

Commentary

Regional Extension of Collective Agreements under Article 18 of the Labor Union Act

The Regional Extension Decision by the Minister of Health, Labour and Welfare on September 22, 2021

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I. Facts and background

On September 22, 2021, the Minister of Health, Labour and Welfare (at the time, Tamura Norihisa) passed a decision [*Kettei*] recognizing the regional extension of a collective agreement (hereinafter, “the decision”) in accordance with Article 18 of the Labor Union Act (LUA). Prior to the decision, there were in Japan as few as eight precedents of the recognition of requests for the extension of collective agreements under Article 18 (LUA). Moreover, as all of these precedents involved requests for extension within one prefecture, the recognition of these extensions took the form of a resolution by the relevant Prefectural Labor Relations Commission and a decision by the relevant prefectural governor (as prescribed in Article 15 of the Order for the Enforcement of the LUA). This case, in contrast, entailed a request for the extension of a collective agreement applied to a region covering several different prefectures, and it therefore became Japan’s first precedent of extension under a resolution of the Central Labor Relations Commission (CLRC) and a decision of the Minister of Health, Labour and Welfare (as also prescribed in the Order for the Enforcement of the LUA, Article 15). This commentary addresses the basis for the decision, which consisted of the resolution [*Ketsugi*] by the CLRC on August 4, 2021 (“the resolution”) and a report submitted to the CLRC by a sub-commission on July 13, 2021 (“the report”).

II. Overview of the case

On April 22, 2020, the labor union of electronics superstore Yamada Denki Co., Ltd., and two other enterprise unions (“the unions party to the agreement”), which are members of the industrial union UA Zensen, formed a collective agreement regarding annual days off (“the collective agreement”) with Yamada Denki Co., Ltd. and two other enterprises that also operate large-scale stores for the mass retail of consumer electronics across Japan (“the employers party to the agreement”). The collective agreement applied to a region encompassing all of Ibaraki Prefecture and certain municipalities in Chiba Prefecture, Tochigi Prefecture, and Fukushima Prefecture. It covered those workers who are full-time employees with an indefinite term of employment (“indefinite full-time employees”) working at such electronics superstores in said regions, and stipulated a minimum of 111 annual days off.

On August 7, 2020, the unions party to the agreement submitted a request to the Minister of Health, Labour and Welfare to pass a decision to extend the collective agreement under Article 18 Paragraph 1 of LUA (“the request”). The Minister of Health, Labour and Welfare responded by requesting the CLRC to pass a resolution as prescribed in Paragraph 1 of Article 18 (LUA). The CLRC established a sub-commission to investigate and



deliberate the request.

Based on the Sub-commission's report, the CLRC passed the resolution at its general assembly meeting on August 4 that year. Given the CLRC's resolution, the Minister of Health, Labour and Welfare made the decision and issued a public notice (LUA Art.18 Para. 3) of the decision on September 22, 2021.

III. The purpose of Article 18 (LUA)

The CLRC's resolution and the report suggest that the purpose of Article 18 (LUA) is for "working conditions prescribed in a collective agreement (that fulfills the requirements prescribed in Article 18 of LUA) to be regarded as the fair working conditions for that region and to be also applied to workers and employers other than those parties to the collective agreement, thereby (i) preventing competitive reduction of working conditions and in turn assisting to maintain and improve working conditions, as well as (ii) securing fair competition between workers and between employers." Of these two, while (ii) is definite in meaning, it is not entirely evident how it differs from (i). It should, however, be noted that the report—in its judgment of the validity of regional extension, an aspect addressed in Section V below—stated that "regional extension of this collective agreement is consistent with the objectives of the regional extension system, because said extension enables the increase in the number of annual days off to the level prescribed in said collective agreement and consequently improves working conditions for the workers in the region whose employment conditions were not at that level." When such an interpretation is also considered, it could be inferred that (i) also encompasses the objective of protecting workers not enrolled in the labor unions party to the collective agreement (non-unionized workers). It can therefore be suggested that through the report and the resolution, the CLRC revealed that the Article 18 (LUA) is a combination of multiple objectives—namely, to protect non-unionized workers and to ensure fair competition between workers and between employers.

IV. Judging the fulfillment of the substantive requirements

For the extension of a collective agreement to be recognized, Article 18 Paragraph 1 of LUA stipulates that "a majority of the workers of the same kind in a particular locality come under application of a particular collective agreement." That is, the substantive requirements for extension are that a collective agreement applies to: (1) a particular locality, (2) workers of the same kind, and (3) a majority.

Looking first at requirement (1), we see that the resolution concluded that "while the region of application prescribed in the collective agreement is taken into consideration," for application to a particular locality to be recognized, "it is necessary to identify a region that can be objectively determined, is clearly definable, and is persuasive for the related workers and employers, in the light of the system's objectives." On this basis, as noted in Section II above, although the collective agreement applied not only to all of Ibaraki Prefecture but also to certain municipalities in the neighboring prefectures of Chiba, Tochigi, and Fukushima, the report and the resolution limited the particular locality in this case to all of Ibaraki Prefecture, based on two main reasons. Namely, that prefectures—given their nature as administrative districts—are a) what can be considered definable regions, as they can be demarcated objectively, without arbitrary gerrymandering, and are b) persuasive for the workers and employers who are not participants in the collective agreement as regions for the demarcation of minimum standards in working conditions, such as regional minimum wages. This judgment appears to have considered the unique nature of the case—that is, that both the employers party to the agreement and the employers to whom the extension of the agreement would apply operate electronics superstores across Japan, and those stores are not all concentrated in the region to which the collective agreement applies.

Turning to requirement (2), the report and the resolution ultimately consider the workers specified

in the collective agreement—namely, the “indefinite full-time employees employed by electronics superstores” to which the agreement applies—to be “workers of the same kind.” However, it should be noted that this conclusion was reached by the judgment that “as the mass retail of consumer electronics entails a common business model, focused on purchasing and selling in large quantities, that is consistent from enterprise to enterprise, region to region, and store to store, the job content and other aspects of the roles of ‘indefinite full-time employees’ of electronics superstores share the common focus of serving customers and managing sales,” and it was therefore certainly not the case that the workers prescribed in the collective agreement were automatically recognized as workers of the same kind.

The indefinite full-time employees of electronics superstores in Ibaraki Prefecture—which were thereby recognized as “workers of the same kind” (requirement (2)) in the “particular locality” (requirement (1))—constituted a total of 662 workers; of which 601 workers were under the application of the collective agreement because they were employed by the employers party to the agreement and members of the unions party to the agreement. The application rate of the collective agreement under Article 16 of the LUA is therefore as high as 90.8%. Furthermore, while the parties to the collective agreement consist of both multiple unions and multiple employers, the agreement itself was concluded as a single agreement with plural signers. Given these factors, the report and the resolution recognized that the “majority” (requirement (3)) of “the workers of the same kind” in the “particular locality” are “under the application of” the collective agreement. It can be suggested that this case fulfils requirement (3) without question, when it is considered that precedents include a case in which application to the “majority” was recognized for a collective agreement with a rate of application of 73% (The *Hakodate Lumber Workers’ Labor Union* case, Hokkaido Labor Relations Commission (Oct. 26, 1951)).

V. Judging validity

Having addressed the fulfillment of the substantive requirements as described in Section IV above, the report and the resolution determine the validity of the extension coverage of the collective agreement—that is, whether the extension could be considered appropriate in light of the purpose of Article 18 (LUA). Unlike the substantive requirements discussed above, the judging of validity is not directly drawn from the wording of Article 18 (LUA). We must therefore first address the question of what grounds the CLRC had for including such a judgment of the validity. It can be suggested that the report and the resolution incorporated this additional requirement of validity in the sense described above as a means of allowing the CLRC to use its own discretion, on the basis of the premise that the judgment is up to the discretion of the CLRC even in cases in which all of the substantive requirements prescribed in Article 18 (LUA) are fulfilled.

The specific factors that the report and the resolution adopted as grounds for recognizing the validity of extending coverage of the collective agreement are: (A) that the extension of the collective agreement both improves the working conditions of workers in the relevant region (the entire Ibaraki Prefecture) who have less than 111 days of annual days off, and contributes to ensuring fair competition by correcting disparities between employers and preventing the reduction of days off to levels below the standard prescribed in the collective agreement, and (B) that the request does not involve special grounds that may be an attempt to abuse the extension system as a means of restricting competition such as eliminating the new market entry of other enterprises. Moreover, in addition to these points, the report also refer to the fact that (C) the regional extension system, given its objectives, naturally presupposes that employers that fall under the extension are restricted from imposing working conditions worse than those that apply under the extension, and (D) in this case, there are no issues about the infringement of the rights to collective bargaining of the labor unions formed by the workers employed by the

employers to whom the extension applies. For each of these points, it can be suggested that the issue is whether the extension is still valid in light of the purpose of Article 18 (LUA) (see Section III) even when considering the effects of the extension of the collective agreement on those who do not belong to a party to the agreement in the context of this specific case. While recognizing that extension under Article 18 (LUA) also applies to members of labor unions other than those party to the collective agreement (“other labor unions”), (D), in particular, appears to be based on the premise that the favorability principle (the recognition of the validity of the more favorable working conditions) applies about the relationship between the standards of the extended coverage of the collective agreement and the working conditions applied to the members of the other labor unions concerned.

VI. Concluding remarks

The report and the resolution are extremely valuable as precedents because they represent the views of the CRLC directly or indirectly on various interpretive issues concerning Article 18 (LUA), which had not necessarily been the subject of active discussion in the past.

It must be noted, however, that there is a view that the purpose of Article 18 (LUA) is to protect the existence of the current collective agreements and the right to organize, neither the resolution nor the report mention these points. In addition, there may be an academic objection to the fact that the report and resolution do not interpret “particular locality” and “workers of the same kind” prescribed in Article 18 (LUA) in the same way as the applicable area and applicable workers stipulated in the collective agreement (see Section IV). It is furthermore unclear exactly what kinds of circumstances are required for the recognition of “special grounds that may be an attempt to abuse the extension system as a means of restricting competition such as eliminating the new market entry of other enterprises” touched on by the report and the resolution in their judgment of validity (see Section V). Therefore, considerable number of issues remain to be addressed about the interpretation of Article 18 (LUA).

For a detailed analysis, see Yota Yamamoto, “*Rōdō kumiai hō 18 jo no kaishaku ni tsuite: Reiwa 3 nen 9 gatsu 22 nichi kōsei rōdō daijin kettei to no igi to kadai*” [The interpretation of Article 18 of the Labor Union Act: The significance and issues of the decision, etc. of the Minister of Health, Labour and Welfare on September 22, 2021], *Quarterly Labor Law* 227 (Summer 2022): 14–30.

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