

Can “Owners” of Convenience Stores be “Workers” under the Japanese Labor Union Act?



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Two remedial orders by the prefectural Labor Relations Commissions (*Rodo Inkai*) in Japan¹ that affirmed the worker status under the Labor Union Act (LUA) of “owners” of convenience stores who work in the stores they manage, have raised new interpretative issues in terms of franchisees being qualified as workers. Although the remedial orders of the Commissions seems basically reasonable, the unique characteristics of franchise agreements were not fully taken into account. In a franchise agreement, the “franchise package” entails the obligation to follow directions and orders from which worker status could be inferred. On the other hand, the franchisee increases opportunities to gain profits as a business trader. In overall judgment of worker status, the amount of income obtained ought to be a deciding factor, and thus it depends on respective convenience store “owners” as to whether they can be regarded as “workers” under the LUA. If labor unions organizing “owners” of convenience stores are recognized as legitimate labor unions meeting the requirements under the LUA, collective bargaining agreements concluded by such unions will be the content of franchise agreement by the effect of Article 16 of the LUA. In other words, franchise agreements will be recognized as “labor contracts.” However, even if the worker status of convenience store “owners” under the LUA is accepted, in the author’s opinion, their worker status under the Labor Standards Act (LSA) is not affirmed because with respect to franchise agreements, “equivalent protections” under a unique set of occupational and work regulations are provided as judicial precedents contributing to the protection of franchisees are being accumulated. Nonetheless, the relative nature of the definition of “worker” causes confusion in practice. Greater consistency of the definition of “worker” will be needed in labor legislation regulating the content of contracts. In the future, a regulatory framework for exemption for convenience store “owners” from application of the LSA/LCA should be drawn up. Meanwhile, there are problems in that convenience store “owners” who has the worker status under the LUA, in the author’s opinion, cannot be qualified as “enterprises” under the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (the Antimonopoly Act), and seemingly should be excluded from protections from abuse of superior bargaining position (the Antimonopoly Act, Article 19). But as collective agreements in Japan differ from those in Europe regulating working conditions for the industry as a whole, regulation of abuse of superior bargaining position will continue to be applied to the entire franchise system.

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I. Introduction

Regarding the status under the LUA of convenience store managers (referred to below as “convenience store ‘owners’”) who are franchisees of Japan’s two largest convenience store chains, Seven-Eleven Japan Co., Ltd. and FamilyMart Co., Ltd., the Okayama Prefectural Labor Relations Commission and the Tokyo Metropolitan Government Labor Relations Commission have issued remedial orders affirming their worker status.² Note that these are not judicial decisions on the worker status of franchisees under the LSA or in other contexts, which as far as I know have never been issued in Japan.³ Regarding franchise agreements, judicial precedents conducive to the protection of franchisees’ rights are accumulating, along with regulations based on the Antimonopoly Act. In issuing judgments on the worker status of convenience store “owners,” it is not the name of the contract but rather the actual practice that are important. It is necessary to consider the worker status of convenience store “owners” in terms of the significance of franchise agreements’ unique characteristics.

In this article, first we will look at an overview of the current debate over worker status (II), then after clarifying my position on the criteria and methods for judgment of worker status (III), it would be examined about the worker status of “owners” taking into account the unique characteristics of franchise agreements (IV).

Note that the convenience store “owners” whose worker status is considered in this article are franchisees that also engage in store operations such as customer service, cleaning, ordering, and inspections. As for convenience store “owners” who entrust all store operations to others, their worker status has not and is not expected to emerge as an issue.⁴

II. Definition of “worker” and criteria for judgment

1. “Worker” under the Labor Standards Act

Article 9 of the LSA defines ‘worker’ as “one who is employed at a business or office (hereinafter referred to as “business”) and receives wages therefrom, regardless of the type of occupation.” Of the terms in this definition, “wage” (LSA Art. 11) has a broad concept, and thus the criterion “one who is employed” has been used exclusively to determine worker status.

The definition of “worker” is often an issue in disputes over worker’s accident insurance in Japan. While the Industrial Accident Compensation Insurance Act (IACIA) does not contain a definition of “worker,” it is thought to follow the LSA in terms of the definition of “worker.”⁵ Although there are theoretical disputes among scholars, “workers” under the Labor Contracts Act (LCA) are also considered synonymous with “workers” under the LSA,⁶ and there is a prevailing opinion that labor contracts and employment contracts under the Civil Code are the same type of contract.⁷ Therefore, one can say that the definition of “worker” under the LSA is same as that of other labor laws defining the legal relationship between individual workers and employers. Furthermore, the scope of persons for whom labor and social insurance coverage is compulsory is basically equivalent to the scope of “workers” under the LSA.⁸

The specific criteria for (factors of) “employed persons” have been assembled from judicial precedents. The Labor Standards Law Study Group Report of December 19, 1985, *Criteria for ‘Workers’ under the Labor Standards Act*,⁹ analyses and summarizes the criteria for worker status. According to this report the criteria for worker status are: (i) whether the person in question can refuse the orders of the client, (ii) whether he/she is bound to the client’s directions in performing his/her work, (iii) whether he/she is bound

to a given working time and place, (iv) whether he/she can hire another person to perform his/her work, (v) whether his/her remuneration is qualified as for his/her work, not for the product, (vi) whether he/she can be qualified as a business trader (bearing financial burden of equipment, remuneration amount), (vii) whether he/she has only one client or many, and (viii) other circumstances (whether work rules apply to him/her, whether social insurance is applied to him/her, what tax status he/she has, etc.). Factors (i)–(v) are referred to collectively as criteria for “subordination to the control of the employer” (*shiyo juzoku sei*) while (vi)–(viii) are supplementary factors strengthening worker status.

In the *Yokohama Minami Rokishocho (Asahi Shigyo Inc.)* case (Supreme Court, [Nov. 28, 1996] 714 *Rohan* 14), the Supreme Court did not recognize the worker status under the LSA of X, a truck driver with his own vehicle. While acknowledging the importance of the above-mentioned criteria (ii) and (iii), interpreted them narrowly enough that in this case they did not sufficiently contribute to worker status. While X was in effect temporally and locationally confined, and was following the directions of the client, the Supreme Court stated that such directions did not exceed those “necessary due to the nature of the transport business,” and the degree of temporal and locational confinement was relatively loose compared to those of other employees, thus denying worker status. The Supreme Court also recognized X as fulfilling the criteria (vi) as the owner of the truck with responsibility for business expenses.

This tendency toward strict interpretation of “subordination to the control of the employer” while placing emphasis on factors contributing to business traders status also characterizes the *Fujisawa Rokishocho* (carpenter’s injury) case (Supreme Court [June 28, 2007] 940 *Rohan* 11), which denied the worker status of a so-called independent foreperson. On the other hand, the worker status under the LSA of drivers with their own trucks has tended to be denied since the Supreme Court ruling in the *Yokohama Minami Rokishocho* (Asahi Shigyo Inc.) case. There is a judicial precedent, however, that considered the definition of “worker” under the LSA same as that of LUA (see the next section) and acknowledged the worker status under the LSA of a consumers’ cooperative delivery driver. This is noted as a judicial precedent oriented toward unification of the definition of “worker” (The *Cargo Staff* case, Shizuoka District Court [Aug. 9, 2013,] LEX/DB 25501645).

2. “Worker” under the Labor Union Act

Article 3 of the LUA defines “workers” as “persons who live on their wages, salaries, or other equivalent income, regardless of the kind of occupation.” Since the wording differs from that of Article 9 of the LSA, and LUA is a law that supports collective bargaining, it is interpreted as a wider concept than that in the LSA.¹⁰

To give a specific example, the worker status under the LUA of orchestra members in a free performance agreement not confining them exclusively to the orchestra was affirmed in 1976.¹¹ In the practice of the Labor Relations Commission in 1985, both an association of home workers and the professional baseball players’ association were recognized as labor unions under the LUA.¹² In 2011 the Supreme Court affirmed the worker status of both chorus members at an opera house and entrusted workers who perform product repair services to customers based on contracts for service.¹³

Furthermore, a Ministry of Health, Labor and Welfare study group on labor relations act (chaired by Professor Takashi Araki, The University of Tokyo) began deliberations in May 2011 to clarify the criteria for judgment of worker status under the LUA, and compiled a report in July 2011.¹⁴ The report identifies six criteria (factors) in the above Supreme Court decisions: (i) whether the person in question is integrated into the business organization of the client, (ii) whether contents of the contract are determined unilaterally by the client, (iii) whether his/her remuneration is qualified as for his/her work, not for the product, (iv) whether he/she should respond to requests for work, (v) whether he/she is bound to the directions of the client, in a broad sense, and he/she is also bound to a given working time and place to certain degree, and (vi) whether he/she is qualified as a genuine business trader. Criteria (i) to (iii) are called “basic criteria,” criteria (iv) and (v) are called “supplementary criteria,” and criterion (vi) is called a “passive criterion.”

Among “basic criteria,” criterion (i) refers to whether or not the worker in question is secured as part of a workforce indispensable for the client’s business, but like criterion (ii) this can also include subcontractors who work for the only client, and these two criteria alone cannot be used to distinguish workers and business traders (self-employed). Meanwhile criterion (iii), “nature of the remuneration as that for work performed,” is the same as one of the criteria for the worker status under the LSA, and is considered one of the factors distinguishing employment contracts and contracts for service, but in reality it is not an effective standard, because the nature of remuneration is determined after worker status or lack thereof is already decided.

While “supplementary criteria” (iv) and (v) are intended to “reinforce and complement” the “basic criteria,” it is understood that if criteria (i) and (ii) are affirmed, criteria (iv) and (v) will tend to be judged in the direction of affirming worker status under the LUA.¹⁵ However, since criteria (iv) and (v) are also factors for judgment of worker status under the LSA, it is unclear how the criteria per se differ between the LSA and LUA.¹⁶ In the end, the difference between judgments of worker status under the LSA and under the LUA lies not in the *criteria* themselves but in *judgment procedures*, with decisions regarding the LUA tending to judge whether criteria are satisfied more loosely than those regarding the LSA.¹⁷

More recently, in the *Victor Service Engineering* case (Supreme Court [Feb. 21, 2012] 66–3 *Minshu* 955), the Supreme Court established a formula for interpretation of criteria (vi) as “whether the individual has, in practice, opportunities to manage revenue by conducting business based on his or her own independent decisions.” When the same case was remanded,¹⁸ it became clear that the temporal and locational confinement, and being under supervision, both criteria for worker status, are also criteria for denying status as a business trader. Thus, the correlation between worker status and business traders (self-employed) property was confirmed.¹⁹

3. Problems concerning current criteria and determining methods

(a) Problems concerning methods determining worker status under the Labor Standards Act

Judicial precedents denying worker status under the LSA recognize de facto temporal and locational confinement, and a certain number of directions from the client, as being “a natural obligation due to the nature of the work.” Other judgments denying worker status under LSA recognize lack of freedom to accept or reject clients’ requests as self-evident, because it is contractually obliged.²⁰ There is a tendency for this de facto confinement not to be recognized as “subordination to the control of the employer (*shiyo juzoku sei*).”

Directions may come from clients, rather than employers, making it difficult to distinguish these from the obligation to follow directions and orders that are the basis of labor contracts. However, worker status should be judged objectively based on the actual practice of work. “Natural obligations due to the nature of the work,” and contractual obligations, should also be taken into consideration in judging worker status.

(b) Unclearly between two different criteria applied in LSA and LUA

In the end, there are no clear differences between concrete criteria for judgments of worker status under the LSA and under the LUA. It appears that under the LSA, judgments of whether such criteria are satisfied are carried out strictly and tend to deny the worker status, whereas under the LUA they are looser so they tend to affirm worker status. The difference is only in judgment procedures.

However, as stated above, there are problems with current judgment procedures that do not admit de facto confinement as “subordination to the control of the employer (*shiyo juzoku sei*).” If so, the issue is how to establish clear grounds for relativity of the “worker” concept under the LSA and the LUA.

(c) The need for case-by-case approach

In a recent lower court case, the *Bunka Shutter* case (Saitama District Court [Oct. 24, 2014] 2256 *Hanrei Jiho* 94), there was a dispute over the application of the LCA and social insurance to X, who handled warehouse management and construction work allocation, based on an “contract for service,” in a distribution center of Company Y, which manufactures and sells exterior products and so forth for houses. The Saitama District Court found that while X himself had offered his own services, without hiring workers, some of the

workforce at the same facility had their own business names and entrusted tasks to other workers. Thus the court affirmed the “possibility of hiring another person performing tasks” and denied the worker status of X.

This judgment raised an issue—whether persons engaged in work for which worker status is an issue should be judged categorically or individually, when there are differences in the actual practice of work between individuals in the same sort of work. In my opinion, individual judgements should be made based on judgment procedures that objectively judge worker status from the actual practice of work. The result will be that among those contracted by the same client and engaged in the same sort of work, some will be recognized as “workers” and some will not.

III. Author’s opinion

1. Relativity of the definition of “worker”

In section II, I discussed how in current theory and judicial precedents, the definition of “worker” under the LSA and the LUA is considered to be relative. Then, what exactly are the occupations or positions recognized as “worker” under the LUA but not under the LSA? There has not been cases where worker status under the LSA and under the LUA were disputed at the same time. Currently, occupations where people are recognized as “workers” under the LUA but not under the LSA include home workers, orchestra and chorus members who have not signed exclusive contracts,²¹ professional baseball players, truck drivers who own their own vehicles,²² construction industry artisans (so-called independent foreperson),²³ messengers,²⁴ NHK subscription fee collectors,²⁵ and massage practitioners at relaxation facilities.²⁶

2. The basic definition of “worker”

The author is concerned with the fact that in the current judgment procedures for worker status under the LSA, worker status is judged too narrowly because the courts tend not to consider *de facto* confinement based on actual practice of work as “subordination to the control of the employer (*shiyo juzoku sei*),” which indicates worker status. I believe that, as with worker status under the LUA, *de facto* confinement should be emphasized, and basically the scope of worker status under the LSA should be expanded in line with scope under the LUA.

Thus, “worker” should be defined as “the essential feature of an employment relationship is that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration.” The concept contrasted with “worker” is “business trader” or “self-employed,” those who conduct transactions themselves in the market. This definition is similar to the definition of “worker” under EU law (Lawrie-Blum formula).²⁷ As criteria for whether someone qualified as “worker,” in addition to obligation to follow direction of another person, the criteria that deny the nature of a business trader should be taken into account, such as the number of clients, possibility of hiring his/her own workers, and presence or absence of equity capital. Here this definition of “worker” will be called a “basic definition of ‘worker.’”²⁸

Most of the people engaged in occupations or work types mentioned in the first paragraph above fall under this definition. They should basically be considered as “workers,” and their contracts that form the basis of their work should be qualified as “labor contracts.”

However, the building and development of labor legislation has historical background, and based on historical and systematic interpretations, not all “workers” should be understood synonymously under current law. Also, it is necessary to expand the “basic definition of ‘worker’ ” according to the aims of individual laws with regard to new forms of work emerging as the times change. In that respect, the relative nature of the definition of “worker” cannot be denied.

Most labor legislation contains provisions regulating the contents of labor contracts, and the different definitions of “worker” are mutually linked through labor contracts. In this respect, there is a need to discuss

worker status under the LSA separately from the status of “insured” or “income recipient” under social insurance and tax laws, which effectively use the same criteria as the “basic definition of ‘worker.’” This will be discussed in III 4 below.

The basic definition of “worker” is presupposed on a certain continuing relationship with the employer. Note that worker status is affirmed for occasional work as well in cases where there is an easily recognized obligation to follow.²⁹

3. “Equivalent protections” allow relativity of the definition of “worker”

As examples where worker status under the LSA is denied based on historical and systematic interpretations of the occupations or job types cited in III 1 above, which can be said to satisfy the criteria of the “basic definition of ‘worker.’” We can refer home workers, independent foremen, and professional baseball players.

Home workers are covered by a special labor law, the Home Work Act. Likewise, for independent foreperson, there is a special enrollment system based on the Industrial Accident Compensation Insurance Act, Article 35, which can be recognized as a special set of regulations under the LSA. With regard to these types of occupations, there is legislation aimed at ensuring protections equivalent to those of “workers.” In such cases where a certain degree of “equivalent protections” is recognized, worker status can be denied even for those who satisfy the “basic definition of ‘worker.’” under the relevant regulations.

A similar situation is that of professional baseball players; there is a long-standing tradition of work conditions defined based on independent and autonomous collective regulations (baseball agreement) and there are no particular problems in terms of necessity of protections. Thus, the worker status of professional baseball players under the LSA can be denied. In other words, although in practice they are “workers,” reasonable protections are provided through special laws, etc.; denying worker status under the LSA is justified based on the principle of “equivalent protections.”

For future policy, it is not appropriate to use relative definitions of “workers,” and rules for exemptions should be prepared based on the same and uniform definition of “worker.” This is because establishing criteria for each type of worker status is difficult, and in the end, the ambiguity of the criteria cited in II 3 (b) remains unresolved. As legislative examples, working hours and income requirements, used as the standard for exclusion of persons covered by social insurance, or the exemption rule of domestic workers (LSA Art. 116 Para. 2) could be considered.

4. Reconsidering the definition of “labor contracts”

“Worker” is a person who satisfies the criteria of the “basic definition of ‘worker,’” and a contract where a “worker” is one of the parties is called a “labor contract.” But for certain occupations, if we admit relativity of the definition of “worker,” we need to reconsider the definition of a “labor contract.” That is to say, home workers and professional baseball players are considered as “workers” under the LUA but not under the LSA (or LCA). Is the contract on which their work is based still called a “labor contract?” Regarding home workers, under the Home Work Act, they are treated as subcontractors, and ostensibly this appears to conflict with dominant opinions and judicial precedents which interpret employment contracts and labor contracts as synonymous. However, a person who satisfies the criteria of the definition of “worker” is a “worker,” that employment contracts which form the basis of employment are “labor contracts,” and that these can be interpreted as synonymous with the “employment contract” under the Civil Code.³⁰ Therefore, based on Article 16 of the LUA, the normative effect should be extended to contracts of those who are not considered “workers” under the LSA. This is because the right to collective bargaining and the right to conclude agreements cannot be theoretically separated. As a result, we must recognize relativity of the concept of “labor contracts” (though labor contracts are interpreted in a narrow sense under the LSA / LCA).³¹ In the future it is necessary to use the broader definition of labor contract for all labor law regulations and to develop exemption regulations in the LSA/LCA.

Although relativity of the definition of “worker” is a prevailing opinion, the “labor contract” is not necessarily interpreted in a relative sense, and some confusion is occurring. For example, in the above-mentioned *Shin-Kokuritsu Gekijo Un’ei Zaidan* case, the Tokyo High Court ruled that the chorus members and the foundation “had not entered into a labor contract that was a prerequisite for application of the LSA and LUA,” indicating that they understood contracts to which LSA and LUA apply as “labor contracts.” Likewise, in the also above-mentioned the *Kensoan* case, the Nara Prefectural Labor Relations Commission’s remedial order stated that “when an individual is judged to be “worker” under the LUA, the contract for service with Y is recognized as a fixed-term labor contract for a one-year period,” meaning a rule governing refusal of the renewal (now LCA Art. 19) is applied. This judgement interpreted each worker status under the LUA and LCA as synonymous.

According to the relative definitions of “worker,” if worker status under the LUA is acknowledged, it should not be judged that the nature of the contract between the worker and the client is a “labor contract” under the LSA/LCA, unless criteria for worker status under the LSA are separately satisfied. In order to avoid practical confusion, there is a need to unify the definition of “worker” under labor legislation regulating the contents of “labor contracts.”

IV. Worker status of convenience store “owner”

1. Convenience store “owner”: contents of contracts and its practice

In this section the worker status of convenience store “owners” will be discussed, first of all by summarizing their contracts and work contents, based on the above-described remedial orders from the prefectural Labor Relations Commissions and FamilyMart Co., Ltd.’s “Key points and overview of franchise agreements” (Legal disclosure statement, July 1, 2012).

(a) Types of franchise agreements

Franchise agreements through which people become convenience store “owners” are roughly divided into two types: (i) contracts where the franchisee provides the storefront property, and (ii) those where the franchisor (company headquarters) provide one. Even if it is the type (i), they have to adhere to standards and requirements for store usage and layout by the headquarters’ instructions. If the franchisee does not procure the storefront property or invest his or her own funds in it (the type (ii) above), the headquarters procures the storefront property and interior work on the building, and the store property is loaned for use to the franchisee by the company. Sales furnishings, fixtures and equipment in the storefront are lent by the headquarters, in either type of (i) or (ii) above.

(b) Qualifications for membership, term of contract, etc.

The term of a franchise agreement is 10 years (FamilyMart Co., Ltd.) or 15 years (Seven-Eleven Japan Co., Ltd.), and agreements may be renewed. Both individuals and corporations can be franchisees. When concluding a franchise agreement, the franchisee must pay approximately 3 million yen to the headquarters as membership dues, etc. It is expected that spouses or family members of franchisees are also working in the store.

(c) Training

After concluding a franchise agreement, the franchisee must undergo and complete training provided by the company, with the cost borne by the franchisee (training costs are included in the above-mentioned membership dues etc.) Training includes lectures and on-site training on all matters necessary for store management, such as the structure and procedures of store management, preparation of documents, specific customer service procedures, etc.

(d) Store management

In order to ensure stores are operated with a consistent image and system, the franchise agreement specifies that the appearance, interior, and layout of the store must comply with the headquarters’ standards.

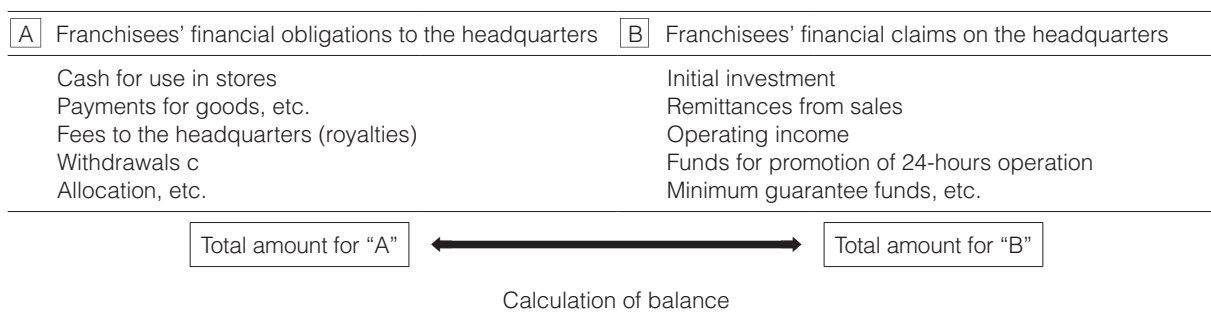


Figure 1. Overview of offset of lending and borrowing through cash settlement account (open account)

As a general rule, it is obliged to be open 24 hours a day, 7 days a week. All shops are operated using the company's data and logistics systems, and goods and suppliers are recommended. Franchisees have the option of purchasing goods from suppliers other than those recommended, but in fact this rarely occurs.

(e) Open accounts

The franchisee is obligated to use the above data and logistics system, as well as a cash settlement account (an "open account"). The open account is established by the headquarters and franchisee from the month the store opens until the month the agreement expires, and the franchisee remits sales proceeds to the headquarters every day, settles accounts payable to each party, and verifies the balance remaining, with the total deducted at the end of the month and the balance treated as a loan. Figure 1 shows amounts of liabilities that are offset between headquarters and franchisee on a monthly basis.³²

As revenue is remitted to the headquarters every day, the headquarters manages operating profits, and the franchisee cannot make withdrawals freely, but rather an amount calculated according to a prescribed method is paid to the franchisee by the headquarters once a month or once every three months, designated as "withdrawals" or "allocations."

With this approach, the headquarters is able to track gross profits thoroughly, can anticipate payment of royalties, etc. even before franchisee earns revenue, and can ensure that the franchisee pays for the purchase price of goods and products purchased from the headquarters or its designated companies.³³ "Withdrawals" or "allocations" may not be paid in cases of poor sales or the franchisee violating the contract.

If sales do not reach a certain amount, minimum guarantee funds to compensate for the deficiency are paid to the franchisee from the head office. The minimum guarantee system ensures the franchisee a certain fixed income.

2. Unique characteristics of franchise agreements

With regard to the definition of a franchise agreement, based on the definitions of the Japan Franchise Association and of the "Interpretation of the Antimonopoly Act in Franchise Systems" (amended June 23, 2011), etc., it is understood as a contract stipulating that (i) franchisors allow, and obligate, franchisees to use the franchise package (ii) franchisees are obliged to pay for the use of the franchise package (iii) the objective of the agreement is transactions of goods and services, (iv) franchisees are to carry out these transactions in their own name and according to their own calculations, (v) the contents of the franchise package include a) use of designated signs and a consistent appearance, b) provision of know-how to franchisee by franchisor, and c) continued management support for franchisees provided by franchisors.³⁴

As item (iv) in the above definition shows, in a franchise agreement, franchisees must be independent business traders. "Business trader" here, however, is regarded as a concept contrasted with "worker" under a labor contract. Thus it is considered a prerequisite for a franchise agreement that it is not a labor contract.³⁵

As discussed above, judgment of worker status should be based on the actual practice of work, not the

content of a contract, and emphasis should be placed on de facto temporal and spatial confinement. In II 3 (a) above, it was stated that mandatory provisions in contracts for service are mere contractual restrictions, and that judicial precedents that do not recognize de facto confinement as evidence of dependency to “the control of the employer (*shiyo juzoku sei*)” are not appropriate for judgment procedures. Likewise, franchise agreements contractually obligate franchisees to use franchise package. Various constraints arisen from this obligation should be considered as evidence for worker status.

However, it is necessary to consider the fact that the de facto constraints on franchisees arising from the use of the franchise package are not intrinsically a matter of worker status, but also can be seen as supporting business trader status in the overall judgment. In other words, it cannot be denied that franchise agreements could heighten profit opportunities for franchisees as business traders by using the franchise package. For example, franchisees have advantages in terms of ordering goods reliably, drastically reducing the burden of clerical work accompanying ordering and accounting by using a designated ordering system or open account, and being free from daily cash flow concerns³⁶ even though they are restricted in their suppliers and in a sense cannot exercise discretion as business traders.

3. Examinations of the prefectural Labor Relations Commissions’ remedial orders

Based on the all above, when remedial orders of the prefectural Labor Relations Commissions are examined, they can generally be supported. In several respects they needed to take the unique characteristics of franchise agreements more fully into account.

(a) Premise of the prefectural Labor Relations Commissions’ remedial orders

In the case of Seven-Eleven Japan Co., Ltd., the Okayama Prefectural Labor Relations Commission said that “Franchise agreements are concluded between independent business traders, namely, member stores and franchisors, based on their respective responsibilities,” but that “workers” under the LUA consist not only of those who supply labor under the LCA and the LSA, and even in negotiations between business traders there may be a significant power differential. As strict adherence to the principle of freedom of the contract may cause unfair consequences, it is quite reasonable to interpret those who organize labor unions and are protected by collective bargaining as being broadly included.” The Commission went on to consider franchisees’ fulfillment of criteria as “worker” under the LUA.

The Okayama Prefectural Labor Relations Commission acknowledged convenience store “owners” as “business traders” in that a franchise agreement is defined as an agreement between business traders; while recognizing that such “business traders” are contrasted with “workers” under the LSA, based on the relative definition of “worker,” it argued that being “business trader” does not hinder franchisees’ worker status under the LUA. This is a clear argument, but there remains doubt, although this may be *obiter dicta* in this case, as to whether franchisees can be interpreted to be “business traders” only by the fact of concluding a franchise agreement.

Meanwhile, in the case of FamilyMart Co., Ltd., the Tokyo Metropolitan Government Labor Relations Commission stated that “the franchisee should be said to provide labor to the company, and simply the format of a ‘franchise agreement’ is not sufficient grounds to render the LUA inapplicable,” because franchisees, i.e. store managers, engaged in work in member stores for a considerable length of time, such as running cash registers, cleaning and so forth, and this work was carried out based on detailed manuals and specific instructions.

This particular part of the Tokyo Metropolitan Government Labor Relations Commission decision is unclear, because this examination overlaps with the examination of worker status under the LUA, therefore it is pointed out that this argument is misreading.³⁷ Certainly, detailed instructions from headquarters can mean that the “owner” is working “under control, in a broad sense,” which leads to the affirmation of worker status under LUA. However, it is appropriate that it does not state that franchisees become “business traders” immediately after they conclude franchise agreements. To avoid overlapping with the examination of the

worker status of the “owner,” it would be better if the remedial order only mentioned that judgment of worker status should not be based on the contractual title “franchise agreement” alone, but objectively based on the actual practice of work.

The Okayama Prefectural Labor Relations Commission and the Tokyo Metropolitan Government Labor Relations Commission have the above-mentioned differences regarding the premise of their remedial orders, but they are nearly in alignment in terms of satisfaction of criteria under the LUA. Regarding (i) unilateral determination of contract contents, (ii) being integrated to a business organization, and (iii) nature of remuneration as work performed, as discussed above, such basic criteria do not themselves function effectively to distinguish between workers and business traders. Here it will be examined about the supplementary criteria and the nature of “business traders” or “self-employed.”

(b) Consideration of the unique characteristics of franchise agreements

With regard to supplementary criteria that have substantial meaning in judgments of worker status, both of the above remedial orders needed to take into account the unique characteristics of franchise agreements. Specifically, while they emphasized the fact that headquarters provided detailed advice and guidance as satisfying the criteria of (iv) lack of freedom not responding to requests for work and (v) providing labor under control, in a broad sense, there is room for further consideration of the unique characteristics of franchise agreements in terms of franchisees’ improved opportunities for profiting as business traders through mandatory use of the franchise package.

Regarding limits on goods and suppliers, both remedial orders recognized the franchisees as having little discretion to exercise their own skills and talents. Here they should have considered the unique characteristics of franchise agreements.

Contrary, in the FamilyMart Co., Ltd. case, the Tokyo Metropolitan Government Labor Relations Commission did not recognize franchisees as having noteworthy status as “business traders.” This is reasonable that store sales are influenced by location, and sales of no more than six million yen constitute over 70% of the total. It can be said that their lack of discretion to exercise as business traders, and their income being about the same as that of an average worker, supports for worker status.

In the Seven-Eleven Japan Co., Ltd. case, the company’s “dominant strategy” (of opening numerous stores in high-density areas), which aims to boost company profits by expanding a network of stores whose trade areas overlap, is a circumstance weighing against franchisees’ opportunities to profit as business traders, as it detracts from the interests of individual member stores.³⁸ As to whether the dominant strategy is immediately disadvantageous to individual member stores, consistent evaluation is difficult because headquarters encourage franchisees to manage multiple stores.

The major discrepancy between the worker status of convenience store “owners” and past cases in which worker status has been at issue is that the convenience store “owners” manage many employees. Regarding this point, both remedial orders note that hiring a large number of part-time workers, etc. is indispensable to fulfill the obligation of being open 24 hours a day, 365 days a year, and these hiring practices are not recognized as intended to expand the profits of “owners.” Being open 24 hours a day, 365 days a year is an important element of the franchise package of convenience stores, and it cannot generally be seen as improving franchisees’ opportunities to profit as business traders, being on the contrary a significant burden. The judgments are reasonable in this regard.

(c) Conclusion: The need for individual judgments

To summarize the above discussion, it is not possible to determine whether every convenience store “owners” should be qualified as “workers.” When examined on a case-by-case basis, the worker status of some will be recognized while those of others will be denied. As a general rule, if a franchisee acts as store manager and engages in store work personally, with income around the same level as an ordinary worker, his or her worker status ought to be affirmed. As mentioned in II 3(c) above, even if multiple parties are in contractual relationships with the same entity, if their worker status is to be judged using objective procedures

based on the actual practice of work, each of them must be examined individually.

As conclusions may differ depending on the individual convenience store “owners,” there is also the problem of whether labor unions consisting of convenience store “owners” who are qualified as “workers” and those who do not are labor union in the meaning of the LUA. In other words, labor unions consisting of convenience store “owners” will not be allowed to combat unfair labor practices unless they satisfy the stipulation of Article 2 of the LUA, “formed voluntarily and composed mainly of workers.” To that end, convenience store “owners” whose worker status is affirmed must outnumber those whose status is denied.

4. Worker status of convenience store “owner” under the Labor Standards Act

The worker status of convenience store “owners” affirmed under the LUA is likely to be denied under the LSA. This is because franchisees are an example of the relative nature of the definition of “worker” discussed in III 3 above.

Special regulations concerning franchise agreements include protections via disclosure restrictions based on the Small and Medium-Sized Retail Business Promotion Act, protection from abuse of superior bargaining position based on the Antimonopoly Act,³⁹ and contractual protections based on judicial precedents. For example, regarding open accounts, the Supreme Court has applied the concept of quasi-delegation (Civil Code Article 656), and the headquarters is obliged to report to franchisees on the specific content of the purchase price of goods not stipulated in franchise agreements.⁴⁰ In addition, in a lawsuit under Article 25 of the Antimonopoly Act, on the grounds of damages suffered due to a cease and desist order from the Fair Trade Commission ordering discontinuance of restrictions on below-cost sales of closeout goods, the Tokyo High Court judged that headquarters’ instructions and advice on refraining from below-cost sales may not be considered contractually obligatory, and may be deemed illegal if they are seen as constituting undue pressure on “owners.”⁴¹

Regulation of franchise agreements like that described above is still insufficient, and the necessity of legislation governing franchises has been pointed out.⁴² Franchisee can be seen as an occupational type for which unique regulations are developing that provide a certain degree of “equivalent protection.” While convenience store “owners” cannot be called “workers” under the LSA, in the future, it is necessary to admit their exemption from its application.

5. Reconciliation of labor law and competition law

While under the LUA, the worker status of convenience store “owners” is affirmed, on the other hand they are categorized as “business traders” subject to regulations of the competition law. Is it possible to reconcile the labor law with the competition law?

The competition law and the collective labor law can be seen as having close historical and systemic relevance,⁴³ and under EU law, the preliminary ruling in the *FNV Kunsten Informatie en Media* case⁴⁴ clearly found this to be true. In this case it is disputed whether a collective agreement for members of an orchestra in the Netherlands can constitute exemption from Article 101 of the Treaty on the Functioning of the EU (prohibition of cartels), when in this collective agreement working conditions of substitute members are regulated. In the Netherlands a substitute member of an orchestra is regarded as an independent contractor. The European Court of Justice (ECJ) stated that “a service provider can lose his status of an independent trader...if he does not determine independently his own conduct on the market, but is entirely dependent on his principal... (para. 33). . . . On the other hand, the term ‘employee’ for the purpose of EU law must itself be defined according to objective criteria that characterise the employment relationship...it is settled case-law that the essential feature of that relationship is that for a certain period of time one person performs services for and under the direction of another person in return for which he receives remuneration (para. 34)...in order that the self-employed substitutes concerned in the main proceedings may be classified, not as ‘workers’ within the meaning of EU law, but as genuine ‘undertakings’ within the meaning of that law, it is for the

national court to ascertain that, *apart from the legal nature of their works or service contract*. . . in particular, that their relationship with the orchestra concerned is not one of subordination during the contractual relationship, so that they enjoy more independence and flexibility than employees who perform the same activity, as regards the determination of the working hours, the place and manner of performing the tasks assigned, in other words, the rehearsals and concerts” (para. 37; italics added by author).

Paragraph 34 of the above preliminary ruling cites the Lawrie-Blum formula, and this indicates that the definition of “worker” under EU law can be interpreted uniformly in principle. In paragraph 37 of the ruling, there is a noteworthy reference to the irrelevance of the nature of their contract, although this article cannot possibly explain this point sufficiently. In Japan, unlike in Europe, a “labor contract” is synonymous with an employment contract under the Civil Code, and it is possible to interpret the scope of the employment contract as broader sense of the labor contract under the LUA (III 4 above).

From the above, convenience store “owners” for whom worker status under the LUA is affirmed are not “business traders” under the Antimonopoly Act but “workers” to whom labor laws apply, although their worker status under the LSA is denied.

There seems to be a problem in that as convenience store “owners” whose worker status under the LUA is acknowledged are not “business traders” (“enterprises”) under the Antimonopoly Act, they are excluded from protections from abuse of superior bargaining position. However, regulations protecting against abuse of superior bargaining position should apply to the franchise contract, which is qualified as a labor contract. Even if unions consisting of convenience store “owners” are recognized as legitimate labor unions under the LUA, franchise agreements are not regulated by collective agreements negotiated by these labor unions. In this respect, the situation in Japan can be seen as different from the EU, where labor-management relations are premised as being on an industry-wide basis.⁴⁵

V. Conclusion

1. The prefectural Labor Relations Commissions’ remedial orders that affirmed the status of convenience store “owners” as “workers” under the LUA can generally be supported, but they do not examine sufficiently whether the convenience store “owners” meet each of the criteria for worker status in light of the unique characteristics of franchise agreements. In franchise agreements, the use of the franchise package results in obligations to follow directions and orders, one of the criteria for worker status, but on the other hand, improve their opportunities to gain benefits as business traders. In comprehensive judgments of worker status, the amount of income obtained as a result of this arrangement is a deciding factor. Different conclusions can be reached for individual convenience store “owners.”

Labor unions consisting of convenience store “owners” will not be allowed to have remedial orders for unfair labor practices unless they satisfy the stipulation of Article 2 of the LUA, “formed voluntarily and composed mainly of workers.” To that end, convenience store “owners” whose worker status is affirmed must outnumber those whose status is denied. Headquarters cannot refuse to engage in collective bargaining with unions that meet the requirements under the LUA. If labor agreements are concluded as a result of collective bargaining, such collective labor agreements form the contents of franchise agreements, according to Article 16 of the LUA. That is, franchise agreements are qualitatively redefined as “labor contracts.”

2. Convenience store “owners” recognized as “workers” under the LUA cannot be qualified as “business traders” under the Antimonopoly Act. With regard to franchise agreements, however, judicial precedents with interpretations that contribute to protections for franchisees are accumulating. Therefore, it can be said that a certain degree of “equivalent protections” is being pursued through unique occupation- or job type-based regulations, meaning that worker status under the LSA is denied. Thus relativity of the definition of “worker” is confusing to deal with in practice. A consistent definition of “worker” should be applied in labor legislation regulating contract contents. In the future, regulations on exemptions from the LSA / LCA coverage should

be established by statute.

3. There seems to be a problem in that as convenience store “owners” whose worker status under the LUA is acknowledged are not “enterprises” under the Antimonopoly Act, they are excluded from protections from abuse of superior bargaining position. However, regulations protecting against abuse of superior bargaining position should apply to the franchise contract, which is qualified as labor contract. Even if unions consisting of convenience store “owners” are recognized as legitimate labor unions under the LUA, franchise agreements are not regulated by collective agreements negotiated by these labor unions. In this respect, the situation in Japan can be seen as different from the EU law, where labor-management relations are premised as being on an industry-wide basis.

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Notes

1. The Labor Relations Commissions adjudicate unfair labor practice cases under Article 7 of the Trade Union Act, such as disadvantageous treatment of union members and refusal to bargain collectively (see Takashi Araki, *Labor and Employment Law in Japan*, 2002, pp. 191–203).
2. The *Seven-Eleven Japan* case, Okayama Prefectural Labor Relations Commission’s Remedial Order (Mar. 13, 2014) 1461 *Extra Churo-ji* 1. The *FamilyMart* case, Tokyo Metropolitan Government Labor Relations Commission’s Remedial Order (Mar. 17, 2015) 1488 *Extra Churo-ji* 1.
3. As will be described later, because a franchise agreement is defined as a contract between business traders, there is a deeply rooted view that franchisees’ worker status cannot arise as a problem in principle. Noriaki Kojima, “Dantai kosho to kyoyaku hosei ni kansuru oboegaki” [Memorandum on collective bargaining and collective agreement legislation], *Handai Hogaku* 64, no.5 (2015): 3–4; Kenji Kawagoe, “Furan chai-ji no dantai to rodo kumiai” [Franchisee organizations and labor unions], in *New edition franchise handbook*, Japan Franchise Association (Tokyo: Shogyokai, 2012), 443–446.
4. In such cases, there is an employment contract between the convenience store “owner” and the store manager, but when the manager’s working hours, etc. are managed by the headquarters, the issue of the headquarters’ acting as an employer arises.
5. The *Yokohama Minami Rokishocho (Asahi Shigyo Inc.)* case, Tokyo High Court (Nov. 24, 1994) 714 *Rohan* 16. *Rokishocho* means chief of Labor Standards Inspection Office.
6. Focusing on the character of the LSA as public law and the LCA as private law, it is argued that worker status under the LCA should be broader than that of the LSA. See Koichi Kamata, “Rodo keiyaku ho no tekiyo han’i to sono kihonteki seikaku” [Scope of application and basic character of the Labor Contracts Act], *Journal of the Japan Labor Law Association* 107 (2006):32, 200; Tomoko Kawada, “Kojin ukeoi/Itaku shugyosha no keiyakuho jo no chii” [Contractual status of independent contractors and outsourced workers], *Journal of the Japan Labor Law Association* 118 (2011): 20.
7. Takashi Araki, Kazuo Sugeno, and Ryuichi Yamakawa, *Shosetsu rodo keiyakuho* [Detailed Explanation of the Labor Contracts Act], 2nd ed. (Tokyo: Kobundo, 2014), 14, 79; Satoshi Nishitani, *Rodo ho no kiso kozo* [Substructure of Labor Law] (Tokyo: Nippon Hyoron-sha, 2016), 71. For an interpretation of labor contracts as broader in scope than employment contracts, Miki Kawaguchi, *Rodosha gainen no saikosei* [Reconstruction of worker status] (Osaka: Kansai University Press, 2012), 60–62.
8. Regarding worker status under the social insurance law, decision of the *Bunka Shutter* case (Saitama District Court (Oct. 24, 2014) 2256 Hanji 94) stated, “Although it is not understood that it is totally synonymous with worker status under the LSA, it is reasonable to view the two as basically equivalent, with the exception of corporate representatives and part-time workers, etc.”
9. The Labor Standards Inspection Division of Ministry of Labour ed., *Kongo no rodo keiyaku to hosei no arikata* [Future Labor Contracts and Legal Framework] (Tokyo: Japan Institute of Labour, 1993), 50–68.
10. Kazuo Sugeno, *Rodo ho* [Labor law]. 11th ed. (Tokyo: Kobundo, 2016), 781–782; Takashi Araki, *Rodo ho* [Labor law]. 3rd ed. (Tokyo: Yuhikaku, 2016), 573; Satoshi Nishitani, *Rodo ho* [Labor law]. 2nd ed. (Tokyo: Nippon Hyoron sha, 2013), 533–534.
11. The *CBC Radio Orchestra Labor Union* case, Supreme Court (May 6, 1976), 30–4 *Minshu* 437.
12. On August 17, 1960, the Central Labor Relations Commission recognized the Tokyo Mule Sandals Craftsmen’s Guild as a labor union (Central Labor Relations Commission’s Remedial Order (Aug. 17, 1960) 357 *Churo-ji* 36). The professional baseball players’ association was certified as a labor union by the Tokyo Metropolitan Government Labor Relations Commission on Nov. 5, 1985.
13. The *New National Theatre Management Foundation* case, Supreme Court (Apr. 12, 2011)1026 *Rohan* 6; The *INAX Maintenance* case, Supreme Court (Apr. 12, 2011) 1026 *Rohan* 27.
14. Japan Labor Relations Act Study Group of MHLW, *Rodo kumiai ho jo no rodosha sei no handan kijun ni tsuite* [Criteria for worker status under the Labor Union Act] (Tokyo: Ministry of Health, Labour and Welfare, Jul. 25, 2011).

15. Araki, *supra* note 10, 575.
16. Yuichiro Mizumachi, “Rodo kumiai ho jo no rodosha sei” [*Worker Status Under the Labor Union Act*], *Jurist*, no.1426 (2011): 21.
17. Michio Tsuchida, “ ‘Rodosha’ sei handan kijun no kongo: Rokiho to rodo keiyakuho jo no ‘Rodosha’ sei o chushin ni” [The future of criteria for judgement of “worker” status: Focus on “worker” status under the Labor Standards Act and Labor Contract Act], *Jurist*, no. 1426 (2011): 55; Yoko Hashimoto, “Kojin ukeoi/itaku shugyosha to rosoho jo no rodosha gainen” [Independent contractors and the definition of “worker” under the Labor Union Act], *Journal of the Japan Labor Law Association* 118 (2011): 32.
18. The *Victor Service Engineering* case, Tokyo High Court (Jan. 23, 2013) 1070 *Rohan* 87.
19. Yoko Hashimoto, case law study, *Jurist*, no.1463 (2014): 121.
20. The *NHK Kobe Broadcasting Station* case, Osaka High Court (Sept. 11, 2015)1130 *Rohan* 22, etc.
21. In the *New National Theatre Management Foundation* case, although it was judged that the basic performance contract for one year was not an employment contract (Tokyo High Court (May 16, 2007) 944 *Rohan* 52), worker status under the Labor Union Act was affirmed by the Supreme Court.
22. Refer to the above-mentioned the *Yokohama Minami Rokishocho (Asahi Sigyo Inc.)* case, as a precedent decided at Supreme Court, the denial of worker status under the LSA. A case where worker status was affirmed under the LUA is the *Asahi Kyuhai* case, Osaka District Court (Apr. 25, 2007) 963 *Rohan* 68. However, among lower court decisions there are those in which worker status under the LSA was affirmed (the above-mentioned *Cargo Staff* case, etc.). Cases about the worker status of a truck driver are difficult to evaluate consistently.
23. As a Supreme Court decision denying worker status under the LSA, refer to the above-mentioned the *Fujisawa Rokishocho (carpenter's injury)* case. Although there seem to be no trial cases where worker status under the LUA of an independent foreperson was disputed, an example of a remedial order of the Central Labor Relations Commission affirming the worker status under the LUA of Brazilian workers of Japanese descent working in a plant producing concrete panels based on a “contract for service,” the *Shin'ei* case (Apr. 6, 2005). A labor union comprised of independent artisans (for example, Wakayama Construction Workers' Union) is affiliated with an industrial union UA ZENSEN (the largest industrial union in Japan) under the umbrella of JTUC-Rengo (Japan Trade Union Confederation).
24. In the *Sokuhei* (refusal to renew contract) case, although worker status under the LSA was denied by the Tokyo High Court (May 21, 2014) 1123 *Rohan* 83, it was affirmed by an administrative interpretation (Sept. 27, 2007 *Kihatsu* [notice issued by the Director of the Labor Standards Inspection Office] No. 0927004). There was a judicial precedent that worker status under the LUA was affirmed (the *Sokuhei* case, Tokyo High Court (Feb. 24, 2016) 1496 *Extra Churo-ji* 52).
25. Worker status under the LSA was denied (the *NHK Kobe Broadcasting* case, Osaka High Court (Sept. 11, 2015) 1130 *Rohan* 22) at the high court level, but worker status under the LUA was affirmed by the Central Labor Relations Commission (the *NHK Kobe Broadcasting* case, Central Labor Relations Commission's Order (Nov. 4, 2015) 1493 *Extra Churo-ji* 16).
26. Worker status under the LSA was denied in the *Rebirth Tokyo* case, Tokyo District Court (Jan. 16, 2015) 2237 *Rokeisoku* 11, but affirmed under the LUA in the *Kensoan* case, Nara Prefectural Labor Relations Commission (Sept. 27, 2012) 1445 *Extra Churo-ji* 1.
27. European Court of Justice (Jul. 3, 1986) Case 66/85, Lawrie-Blum, ECLI:EU:C:1986:284.
28. Yoko Hashimoto, “ ‘Rodosha’ no gainen keisei” [Building the definition of “worker”] in *Rodoho gaku no tenbo: Sugeno Kazuo sensei koki kinen ronshu* [Prospects for laborlaw studies: Kazuo Sugeno 70th birthday memorial journal] by Takashi Araki, Masahiko Iwamura, and Ryuichi Yamakawa, ed. (Tokyo: Yuhikaku, 2013), 46–47.
29. An opinion pointing out the necessity of affirming worker status under the LUA of an occasional work, see Hiroyuki Minagawa, “Shudan teki rodo ho ni okeru rodosha zo” [Image of the worker in collective labor law], *Journal of Japan Labor Law Association* Labor Law no. 119 (2012): 55–56.
30. For example, with regard to home workers, if there is an ongoing relationship with a specific customer, a contractual relationship beyond individual contract can be recognized.
31. Shinobu Nogawa, “Significance of the labor contract under Article 16 of the Labor Union Act, edited by Takashi Araki et al., *supra* note 28, 567.
32. FamilyMart, “Furanchaizu keiyaku no yoten to gaisetsu” [Key points and overview of franchise agreement] (Legal disclosure document, Jul. 1, 2012), 14.
33. Iwao Hako, “Furanchaizu shisutemu ni okeru opun akaunto sei ni tsuite” [The open account system in franchise systems], *New Business Law* 991 (2012): 31.
34. Soichiro Kozuka, *Furanchaizu keiyaku ron* [Franchise contract theory] (Tokyo: Yuhikaku, 2006), 45.
35. Kozuka, *supra* note 34, 43–44, 137.
36. Kozuka, *supra* note 34, 57.
37. Akira Hamamura, “Konbini chein kamei tenshu no rodo kumiai ho jo no rodosha sei” [Worker status of convenience store “owners” under the Labor Union Act], 1201 *Chuo rodo jiho* 24, 2016.
38. Regarding the dominant strategy, see Seigi Oyama, “Konbini owner tencho no rosoho jo no rodosha sei” [Worker status of convenience store owners under the Labor Union Act], 1821 *Rojun* 15 (2014). As brand power is increased when consumers often see shops of the same chain, headquarters can obtain royalties from multiple stores.
39. A cease and desist order was issued concerning restrictions on below-cost sales (order of the Japan Fair Trade Commission,

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- June 22, 2009). About this order, see Hajime Nishiguchi, Teruhisa Nara, and Ryo Wakamatsu ed. *Franchise Contract Judgment Handbook*, (Tokyo: Seirin Shoin, 2012), 451 (Teruhisa Nara).
40. The *Seven-Eleven Japan Open Account* case, Supreme Court (Jul. 4, 2008) 2028 *Hanji* 32 (Nishiguchi, Nara, and Wakamatsu ed., *supra* note 39, 335 (Teruhisa Nara).
41. The *Seven-Eleven Japan Antitrust Law Article 25 Lawsuit*, Tokyo High Court (Aug. 30, 2013) 2209 *Hanji* 10. This case is a civil lawsuit concerning the fair trade order, *supra* note 39, which was rejected the appeal to the Supreme Court and was confirmed.
42. Akiko Hasegawa, “Furanchaizu honbu no ranyo koi to sono hokisei” [Abuse of position by franchise headquarters and regulation thereof] 2015 *Annual Report of the Japanese Economic Law Association* no. 36, 126–127.
43. Katsutoshi Kezuka, “Hitenkei romu keiyaku shugyosha no ‘rosoho jo no rodosha’ sei ni kansuru saikosai hanketsu no teichaku to kongo no kadai” [Establishment of Supreme Court judgments on ‘Worker status under the Labor Union Act’ and future issues for atypical contract workers], 1164 *Churo-ji* 30, 2013. Hashimoto, *supra* note 16, 33–34; Hisashi Takeuchi (Okuno), “Shudan teki rodo kankei ni okeru rodosha gainen” [The definition of “worker” in collective labor relations] in *Henbo suru koyo/shuro moderu to rodo ho no kadai* [Changing employment and work models and labor law issues], ed. Shinobu Nogawa et al (Tokyo: Shojihomu, 2015), 149.
44. European Court of Justice (ECJ), Dec. 4, 2014. — Case C-413/13, FNV Kunsten Informatie en Media, ECLI:EU:C:2014:2411. For a comment on this preliminary ruling, see Masako Wakui, *Fair Trade* no. 783, p. 61 ff., 2016, and Goto Kiwamu, 1874 *Rojun* 26, 2016.
45. About the relation between the definition of “worker” under the LUA and the definition of the enterprise under the Antimonopoly Act, see Takashi Araki, “Rodo kumiai ho no rodosha to dokusen kinshi ho jo no jigyo sha” [Workers under the Labor Union Act and enterprises under the Antimonopoly Act] in *Rodo ho ga mezasu beki mono: Watanabe Akira sensei koki kinen* [What labor law should aim for: Professor Akira Watanabe memorial], eds. Kazuo Sugeno, Shigeya Nakajima, Shinobu Nogawa, Ryuichi Yamakawa (Tokyo: Shinzansha, 2011), 185 ff., Kezuka, *supra* note 42; Takeuchi (Okuno), *supra* note 43, 149.

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