed-term contract, and are considered to be no more than temporary, peripheral staff. Even if these claims are true — and even more so if they are not — trying to justify such a huge wage gap is a different matter. It is not surprising that part-time workers are discontent and call strongly for improvements.

Despite all this, in the eyes of the law, treatment of part-time workers is a different matter. As long as hourly wages are above the legally determined minimum wage, the treatment of part-time workers as such cannot be judged as illegal. The question lies in the disparity between them and regular employees — but setting different working conditions for different types of workers is in no sense prohibited. Article 3 of the Labour Standards Law prohibits discrimination in working conditions on the ground of nationality, creed or social status, but the widely

accepted view is that “social status” does not include status such as “part-time” as laid down in employment contracts, therefore setting different wage levels for part-time workers is considered to be justified in practice.

Of course, in cases where there is no difference between the two types of workers in terms of the three points previously mentioned, and the difference between regular employees and part-time workers is purely nominal, then it may be possible to deny the difference via legal techniques — i.e., skillful interpretations of employment contracts — and request that employers give identical treatment to both sets of workers. But in cases where differences do exist (the author believes that part-time workers who, literally, work shorter hours should be included in such differences), it is for the parties involved to decide how much economic value is attached to the difference even if the economic value thus determined seems unreasonable to outsiders — just as someone may spend a lot of money for something that appears valueless to others.



3. Arguments concerning 'Equal Treatment'

Concerning the issue of equal treatment, particularly in recent years, the view in favor of a more aggressive approach from the legal side has become increasingly dominant among academics. Typical arguments make reference to Article 3 of the Labour Standards Law mentioned earlier, Article 4 of the same law which prohibits wage discrimination against female workers, and Article 14 of the Japanese Constitution which stipulates equal rights under the law and prohibits discrimination on the basis of race, creed, sex, social status or family origin. These arguments claim that the spirit of “equal pay for work of equal value” (hereafter referred to as equal pay for equal work) and/or “equal treatment,” which if not explicit runs through these provisions, is a fundamental principle constituting “the public order” of society and conclude that discrimination in working conditions that goes against such regulation must be illegal. As for case law, the decision in the Maruko Alarms case (Nagano District Court, Ueda Branch, March 15, 1996 *Rōdō Hanrei* No. 690, p. 32) had significant repercussions. The district court ruled boldly that, in the light of the philosophy of equal treatment, the wage discrepancy between non-regular and regular workers who are engaged in the same duties for the same number of hours — so long as the wage level of the former was less than 80 percent of the latter — constituted a violation of the law, and concluded that the employers involved should pay damages to the claimants.

The author, on the other hand, finds this kind of approach

lacking. First, in determining wage levels in this country, factors concerning individuals, such as age, educational level, and the number of dependent family members, have carried great weight, and wage levels have not necessarily been linked to the nature of a job. Under such circumstances, I wonder whether it is sensible at this stage to accept the principles of “equal pay for equal work” and “equal treatment” as representing an overriding aspect of the public order. If the situation involved sexual discrimination, then, for example, the schemes whereby female workers retire when marrying and the different mandatory retirement ages depending on gender, no matter how prevalent they once were in society, must inevitably be negated in light of what is clearly laid down from the outset in Article 14 of the Constitution as impermissible and a violation of the public order (Sumitomo Cement case: Tokyo District Court, December 20, 1966, *Rominshu* Vol. 17, No. 6, p. 1407; and the Nissan Motor case: Supreme Court, March 24, 1981, *Minshu* Vol. 35, No. 2, p. 300). But it would be difficult to find a similarly firm legality in these principles of universal “equal pay for equal work” and “equal treatment.”

Second is the question of how these principles can be applied in real life. It is a rather exceptional situation when regular and part-time employees are identical in every sense; there are certain differences in the nature of their duties, levels of responsibility, educational levels, the process of hiring, the duration of employment contracts and so on. Is it in fact possible, or appropriate, for courts of justice to take all these into account in a comprehensive manner and to provide model decisions on, for example, whether or not their wages should be equal, or whether it is unacceptable that wages for part-time workers be less than 80 percent of those for regular employees? The author personally feels that such a role is more suited to arbitrators of interest disputes than courts of law.

As for future legislation, the first question does not raise any problem, but the second will remain. If legislation merely deals with the second problem by drawing limits or stipulating that employers bear a “duty to endeavor” to observe the rules, the effect might be, conversely, to make the legal principles obscure. In this regard, the final report of the Study Group on Part-time Workers published by the Ministry of the Health, Labour and Welfare this past July proposes two legal approaches for cases where regular employees and part-time workers are engaged in identical duties: (1) where there are no reasonable grounds for differentiating among workers in terms of treatment, “the principle of equal treatment” should be applied; and (2) where there are certain reasons for differentiating between the two types of workers, employers should take measures on the basis of their “obligation to bear in mind the need for a balance.” However, the nature of these approaches, particularly the second, is ambiguous and thus it is doubtful whether the proposed measures would have any effect beyond encouraging employers to improve the situation on a voluntary basis.

4. Guaranteeing Equal Access

It is the author’s position that the essence of the question lies, not in the difference in the conditions between regular and part-time workers as such, but in the fact that the opportunity to work as regular employees has not been equally open to everyone. Many people are disqualified because they are women, married women, elderly, or foreign nationals, and are obliged to work under part-time contracts. Even if a married woman is no longer concerned with child-care and wishes to work again, finding regular employment will be extremely difficult. This is supported by the fact that a majority of part-time workers are in fact female, and most are married. This is not irrelevant to the conspicuously excessive discrepancies in working conditions. Such being the case, the law should eliminate unfair discrimination based on

specific characteristics of workers, and guarantee equal access to regular employment so long as workers possess the will and the ability.

As for the hiring of employees, the legal infrastructure in Japan lags far behind other countries, partly because the Supreme Court emphasized the employer’s “freedom in hiring” in the Mitsubishi Jushi case (Supreme Court, December 12, 1973, *Minshu* Vol. 27, No. 11, p. 1536). Only recently did the revised Equal Employment Opportunity Law (effective 1999) bring a clear ruling prohibiting discrimination against females in hiring. (Before the revision, the law simply imposed on employers the “duty to endeavor” to provide equal opportunities for female workers.) The task of developing effective legal principles to prove the existence of discrimination in such situations and to rescue those who are being discriminated against still remains, nor is there any legislation concerning discrimination in hiring for other reasons. In 2001, the Employment Measures Law was revised, making it obligatory for employers to “endeavor” not to set age limits in recruitment and hiring. But the tremendously large number of exceptions allowed emasculates the effectiveness of the regulations in practice. As a beginning, efforts should be made to correct this situation.

Meanwhile, an important task concerning sexual discrimination which is now illegal will be to remedy existing situations resulting from unfair previous decisions. There are plenty of remaining cases of male-female inequality that were not considered to be unfair in the past but would qualify as illegal acts of discrimination today. Even when they do not, positive action to get rid of them is necessary. At the same time, of course, if the work of a regular employee is something that is essentially unsustainable without the support of a full-time housewife, it functions as a hidden discriminatory barrier, and the rationalization and moderation of working conditions of regular employees should be implemented.

5. Conclusion

The verdict in the Maruko Alarm case has received much praise. However, while it was possible to aid the plaintiffs from the perspective that the case involved discrimination against women or married women, the court, in a very passive way, rejected this approach, preferring to handle the matter as one of “equal treatment.” Here too, the author has his doubts. I believe that prohibiting discrimination, based on individual characteristics, rather than seeking “equal treatment,” which is too general and abstract, will yield more incisive, transparent and consistent legal principle. In this, the principle of equal wages for work of equal value would serve as a supplementary concept. It may take long, but to focus on prohibiting discrimination seems more effective in the end as a legal way of confronting the issue of wage differences affecting part-time workers.

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Special Topic

Should Wages for Regular and Part-time Workers be Based on the Principle of ‘Equal Pay for Work of Equal Value’?

Mutsuko Asakura
Professor, Faculty of Law
Tokyo Metropolitan University

1. Japan Labor Law Association Symposium

In May 1984, the Japan Labor Law Association organized a symposium on the theme of equal treatment (primarily wage equality) between regular employees and part-time workers. The meeting, the first of its kind, was held in response to the filing of a court suit against Shin Shirasuna Electronics Company in May 1983. This case was brought by female part-time workers who had been engaged in the same duties as regular workers for between eight to 16 years, and they were demanding compensation from their employer, claiming that their wages, which were 50 to at most 60 percent of those paid to regular employees, represented discrimination. In 1996, the case saw an out-of-court settlement, whereby the defendant accepted almost all the claims of the plaintiffs (Ohwaki, 2000).

In 1993, the Part-Time Labour Law was enacted in Japan, and in the following year, the International Labour Organization Convention No. 175 (Part-Time Work Convention) was adopted. In 1996, for the first time, a court ruled that part-time workers engaged in the same duties as regular employees should be paid 80 percent the wages of the latter (the Maruko Alarm Company case, Nagano District Court, Ueda Branch, March 15, 1996. *Rōdō Hanrei* No. 690, p. 32). Following this verdict, the Japan Labor Law Association held another symposium in May 1997 on the same theme.

Meanwhile, the decision in the Maruko Alarm case was contested by the defendant, and heard before the Tokyo High Court. In November 1999, an out-of-court settlement was reached whereby the claims of 28 female temporary (non-regular) employees concerning wage discrimination between non-regular workers and regular employees were more or less fully accepted (Iwashita, et al, 2000).

2. From the Viewpoint of Labor Law

The issue of equal treatment between regular employees and part-time workers has been discussed not only in terms of labor law but also from other academic viewpoints, such as social policy and labor economics. But when the discussion centers on labor law, particular attention should be paid to the distinction between “interpretative” and “legislative” approaches. In some cases, a

debater who is negative about inducing the need for equal treatment from an interpretation of current law may support equal treatment when considering possible future legislation. (This is a question of policy choices.) In addition, it is important to consider the precise nature of part-time workers, that is, whether the argument covers “typical” part-time workers, or so-called “quasi” part-time workers, as seen in the Shin Shirasuna Electronics and the Maruko Alarm cases where part-time workers were engaged for a long period doing the same duties as regular employees. Discussion throughout the Japan Labor Law Association symposiums focused on the question of the legal interpretation of the violation of the public order concerning different treatment of quasi part-time workers.

At the time of the first symposium in 1984 there were two opposing views. One view held that “labor of equal amount and quality, regardless of the worker’s gender, age, social status, nationality or creed, brings in a new equal value, and thus the demand for equal wages ... is an established global principle.” This wing claimed that setting different wages for part-time workers goes against the principle of equal pay for work of equal value (hereafter referred to as equal pay for equal work), and is a violation of the public order, and as such is invalid (Honda, 1983). The other view countered by claiming that, if that interpretation were accepted, the current situation would be a mass of illegality (Shimoi, 1984). The latter view, using the legislation approach to support their position, claimed that there is no reason to oppose the enactment of legislation requiring employers to end discriminatory treatment of workers who are part-time in name only, while an interpretative approach holds that it is doubtful whether there are in fact the social and economic foundations in Japan for accepting “equal pay for equal work” as a public principle or criterion. At this stage, of course, even among those who claimed that a violation of the public order had occurred, the argument did not go deeper to specify in detail the conditions that



needed to be fulfilled to achieve equal treatment between part-time workers and regular employees.

3. Legal Principle Leading to Equal Pay

At the time of the symposium in 1997, theoretical arguments concerning the issue had deepened, in particular, the remarkable, well documented research on part-time work by Mizumachi (1997). Mizumachi states that it is legally justified in Japan for workers with greater obligations to be given more rights (right to demand wages) out of consideration for or as compensation for such obligations. These obligations include accepting working overtime, reallocation, not engaging in competitive work for another company, and observing instructions concerning duties. A characteristic of part-time workers is their relative freedom from these obligations (less restrictions), and in this sense, he claims, it is reasonable for employers to pay lower wages to part-time workers. Put differently, the principle of equal pay between regular employees and part-time workers follows “the principle of equal pay for equal obligations.” The legal justification for this depends on the interpretation of Article 14, Paragraph 1 of the Japanese Constitution, i.e., that the spirit of the law — prohibiting discriminative treatment of workers without a rational reason — effectively prohibits wage discrimination when equal obligations are involved. This means that discrimination against part-time workers who have the same obligations as regular employee is against the public order.

In academic circles, in line with the questions raised in the above mentioned Shimoi theory, a strong view still exists that, because there are no social foundations in Japan admitting the principle of equal pay for equal work, the issue of wage differences involving part-time workers should be left to collective labor-management bargaining, staying outside the legislative framework (for example, Sugeno and Suwa, 1998). On the other hand, Mizumachi thoroughly investigated the issue from both an interpretative and legislative standpoint, and rigorously presented the bases for equal treatment and wage equality — though, according to his logic, the differences relating to overtime, reallocation, after-work activities, and the degree of freedom in, for example, deciding working hours are the basic justification for wage differentials.

In a thesis the author wrote as an *amicus curiae* in the Shin Shirasuna Electronics case (Asakura, 1996), the author took up the principle of equal treatment — which is the aim of Articles 13 and 14 of the Constitution and Articles 3 and 4 of the Labour Standards Law — stating that employers have an obligation to pay equal wages to workers engaged in work of equal value. In so doing, the author presented the factors determining “work of equal value”: (1) “duties, efficiency, and skills” directly associated with the quality and amount of labor; (2) “age, educational level, and tenure,” which are indirectly associated with the quality and amount of labor; and (3) “the degree of contribution to the company in the economic sense.” In no way does the author reject Mizumachi’s emphasis on

the obligation to accept instructions concerning reallocation and overtime as a justification for wage differentials; on the contrary, the author sees it as a justification for wage gaps in cases where such an obligation in practice creates differences in the quality and amount of labor and the contribution to the company — factors which logically determine wage levels. This is, as was criticized later (Tsuchida, 1999, p. 560), a fairly narrow understanding of “equal pay for equal work.” Yamada (1997), on the other hand, puts forwards the position that “the quality and amount of labor” is the criteria for equal wages, citing the nature of jobs, degree of responsibility, skills, experience, tenure and age.

Either way, while they differ in their range of criteria for equal wages, Mizumachi, Asakura and Yamada do not agree with the view that denies that the principle of equal pay for regular employees and part-time workers is already contained in existing social and economic foundations (Sugeno and Suwa, 1998).

4. Equal Pay for Work of Equal Value Should be Observed

Then, should the legal principle of equal wages between part-time workers and regular employees be based on “the principle of equal pay for equal obligations” as claimed by Mizumachi, rather than “the principle of equal pay for equal work?” The verdict in the Maruko Alarm case denied the public order aspect of equal pay for equal work because there was no provision specifying the principle. In addition, the decision was based on the need to maintain consistency with age-profile and standard of living wages, and on the difficulty of evaluating the value of work. (On the other hand, the verdict ruled that wage differentials contradicting the philosophy of equal treatment, from which the principle of equal pay for equal work derives, are a violation of the public order.) There are in fact some cases, even among regular employees, where “the principle of equal pay for equal work” is not applied, and the promotion to higher grades through job rotation, which is ubiquitous in Japanese firms, is incompatible with wage determination in accordance with duties. Even so, do these justify denial of the principle of equal pay for equal work?

First of all, the fact that there are no clear provisions in current law does not mean it is correct to deny that the principle is part of the public order. The council of judges of the Supreme Court held on October 27, 1998, saw more or less unanimous agreement on the question of whether or not it was allowable to differentiate regular employees and temporary workers in terms of wages even though the tenure, nature of the work, and working hours of the two were the same. They concluded that legislation requiring observation of the principle of equal pay for equal work does not exist, and thus, unless the wage gap violates the public order, it is permissible (Supreme Court, 1998). Although the nature of the “public order” is not clear, the Supreme Court does not reject the possibility that the public order may be violated in some wage dis-

parity cases. Admittedly, the United Nation's Committee on Economic, Social and Cultural Rights is critical of the way this interpretation cites the fact that there is no ruling in current law. In August 2001, the committee released its concluding observation. While noting that Japan has ratified Article 7 (a) (1) of Covenant A of the Charter of International Human Rights which lays down the principle of equal pay for equal work, the committee is concerned that in Japan "judicial decisions generally do not make reference to the Covenant on the mistaken ground that none of its provisions has direct effect" (United Nations, 2001).

The author does not consider the principle of equal pay for equal work to be rigid and to exclude all "wage differentials" based on logical reasons. The author thinks that the principle should be adopted in forms compatible with reasonable wage practices in each country (Asakura, 1996, Vol. 3, p. 46). In such cases, the principle is not necessarily inconsistent with the seniority wage system, that is, as long as the seniority wage profile is regarded as a "reasonable" determinant for setting wages. Yamada's view is also persuasive in the sense that it asserts that the principle of equal pay for equal obligations is a variant form of the principle of equal pay for equal work, and that the nature of obligations, such as "being reallocated and working overtime," can be regarded as different "responsibilities" involved in labor (Yamada, 1997, p. 122).

The principle of equal pay for equal work presents a primary principle of capitalism, that is, "goods of equal value have equivalent prices," and in this sense, it should be able to serve as a "public theory" for both labor and management. It is recognized internationally as a general principle applicable not only to wage differences between men and women (ILO Convention No. 100), but also to workers as a whole (Covenant A of the Charter of International Human Rights).

5. Should Proportional Wages for Typical Part-time Workers and Regular Employees be Realized?

The series of debates in the Japan Labor Law Association over the principle of equal treatment of part-time workers prompted by the verdict in the Maruko Alarm case was limited in its coverage because it dealt mainly with quasi part-time workers. Debate is still insufficient concerning wage differentials involving "typical" part-time workers, who are different from regular employees in terms of the quality, amount, and other aspects of work, and of the obligation to accept overtime and reallocation to other workplaces.

Tsuchida (1999) presents an interpretation based on the imposition of an "duty to endeavor for equal treatment" in Article 3 of the Part-Time Labour Law, citing the quality and amount of work, and the nature of the duties as fundamental elements, and the tenure, the degree of freedom to control their own working hours, and whether or not there is overtime and reallocation to other workplaces, as complementary elements. He contends that wage differentials involving part-time workers are

unlawful once the similarity of part-time workers to regular workers in these elements has been verified, together with the lack of effort on the employer's part to correct the wage difference, and unless the employer produces counter-evidence showing the reasonableness of the inequality and the effort he has made to correct it. Thus the discussion also covers the question of equal treatment for typical part-time workers.

Concerning policy issues, in its final report on July 19, 2002, the Study Group on Part-time Labor within the Ministry of Health, Labour and Welfare stressed as a general indication of policy, the importance of "establishing rules for Japanese-style equal treatment:" (1) in cases where the current duties and responsibilities, the extent and frequency of reallocation and other conditions are identical, employers must coordinate their wage determination systems for part-time workers and regular employees; (2) in cases where there are certain logical reasons for being unable to coordinate the systems, employers should bear in mind the need for an appropriate balance between them. This can be an appreciated recommendation as a step towards the realization of equal treatment in the future.

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Government Policy in the Era of Globalization*

Dr. Tadashi Hanami

Professor Emeritus, Sophia University
Chairman, Japan Institute of Labor



1. Decline of Labor and Social Policy

Globalization is an economic phenomenon resulting from the globalization of the activities of multinational enterprises. The fundamental purpose of such multinationals is, *inter alia*, economic, i.e. to pursue monetary gains regardless of the morality of the measures utilized for this purpose. The purpose of labor and social policies must be different than that of economic policy in the sense that it must be human and moral in order to protect and promote the well-being of workers and other disadvantaged groups.

Thus, the labor and social policies of governments in this period of globalization must be to regulate the effects of globalization for this purpose, although globalization *per se* must be accepted as a *fait accompli*. However, a shift in economic thought — from Keynesian to neo-classical as a result of the economic crisis brought about by globalization — ironically took place exactly when there was world-wide confusion in both the political and economic spheres when what was most needed was strong initiatives toward order and discipline on a world-scale. Unfortunately, the crisis took place in tandem with the fall of non-market economies represented by the former Soviet block and the establishment of a hegemony of the market-oriented superpower represented by the United States. The victory of the market economy over the planned economy consequently resulted in a negative attitude toward governmental initiatives.

The decline of government initiatives in general resulted in a decline of labor and social policies within the realm of a broader economic policy-mix. Emergence of “deregulation,” “superiority of the market-oriented economy” and the idea of “small government” in economic thought together have impacted negatively against labor and social policies.

2. Deregulation and Segmentation of the Labor Force

Along with this shift in economic thought and the decline of labor and social policies in policy-mix, there has been a segmentation of the labor force and a shrinking of regular employment, both in terms of number and meaning of the working population. This occurred almost simultaneously throughout the world. Together with the decline of labor and social policies and the role of regular employment in most parts of the world, and particularly in some of the most advanced economies, there has been a remarkable decline in the influence and prestige of trade unions. The decline in the influence of unions took place alongside the decline of labor policy, labor law and industrial relations in general.

Such significant changes have occurred in some countries in Europe and in North America. In Japan also, saddled with continuing economic difficulties, the overwhelming

Western trend towards deregulation was welcomed as an almost desperate last resort to restore the past glory of the Japanese economy. Most advisers for economic policy in the most recent Cabinets, including the present Koizumi Cabinet, are those who were trained or influenced by American monetarists, Reaganomics and supply-side economic theories in general. They claim that their policies will change the traditional Japanese economic structure which is characterized by a strong emphasis on extensive government regulation of economic activities. According to these neo-liberal theories, this is the fatal reason behind the decline of the Japanese economy after the fall of bubble economy.

However, currently there is no doubt that the policies of the present government have been neither successful in stimulating economic activities nor in creating employment, but rather have only promoted an income divide in Japanese society. On the one hand, they have introduced a rather limited scope of deregulation in employment policy, such as a partial relaxation of labor exchange and regulations regarding temporary work. But on the other hand, they have introduced certain steps and are trying to promote employment security for older regular workers who have enjoyed established privileges under the traditional employment system by encouraging a higher retirement age. Such a policy is obviously counterposed to the idea of deregulation. Thus, while the government has introduced these contradictory policies and is causing confusion, it has apparently failed to create the political conditions that are necessary to bring fundamental change to the basic structure of Japanese politics and the economy.

Meanwhile, globalization is depriving Japanese manufacturing industries of taking advantage of qualified labor and technology in the newly-developing economies, particularly in Asia. In this regard, China’s entry into the market economy is the most serious factor.

3. Role of the Japanese Government in the Globalizing World

The Japanese economy is faced with serious challenges: the pressure of competition from advanced multinational economic forces, as in the past, combined with the new phenomenon of newly emerging economies in Asia, particularly the giant Chinese economy. To survive, the government must establish and enforce active labor and social policies

that will create a new employment environment which maintains the traditional long-term employment system that creates and preserves capable core workers, while establishing flexible arrangements that incorporate efficient contingent workers that are needed to cope with extensive business fluctuations, which are expected to become sharper in the future.

In the past, Japan has been a model for developing countries, the only late-comer in the world to have successfully developed a highly advanced economy, and particularly in Asia. However, what is often overlooked is the fact that Japan, as a forerunner of development, has been successful because it accepted international rules in the field of labor and social policies by observing fundamental modern labor law principles set down after the Second World War. As early as 1946, in the form of fundamental human rights, it recognized the basic rights of workers, including the right to organize, bargain and act collectively, and the principle of legally establishing minimum working conditions, all of which are contained in the Constitution of Japan. Rather generous pro-labor legislation under this basic scheme of labor law contributed to the emergence of a comparatively strong democratic trade union movement, compared to other Asian countries. And this has created a prosperous economy with a strong consumer base in the domestic market, and a reliable and capable labor force that created the strong, competitive power of the Japanese economy.

The Japanese government should have taken the initiative in guiding the development of other Asian countries along its own model. Under the threat of globalization, top political leaders in Asia have strongly voiced their support for the establishment of some kind of Asian free trade organization. Linked with this is the need to establish a labor and social dimension to the free trade arrangements in Asia.

The Japanese government must pay attention to this important dimension and take the initiative in promoting a balanced economic development with due consideration to human and welfare needs.

4. The West and the East, or the Non-West

On the international level, the importance of labor and social policies vis-à-vis economic policy has been defended and prompted most vigorously by the International Labour Organization (ILO) which has emerged as one of the most prominent international organizations throughout the recent decades of economic crisis.

The role of regional organizations such as the EU has also been remarkable in this respect as a vigorous promoter of labor and social policies not only in the realm of the European community but also to some extent beyond its geographical scope, made possible by the dominant political and economic influence of the member countries.

From the non-Western or Asian point of view, international labor standards in the form of development-assistance or financial aide are probably one of the most reliable instruments to defend labor and social policies in the wave of globalization. However, there has emerged a rather serious question about the universal nature of international standards in the Asian context. The conflict between the West

and the East began to threaten the universalism of international standards when the possible linkage between trade and labor standards was discussed in connection with the introduction of the social clause in the World Trade Organization (WTO). The most important argument opposing this linkage was based on the non-universal nature of international labor standards. Such argumentation emerged in a very sharp form at the WTO meeting in Singapore around the end of 1996, when the standpoint of the Western countries to enforce international standards with trade sanctions was criticized as hypocritical protectionism disguised as idealism. In particular, Asian countries argued that the standards are Western in their nature and not necessarily accepted without reservation in Asia.

In 1998 the ILO adopted a new instrument in the form of the “Declaration on Fundamental Principles and Rights at Work” (hereafter referred to as the “Declaration”). The Declaration was an attempt to restore universality to international standards by limiting their scope into so-called “core” conventions. This concept of “core” conventions was invented to avoid criticism against the universality of all ILO conventions that have been overblown for many years. It was hoped that the Declaration would be accepted as being based on universal values and ideas stemming from a general humanistic standpoint, taking into consideration the position of non-Western developing countries.

A Western labor law specialist has theorized that the shift in terminology from core “standards” to fundamental “rights” is an indication of “a major political victory” of Western dominance over the ILO. The shift is highly praised as having “removed the issue from the arena of national partisan politics,” making it “extremely(!) difficult for any government or political party to oppose acknowledging this right” which is now regarded as a fundamental human right. Thus this shift “moved the issue out of the miasma of debate on the universality of application of labor standards in the face of varying economic conditions” (J.R. Bellace, 2001).

However, believing that the mere shift in terminology from “standards” to “rights” could successfully provide universal support for the Western idea is a very Western ethnocentric way of thinking and hardly convincing for non-Westerners. One must understand that the very idea of “human rights” is today under attack by the non-Western world. The question is whether they are really universal or only Western ideas. For instance, serious disagreement emerged among the different nations attending the September 2001 U.N. meeting on eliminating racial discrimination that was held in Durban, South Africa. It was argued that most Western countries have committed serious crimes of discrimination — such as the slave trade and colonial rule — against non-Western countries. Even the very existence of the state Israel was under attack as “a racist apartheid state” (*Japan Times*, September 3, 2001).

In many Asian and South American countries, the noble human idea of prohibiting child labor in reality lead to the death of entire families due to hunger. In these countries children will never go to school even if they are deprived of working opportunities resulting from enforcing trade sanctions that are based on a noble idea (J. Pastore, 2000).

Freedom of association, another basic human right is also not always acceptable from the standpoint of a developing economy. The ILO was urged by one of the most prominent political leaders in Asia to revise its objectives of putting priority on the right to strike over the right to earn a living. He wrote, “The economies of many developing countries have been destroyed by irresponsible industrial action” and “due to instigation by unions in developed countries, the productivity of developing countries is further disrupted” (Mahathir bin Mohammad, 1994).

5. Method of Enforcing Values and Ideas

The debate concerning international labor standards and trade not only highlighted the difference between Western and Eastern values, but also raised the question of enforcing such values. Taking the example mentioned above, the Brazilian program of enforcing international standards by guaranteeing a minimum wage to parents whose children regularly attended school and achieved certain grades is regarded as a more effective way of reducing child labor and stimulating school attendance (Pastore, 2000). A soft-law approach instead of hard-law enforcement of international labor standards has already been encouraged by several authors in addition to myself (M. Weiss, 1994, T. Hanami, 1994). It should be emphasized that the traditional Japanese method of legal enforcement is different than the West in the sense that administrative guidance as a way of enforcing policy and legal norm in general — such as administrative advice, persuasion, encouragement or discouragement, including suggestion or provision of favor and disfavor — is preferred to direct enforcement by judicial procedures (see e.g. T. Hanami, 1988).

Eventually the purpose of the “follow-up” procedures in the new Declaration of the ILO is defined as “encourag[ing] the efforts made by the Members of the Organization to promote the fundamental principles and rights” (I.1 of the Annex to the Declaration) and “not a substitute for the established supervisory mechanisms, ... consequently, specific situations within the purview of those mechanisms shall not be examined or re-examined” (I, 2 of the Annex). Thus, something other than the technical and legalistic approach of the Experts Committee, which scrutinizes laws and practice of member countries and examines them with the relevant requirements of each convention, is expected.

The supervisory mechanism of the ILO including the Experts Committee works in a very formal way whereby only conformity of the legal system of a relevant member country is examined. It never examines whether a country has complied with the convention in practice or not. Examination of the reasons behind non-conformity does not take place. The documents are treated as a *fait accompli* and their appropriateness is never examined even if their enforcement is not realistic. Even when practices are examined, only the existing practice is supervised, but improvement of the practice is never sought. Furthermore, the supervisory procedures investigate only the domestic formal system and do not cover labor issues beyond national borders or problems in the informal sector (see S. Cooney, 1999).

Such deficits in the existing mechanism might have been more or less recognized by ILO officers. In 1999, the

Governing Body appointed a panel called “Experts Advisors” to review the actual state of implementation of one of the four basic rights covered by the Declaration. The Advisors are appointed, and are composed not only of lawyers (as is the Experts Committee), but also numbers those with experience and academic expertise in labor relations, labor market analysis, and even developmental economics. This lineup may be the starting point to overcome problems of the present legalistic supervisory system.

It is also encouraging to observe that the Governing Body in the fall of 2000 decided to emphasize provision of follow-up assistance, such as sending a mission of technical and field assistance. Such new approaches could positively cope with the present deficit in the enforcement mechanism. In this regard, attention should be paid to the traditional Japanese method of legal enforcement through administrative guidance rather than judicial procedure as a future way to enforce international labor standards in a non-Western context.

6. Conclusion: The Role of the Japanese Government in Asia

The conflict between universalism as a basic idea embodied in international labor standards based on a noble idealistic philosophy on the one hand, and the Euro-centric reality of the postwar history of the ILO on the other has yet to be overcome.

In this context, the efforts by Asian nations to actually accept the basic idea of international labor standards apart from its Western codification are crucial, and an important step in recovering the role of labor and social policies in a world where the overwhelming trend is to give consideration to economic hegemony. The leadership of the Japanese government in carrying this out is very much expected.

Note: *This paper was submitted to the 4th Regional Congress of the Americas of the IIRA (International Industrial Relations Association), which was held in Toronto, Canada in June 2002.

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Final Report of the Study Group on Part-time

Yuko Nunoyama

Employment and Personnel Management Group
Labor Policy Bureau
Japan Business Federation (Nippon Keidanren)*

In 1995 Nikkeiren published *New Japanese-style Management Systems* which dealt with the question of part-time and other varied working styles. In this report, Nikkeiren proposed for consideration the introduction of individual “employment portfolios” which would allow companies to respect individual workers while making full use of their human resources.

The “employment portfolio” aims at an efficient combination of various labor contracts, such as indefinite-term (for workers displaying abilities accumulated over the long-term); fixed-term contracts (for workers specializing in highly professional skills); and other fixed-term contracts (for workers available for flexible working hours), thus offering employees a varied choice of working styles and realizing a more dynamic business management by effectively combining the needs of workers and management. How these three types of workers actually are combined, as well as their treatment and management, naturally varies depending on the individual firm, and takes different forms depending on the arrangement of full- or part-time work, types of duties, whether or not a contract is on a local basis or involves different workplaces, and so on.

In May 2002, Nikkeiren released a report entitled *Back to the Basics: A Direction for Diversity Management*. The meaning of “diversity” in this report is not restricted to the general sense of a state comprising various elements, but is a strategy for using diversified human resources. In other words, the report affirms diverse characteristics and working styles among employees as a positive asset, and envisages this situation as a continuing, positive process of spreading this perception throughout society as a whole, taking advantage of diversity as an integral part of business strategy and leading to the establishment of more specific meas-

ures.

Against this background, the Japan Business Federation, under the names of Kunio Anzai, chairman of the Committee on Personnel Management, and Hiromichi Fujita, chairman of the Committee on Labor Legislation, released the following statement on the final report of the Study Group on Part-time Workers.

- Today, the Study Group on Part-time Workers (a private study group summoned by the head of the Equal Employment, Children and Families Bureau of the Ministry of Health, Labour and Welfare) has published its final report concerning the treatment of part-time workers, which we see as a summing-up of deliberations on the subject by scholars.
 - The treatment of part-time workers is, basically, a question which labor and management in individual companies should deal with on a voluntary basis.
 - Guidelines and other measures related to the balanced treatment of part-time workers, together with the necessity of such measures, should be examined carefully, and must not interfere with the personnel management of individual companies.
- Deliberations scheduled to be held this autumn at the relevant tripartite advisory councils should take into account the need to strengthen corporate competitiveness. While taking account of workers’ needs for diversified forms of employment and work, these discussions must give serious thought to the actual situation of business management and human resource management.

*The Japan Business Federation is an organization established as a result of the merger between Keidanren and Nikkeiren in May of this year.

Workers: Viewpoints from Labor and Management

Sohgo Yoshimiya

Director of the Bureau for Equal Treatment
Japanese Trade Union Confederation (Rengo)

The final report of the Study Group on Part-time Workers, chaired by Professor Hiroki Sato from the University of Tokyo, suggested that a legal framework should be established concerning principles regarding equal treatment between part-time and full-time employees noting that “laws indicate the principle, with guidelines to supplement them.” However, the report ended by only saying that, “it was difficult to embody them in law immediately,” thus it failed to go further than encouraging improved treatment for workers via administrative guidance.

At the same time, although the report emphasized the importance of two issues — reform to allow possible various working styles by, for example, expanding the discretionary working system; and establishing rules for fair treatment reflecting values and styles of work — it did not reach a conclusion on the latter issue. There is concern that this may lead to relaxing regulations without proper rules.

In so far as the Ministry of Health, Labour and Welfare had decided that the study group should consist solely of academic experts, I had expected it to produce some clear-cut, resolute messages uninfluenced by either employers or employees. I cannot help feeling disappointed at the conclusion of the report.

The current debate on how to improve the working conditions of part-time workers in accordance with the Labour Standards Law began five years ago with the adoption of a general policy direction. In 2000, a study group report on how to measure “equality” was published, followed by this most recent report released in July 2002. Judging from the weak effectiveness of this series of actions, one can conclude that the era where things can be left to administrative guidance is over.

From September, these questions are to be debated in the Labour Policy Council. The point we would like to emphasize is that the final report of the Study Group on Part-time Workers can serve as a point of reference, but should not dictate the course of future debate. A separate study group on equal treatment consisting of members of the Council should discuss these issue fur-

ther, and we will seek the establishment of a labor law dealing with part-time and fixed-term labor contracts.

The following are the main issues we wish to examine in future debates:

1. Whether it is appropriate to distinguish employment contracts on the basis of availability of workers which may be necessary in the future, such as the possibility of reallocation to a different area, reallocation within the firm, or frequency of non-scheduled working hours;
2. Whether it is really correct to say that “equal pay for equal work” is not applicable in Japan, where description of the duties involved in a particular job are obscure;
3. Whether the nature of “reasonable” differentials should be left to the discretion of individual firms on condition that discriminative treatment of workers on the basis of working hours and types of labor contract is firmly prohibited; and
4. Whether protective measures should extend to workers on fixed-term contracts, who account for 60 percent of part-time workers as a whole, even though a different body, the Labour Standards Bureau, is in charge of this matter.

The failure to improve working conditions of part-time workers is also, to no small extent, the responsibility of the labor unions. At its 37th Central Committee Meeting in June, Rengo confirmed in a special resolution that it was determined to realize equal treatment for part-time workers and to promote to organize them into labor unions. Through a Rengo project group on part-time workers, we intend to tackle the following specific issues and push for a nationwide consensus concerning relevant legislation: (1) clarification of the criteria for “reasonable differentials” before the end of October; (2) unionization of part-time workers (a survey of the present situation and compilation of case studies); and (3) agreement on setting minimum wage levels within individual firms that will be applicable to all employees.

JIL NEWS AND INFORMATION

Survey on HRM in Japanese-affiliated Enterprises Abroad (Part 2)

3. Reasons for Dispatching Japanese Staff

Almost three-quarters of the companies (71.8%) responded that to permeate management principles and the methods of the head office, it was necessary to dispatch director-level personnel or higher to overseas work locations, while 56.5 percent responded that mid-level management were dispatched to coordinate with the Japanese head office (multiple answers possible).

Compared to the 1999 survey, the number of those who responded “because local staff are not sufficiently trained” had decreased for director level and higher (37.2% in 1999 as compared to 30.1% in 2001), and those who thought dispatching personnel was necessary to transfer technology from Japan had increased for mid-level management (35.1% in 1999, 40.4% in 2001).

4. Issues in Local Management

The main issues related to local management of human resources were “mutual understanding (between Japanese staff and local employees)” at 37.3 percent, “lack of com-

petence and morals of general local employees” at 35.9 percent, “mutual understanding (between head company and subsidiary)” at 32.4 percent, and “local mid-level management (department and section chief class) lack competence” at 32.1 percent (multiple answers possible).

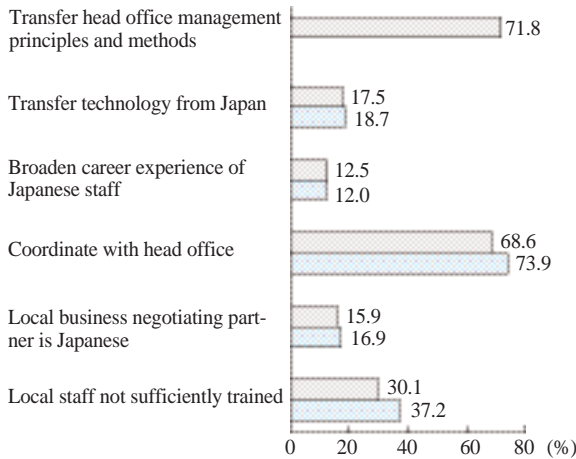
5. Wages are Still Main Source of Dispute

Of the companies that replied, 81.1 percent reported that currently there was no industrial dispute, nor had there been in the last five years. For those companies which had experienced disputes, the main source was over wages (51.5%), followed by employment adjustment (24.0%), and working hours, days off and leave (18.6%) (multiple answers possible).

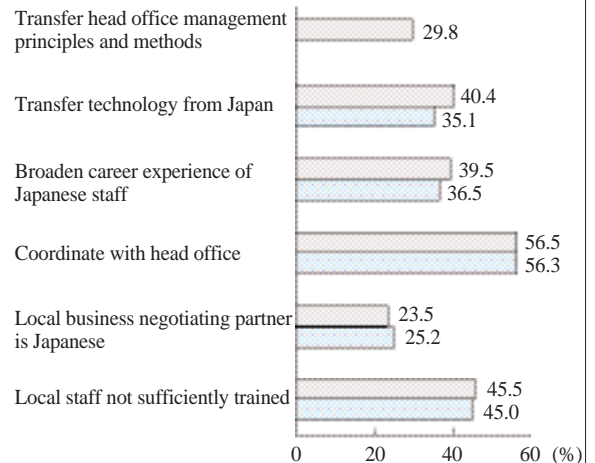
Disputes over wages and welfare benefits had decreased since the previous survey (for wages, 62.8% in 1999 and 51.5% in 2001; for benefits, 23.8% in 1999 and 14.1% in 2001). On the other hand, disputes over employment adjustments had increased (19.2% in 1999, 24.0% in 2001).

Main Reasons for Dispatching Japanese Staff (multiple answers)

Director or High-level Employee



Mid-level Management (Department and Section Chief)



Note: The response “transfer head office management principles and methods” was not included in the 1999 survey.



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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The Japan Institute of Labour, 8-23, Kamishakujii 4-chome, Nerima-ku, Tokyo 177-8502, Japan. Tel: +81-3-5991-5165 Fax: +81-3-5991-5710. Price ¥360 (inc. tax) per issue or ¥4,320 (inc. tax) per year.