

IV-1

Shrinking of Trade Unions and Need for a New Collective Influential Voice System in Japan

1. Problems (Dysfunction of Trade union)

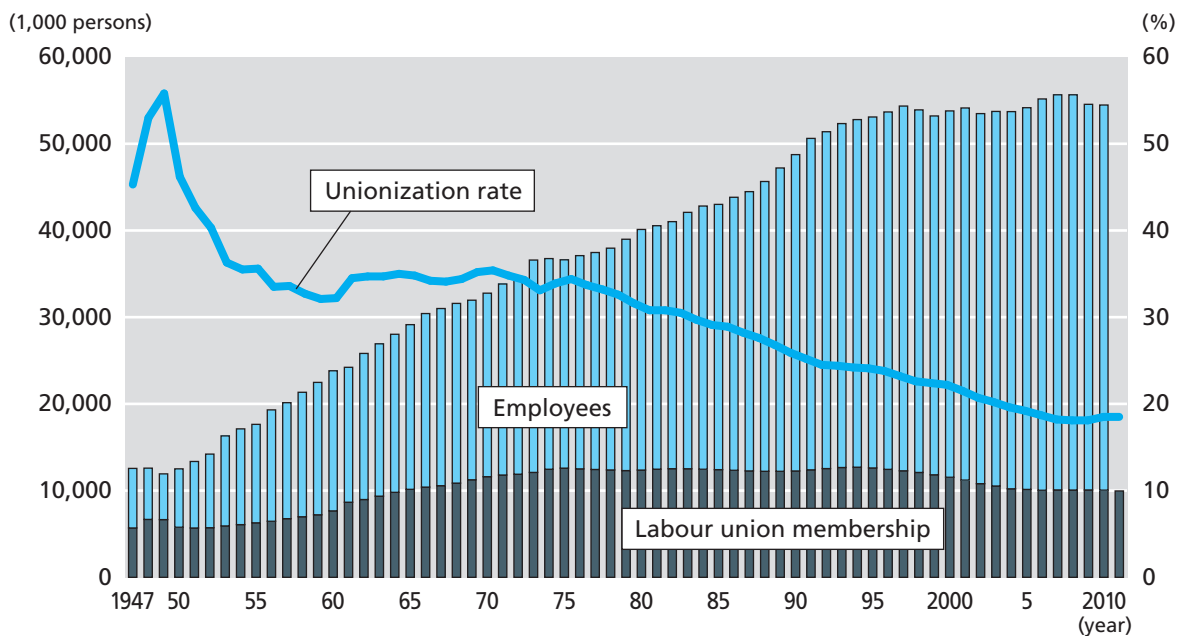
The labor legislation in developed countries faces a number of issues in the huge, universal trend of post-industrialization and economic globalization. One of the most significant issues is the decrease in the function of trade unions. In most of developed countries, the organization rate has consistently declined and such trend has caused the dysfunction of its traditional system for determining working conditions that worker protection laws stipulate minimum labor standards and working conditions that are more favorable than these standards are fixed by collective bargaining.

The power of trade unions in Japan has also

remarkably weakened. IV-1 shows the long-term trends of estimated organization rate and number of union members researched by the Ministry of Health, Labour and Welfare. After peaking at 55.8% in 1949, the organization rate continued to decline until falling below 20% in 2003. It decreased further to 18.1% in 2008, and remaining at 18.5% currently. Not only the organization rate but the number of union members is also experiencing an ongoing decline after reaching a peak of 12.70 million in 1994. It was finally 9.96 million in 2011—falling below the 10 million members even though it is affected by the Great East Japan Earthquake.

Approximately 90% of Japanese trade unions are organized by enterprise-based,¹ unlike those organized by industry as often seen in Europe and the

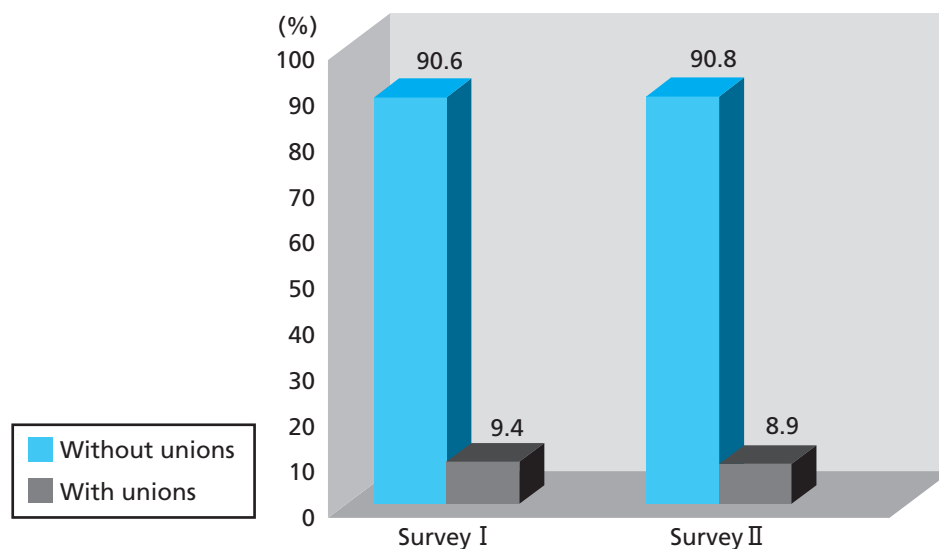
IV-1 Changes in the Estimated Organization Rate and Number of Union Members



Source: Ministry of Health, Labour and Welfare, *Basic Survey on Trade Unions*

1 In terms of organizing trade unions, Japanese Trade union Act takes the stance of free establishment, allowing workers to set up trade unions at their discretion without requiring any permission or application. However, the Trade union Act requires a trade union to meet certain criteria so that it can be recognized as a legitimate body under the said law, and to have specific qualifications in order to be eligible to participate in the procedures provided in the Law and to be granted solutions.

IV-2 Existence or Absence of Trade Unions at Private Enterprises (with 10 or More Employees)



Source: Survey I : JILPT 2005, *Survey on the Framework of Employee Relations, Employment and Retirement*
Survey II : JILPT 2005, *Survey on the Establishment and Modification of Working Conditions and Human Resources*

U.S. According to the “Basic Survey on Trade unions” conducted by the Ministry of Labour in 1997, among Japanese trade unions, 95.8% were enterprise union and 85.9% of union members belong to ones established within the corporations where they are hired. IV-2 is the result of survey in 2004, showing the ratio of the enterprises where trade union exists and the ratio of the enterprises where trade union does not exist. According to it, less than 10% of enterprises with 10 or more workers have a trade union, leaving more than 90% without any such institution.

Based on the overall tendency of decrease in organization rates, I have already pointed out the deterioration of the function of collective bargaining for improving working conditions. Moreover, it is revealed that this system is not functioning properly, as shown by the fact that more than 90% among enterprises with 10 or more employees do not have a trade union.

It is important for determining working conditions to secure a mechanism for labor-management negotiations on a practically equal footing by

complementing bargaining strength as well as properly determining workers’ opinions. In a slow-growth economy, in order to respond toward diversification of employment patterns and diversity and complexity of enterprises and workers, especially in Japan, the collective influential voice system is expected to have the following functions as well as the function that realizes more favorable working conditions than minimum labor standards stipulated by worker protection laws. To face the reality that more than 90% among enterprises have no trade union, it is an extremely important issue how to reflect opinions from employees for determining working conditions in enterprises without trade union.

A. Reflection of opinions from employees against disadvantageous modification of working conditions

In the era of high economic growth, the main issue was to improve working conditions as much as possible. When entering the era of low economic growth, the main issue is shifted to disadvantageous

modification of working conditions. Therefore, the collective system for determining working conditions is playing the role of not only improving working conditions but also setting unified working conditions through the coordination of advantages and disadvantages. In most cases, working conditions are collectively modified through changes in working regulations in Japan. According to Supreme Court's precedents, whether disadvantageous modification of work rules is right or wrong shall be determined based on rationality and process of negotiations with trade union shall be one of criteria for the rationality to be determined in a comprehensive manner.

B. Realization of regulations reflecting diversity and complexity of enterprises, workers, etc.

The realization of regulations reflecting diversity and complexity of enterprises, workers, etc., unlike conventional uniform regulations, becomes necessary. The deviation from legislation that requires labor-management agreements with majority representatives and decisions made in labor-management committees is expanding. This concept is to approve the deviation from nationally-established labor standards and take its procedure based on not individual agreements but collective agreements. Such requests are expected to continue to expand.

C. Response towards diversification of employment patterns

It becomes necessary to determine working conditions that respond to the increase in part-time workers and diverse workers. Effective responses depending on circumstances of workplaces are expected by reflecting diverse workers' voices through collective influential voice systems.

2. Direction of Developing/Strengthening Workers' Collective Influential Voice System

As above, the need for developing/strengthening workers' collective influential voice system in workplaces is increasing. There are three major

fundamental directions for review of labor-management relations laws towards the realization of its system: (1) maintenance of the existing system, (2) strengthening/regeneration of trade unions, and (3) development/strengthening of workers' collective influential voice systems that are different from existing trade unions.

The concept of above (1) is to expect trade unions to make efforts within the framework of existing labor-management relations laws without any fundamental modification. For instance, trade union activities are protected by the system to deter unfair labor practices and trade unions can expand their power of influence by the extended application system of collective agreements even under the existing laws. At the most fundamental level, it is guaranteed that trade unions go on strike to assert their opinions against employers. In fact, trade unions have already had legal rights so they can realize to extend their influence by their own effort under the existing laws.

The concept of above (2) is to expand policies for support of trade unions or amend the existing labor-management relations laws to regain their power and strengthen their functions.

The concept of above (3) is to develop/strengthen workers' collective influential voice systems that are different from existing trade unions by law. Note that while the system of collectively determining working conditions is shrinking, the number of workers' collective influential voice systems that are different from existing trade unions is increasing.

It is preferable that trade unions that have rights of organization, collective bargaining and collective activities work positively to maintain and improve working conditions. There is a huge expectation for regaining the power of trade unions. However, to face the reality that the organization rate shows the long-term trends of decline without showing any sign of rapid recovery and especially more than 90% of enterprises have no trade union, we must say that it becomes important for determining working conditions to secure a mechanism for labor-management negotiations on a practically equal footing by complementing bargaining strength as well as properly determining labor opinion with

development/strengthening of systems that are different from existing trade unions even for enterprises where trade union does not exist.

In this paper, therefore, I expect trade unions to regain their power and also make a detailed analysis of organizations and activities of trade unions based on the existing survey to examine the realities of above (1) and (2). On that basis, I will seek which is the most realistic among above three methods.

3. Realities of Trade Unions' Organization, Activities, Etc.

A. Actual situation of organization

i. Comparison between private enterprises and public sectors

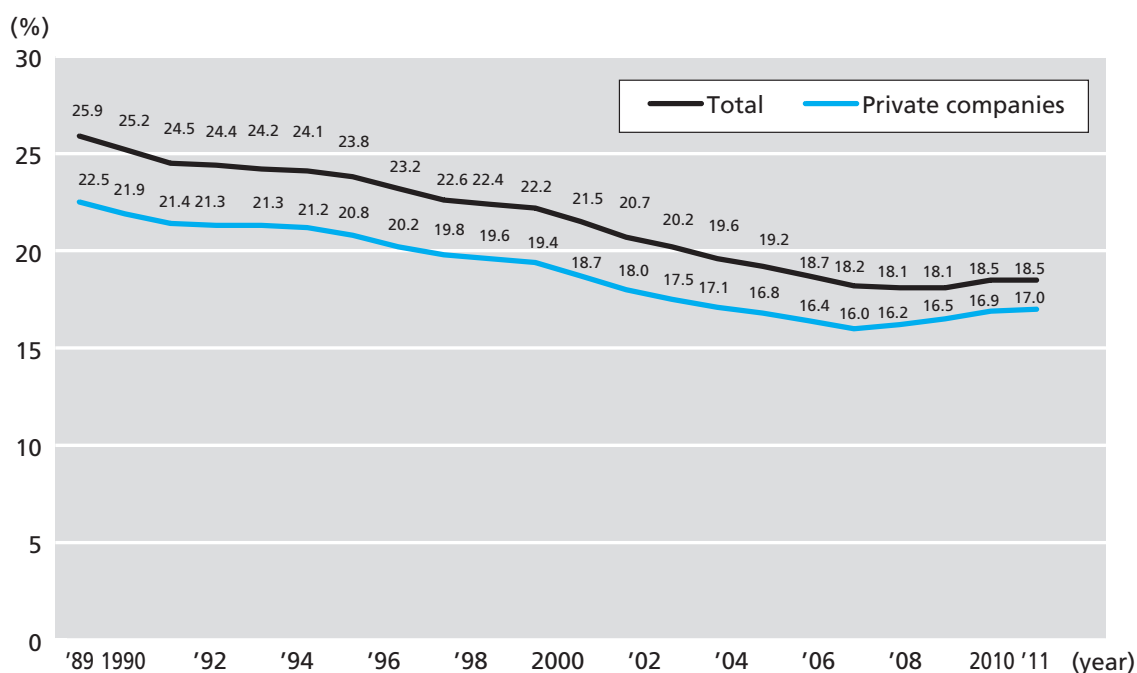
Private enterprises and public sectors do not share the same level of organization rate. IV-3 shows shifts in the estimated rate both among all types of organizations and among private enterprises. It is obvious that the line indicating the rates among private enterprises always runs below the total line.

This is because that the rates among public sectors are generally high. In 2010, for example, public sectors had a organization rate of 31.8%, while that among private enterprises was 17.0%. Values of private enterprises tell that this is a matter of concern.

ii. Situations by enterprise size (private sectors)

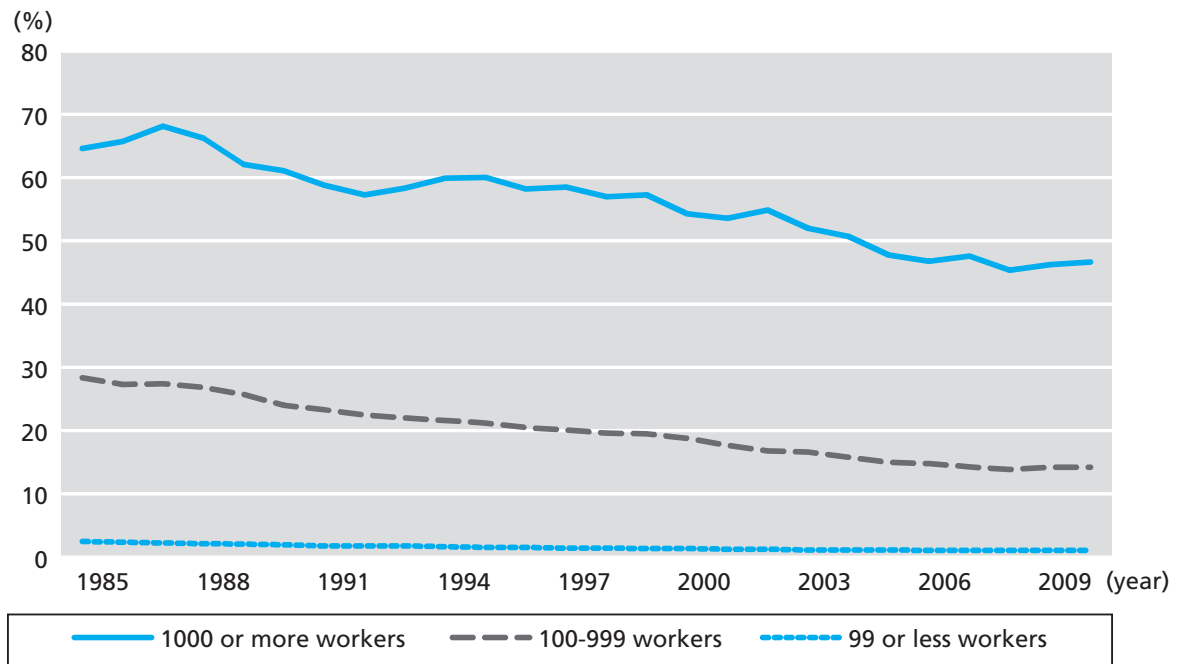
IV-4 indicates shifts in the estimated organization rate, and IV-5 shows those in the estimated number of union members, both among private enterprises by corporate size. The organization rate is high among large-sized enterprises, and low in small-sized enterprises. In 2010, it was 46.6% among enterprises with 1,000 or more employees, 14.2% among those with 100 or more but less than 1,000, and as low as 1.1% among those with 99 or less. Similarly, the number of union member drops as the enterprise size grows smaller. It is apparent that situations regarding trade union organization vary significantly depending on the size of the corporation.

IV-3 Shifts in the Estimated Organization Rate (Total and among Private Enterprises)



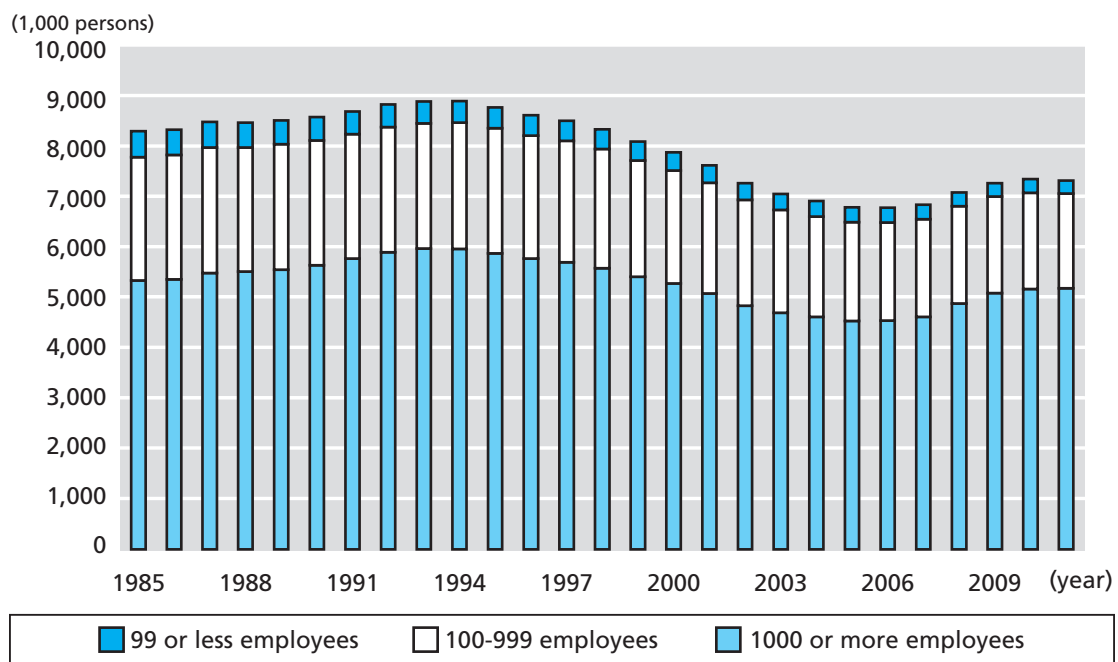
Source: Ministry of Health, Labour and Welfare, *Basic Survey on Trade Unions*

IV-4 Shifts in the Organization Rate by Enterprise Size (among Private Enterprise)



Source: Ministry of Health, Labour and Welfare, *Basic Survey on Trade Unions*

IV-5 Shifts in the Number of Trade Union Members by Enterprise Size (among Private Enterprises)



Source: Ministry of Health, Labour and Welfare, *Basic Survey on Trade Unions*

iii. Organization of non-regular workers

○ Organization of part-time workers

The number of part-time workers union members is 726,000 in 2010, a 3.9-time increase in 15 years from 184,000 in 1995. The percentage of part-time union members has increased from 1.5% to 7.3% in 15 years. The estimated organization rate of part-time workers has also increased from 2.1% to 5.6% in 15 years. However, those percentages are much lower than whole estimated organization rate.

○ Organization of dispatched workers

In recent years, easing of for worker dispatch services such as expansion of permitted jobs have been repeated and the number of temporary workers has been increasing, but the organization of them is also slow.

According to the Ministry of Health, Labour and Welfare "Questionnaire Survey on Labor Placement System" in 2005, 60% among temporary workers are unionized where temporary agencies have trade unions, but many of them have no trade union and the percentage of all unionized temporary workers in such case is only 5.9%. The organization rate of temporary workers in user enterprises which have trade unions is also only 1.7% and the percentage of

all unionized temporary workers in such case is only 0.8%. The percentage of temporary workers who join other trade unions is 1.6%. By simple arithmetic, the percentage of temporary workers who join any trade unions is 8.3% (see IV-6).

In addition, IV-6 shows that one-quarter temporary workers said they "don't know" if trade unions exist.

○ Organization at enterprise level

Organization rates obtained by "Basic Survey on Trade Unions" are calculated by the number of union members divided by the number of employees based on "Survey on Workforce" at workers level.

According to survey on organization rates at enterprise level by JILPT in 2004, less than 10% of enterprises with 10 or more workers have trade unions. According to enterprise size, more than 70% of enterprises with more than 1,000 workers have trade unions, but the smaller an enterprise is, the lower its percentage becomes. Only about 5% of enterprises with 10 to 49 workers have trade unions (see IV-7).

IV-6 Situation of Organizing Dispatched Workers

(number of persons, %)

| | Total | Do temporary agencies have trade unions? | | | Do user enterprises have trade unions? | | | Other union members |
|--------------------|-------|--|-------|------------|--|------|------------|---------------------|
| | | Yes (members) | No | Don't know | Yes (members) | No | Don't know | |
| Total | 2,908 | 280 (173) | 1,817 | 77 | 1,351(23) | 706 | 748 | (45) |
| % | 100 | 9.6 (5.9)[61.8] | 62.5 | 25.7 | 46.5 (0.8)[1.7] | 24.3 | 25.7 | (1.6) |
| Women | 1,672 | 146 (93) | 894 | 598 | 677 (10) | 419 | 523 | (25) |
| % | 100 | 8.7 (5.6)[63.7] | 53.5 | 35.8 | 40.5 (0.6)[1.5] | 25.1 | 31.3 | (1.5) |
| Men | 1,229 | 134 (80) | 922 | 148 | 673 (13) | 287 | 223 | (20) |
| % | 100 | 10.9(6.5)[59.7] | 75.0 | 12.0 | 54.8 (1.1)[1.9] | 23.4 | 18.1 | (1.6) |
| Registered workers | 1,154 | 108 (62) | 551 | 476 | 427 (8) | 296 | 399 | (17) |
| % | 100 | 9.4 (5.4)[57.4] | 47.8 | 41.3 | 37.0 (0.7)[1.9] | 25.7 | 34.6 | (1.5) |
| Regular employees | 1,698 | 167 (106) | 1,240 | 23 | 902 (14) | 396 | 337 | (27) |
| % | 100 | 9.8 (6.2)[63.5] | 73.0 | 14.9 | 53.1 (0.8)[1.6] | 23.3 | 19.9 | (1.6) |

Source: Ministry of Health, Labour and Welfare, *Questionnaire Survey on Labour Placement System*, 2005

IV-7 Existence of Trade Unions at Enterprise Level

(%)

| | Exist | | None | | |
|---------------------|------------------------|------|------|------|------|
| | I | II | I | II | |
| Size of enterprise | 9.4 | 8.9 | 90.6 | 90.8 | |
| Number of employees | 10 to 49 employees | 5.6 | 4.4 | 94.4 | 95.2 |
| | 50 to 99 employees | 14.8 | 16.3 | 85.2 | 83.6 |
| | 100 to 299 employees | 29.4 | 33.0 | 70.2 | 66.7 |
| | 300 to 999 employees | 46.6 | 46.2 | 53.0 | 53.4 |
| | 1000 or more employees | 73.5 | 73.6 | 26.3 | 26.2 |

Source: Survey I and II by JILPT

IV-8 Number of Trade Unions in a Enterprise

(%)

| One | Two or more | Non-response |
|------|-------------|--------------|
| 88.4 | 5.1 | 6.5 |
| 94.5 | 4.8 | 0.7 |

Source: Survey I and II by JILPT

IV-9 Existence of Trade Unions Organizing Majority of Employees

(%)

| Exist | None | Don't know | Non-response |
|-------|------|------------|--------------|
| 70.3 | 20.2 | 2.7 | 6.8 |
| 75.1 | 15.0 | 0.5 | 9.3 |

Source: Survey I and II by JILPT

IV-10 Establishments Unionizing Majority of Employees in One Trade Union

(%)

| All establishments | Many establishments | Few establishments | None | Don't know | Non-response |
|--------------------|---------------------|--------------------|------|------------|--------------|
| 54.9 | 7.2 | 6.0 | 14.9 | 4.1 | 12.9 |
| 50.2 | 8.1 | 4.2 | 14.6 | 0.5 | 22.4 |

Source: Survey I and II by JILPT

In addition, according to survey carried out by JILPT in 2006, only 1% among enterprises with 1 to 9 workers have trade unions. This tells us that there are very few trade unions in such size of enterprises.

According to Survey I and II by JILPT in 2004, 90% among enterprises that have trade unions said one enterprise has one trade union. 70% among enterprises that have trade unions said their trade unions organize majority of employees. About 60% among enterprises said "all establishments" or "many establishments" have one trade union organizing majority of employees (see IV-8 to IV-10).

As above, it is clear that there is no trade union in

most of small and medium-sized enterprises and especially micro enterprises. Those enterprises in which laws on the system for determining working conditions based on the existence of trade unions such as collective agreements between employers and trade unions and labor-management agreements with trade unions organizing majority of employees can be applicable to are extremely rare.

B. Realities of Activities

i. Situation of organization activities

○ Scope of union members

IV-11 shows organization rates of trade unions in

IV-11 Ratio of Trade Unions by Organization Rate

(%)

| | Less than 10% | 10 to 30% | 30 to 50% | 50 to 70% | 70 to 90% | 90% or higher | Less than 50% | 50% or more | With other unions | With union shops |
|------|---------------|-----------|-----------|-----------|-----------|---------------|---------------|-------------|-------------------|------------------|
| 1993 | 1.1 | 4.4 | 10.0 | 21.6 | 29.9 | 32.9 | 15.5 | 84.4 | 16.6 | 61.0 |
| 1998 | 1.2 | 5.3 | 9.7 | 22.6 | 31.0 | 30.2 | 16.2 | 83.8 | 13.9 | 58.7 |
| 2003 | 2.4 | 5.6 | 12.7 | 22.7 | 26.4 | 30.2 | 20.7 | 79.3 | 10.8 | 63.4 |
| 2008 | 0.8 | 6.8 | 16.2 | 34.3 | 26.1 | 15.7 | 23.8 | 76.1 | 8.3 | 49.4 |

Source: Ministry of Health, Labour and Welfare, *Survey on Trade Unions Activities*, every year

Notes: 1) Ratio of union members from all workers in establishments (in case of per unit union, all enterprises). "Less than 50%" and "50% or more" are obtained by simple calculation.

2) "With other unions" is in the case that there is another independent trade union unionizing workers in the same establishment.

establishments. While trade unions with an organization rate of 90% or more previously accounted for the highest proportion, the proportion fell as the unionization rate declined. In other words, a characteristic of Japan was the fact that although the proportion of establishments in which a trade union had been organized was low, the unionization rate in establishments where they had been organized was high. However, according to the most recent data available, for 2008, the most common are establishments with a unionization rate of 50-70%, followed in descending order by those with rates of 70-90%, 30-50%, and more than 90%, so one can see that it is no longer necessarily the case that the unionization rate is high even if a trade union exists. The reasons behind this are likely to be the increase in the number of non-regular workers, who have a low unionization rate, as well as the decline in the proportion of establishments with union shop agreements.

IV-12 shows the scope of union members other than regular employees. It tells us that there are few trade unions which regard non-regular employees such as part-time workers and fixed-term workers as targets for organization, and there are very few actual union members of such non-regular employees. For instance, 83% or more among trade unions whose establishments have part-time workers do not give part-time workers their union membership. Furthermore, though about 17% among trade unions give part-time workers their union membership, only

10% among those have actual union members of part-time workers. For dispatched workers, subcontract workers, etc. who have no employment relationship with employers of such establishments, the percentages are less, and less than 1% among trade unions have actual union members of those workers.

There are very few trade unions "making efforts to unionize" such non-regular employees. Less than 10% among trade unions whose establishments have part-time workers make efforts to unionize part-time workers. Overwhelming majority of trade unions "do not make any effort for organization." The reality is 72.3% among trade unions whose establishments have part-timer workers do not make any effort for organization.

IV-13 shows if expansion of organization is considered as a priority issue (multiple answers). 29.6% among trade unions are dealing with the expansion of organization as a priority issue during the number of union members is decreasing. Many of trade unions regard regular employees as a target for expansion of organization: "New graduate/mid-career regular employees" (54.4%) and "Existing unorganized regular employees" (50.5%). On the contrary, the ratio of trade unions which regard non-regular employees as a target for expansion of organization is low; 31.8% and 27.6% among trade unions regard part-time workers and dispatched workers as targets for expansion of organization respectively.

IV-12 Situation of Organization by Types of Workers

(%)

| | (There are applicable workers) | | | | | | | |
|--|--------------------------------|-------------------|--------------------------------|-----------------------|--|----------------------------|---|--|
| | | Qualified to join | | Not qualified to join | Multiple answers | | | |
| | | | There are actual union members | | Granting membership as associate members | Making efforts to organize | Collaboration with organizations in which applicable workers join | Not making any effort for organization |
| Managers/specialists | (65.7) | 35.9 | 28.2 | 64.1 | 0.3 | 1.8 | 0.5 | 61.4 |
| Part-time workers | (61.8) | 23.0 | 17.4 | 77.0 | 1.4 | 8.5 | 0.7 | 66.4 |
| Fixed-term workers | (51.3) | 23.3 | 15.0 | 76.7 | 1.5 | 5.5 | 0.3 | 69.4 |
| Senior fixed-term workers | (69.1) | 30.0 | 22.5 | 70.0 | 2.4 | 6.2 | 0.6 | 60.8 |
| casual workers | (41.4) | 11.2 | 7.2 | 88.8 | 0.8 | 4.5 | 0.2 | 83.3 |
| Retired workers (no employment relationship) | (43.7) | 13.2 | 10.3 | 86.8 | 1.3 | 2.4 | 1.5 | 81.7 |
| Workers transferred to another enterprises | (47.7) | 84.5 | 62.6 | 15.5 | 0.5 | 0.2 | 1.3 | 13.6 |
| Workers transferred from another enterprises | (36.2) | 16.5 | 10.9 | 83.5 | 0.0 | 0.9 | 3.5 | 69.0 |
| Dispatched workers | (54.0) | 3.1 | 1.5 | 96.9 | - | 2.7 | 0.4 | 93.9 |
| Subcontract workers | (29.1) | 2.7 | 1.7 | 97.3 | - | 1.2 | 3.5 | 92.6 |
| Foreign workers | (20.4) | 21.2 | 13.6 | 78.8 | - | 0.3 | - | 78.5 |

Source: Ministry of Health, Labour and Welfare, *Survey on Trade Unions Activities*, 2008

Note: Values without parentheses are percentages with a score of 100 representing applicable workers.

IV-13 Expansion of Organization as a Priority Issue

(%)

| Dealing with it as a priority issue | | | | Not dealing with it as a priority issue | | | | Unknown | | | |
|---|---|-------------------|------------------|---|--------------------------|--|---------------------------------|---------|--|--|--|
| 29.6 | | | | 68.4 | | | | 2.0 | | | |
| ↓ | | | | ↓ | | | | | | | |
| Target for expansion of organization | | | | Reason for not dealing with it as a priority issue | | | | | | | |
| (Multiple answers, %) | | | | (Multiple answers, %) | | | | | | | |
| Existing unorganized regular employees | New graduate/mid-career regular employees | Part-time workers | Contract workers | Already organized | Low chances of expansion | No money or personnel for organization | There are other priority issues | | | | |
| 50.5 | 54.4 | 31.8 | 27.6 | 51.2 | 28.9 | 19.1 | 21.4 | | | | |

Source: Ministry of Health, Labour and Welfare, *Survey on Trade Unions*, 2008

68.4% among trade unions are not dealing with expansion of organization as a priority issue. The reasons for not dealing with it as a priority issue are: "Already organized" (51.2%) and "Low chance of expansion" (28.9%), etc.

In the same way, from the Ministry of Health, Labour and Welfare's "Survey on Trade Union Activities" (2010), one can see that initiatives by trade unions to unionize non-regular workers in the workplace certainly cannot be deemed to be adequate.

There are not so many trade unions making some efforts for these workers. Even if trade unions make some efforts for those workers, majority of them do not deal with strengthening of the organization. For

example, even if there are part-time workers and full-time non-regular workers in a workplace, only about half of all trade unions conduct initiatives relating to such workers (IV-14); of these, only 20% or more conduct activities relating to the unionization of full-time non-regular workers, while barely 4% of them extend these activities to dispatched workers (IV-15). Though the necessity of unionizing non-regular employees has been pointed out in recent years, this situation has never changed even in 2010.

As above stated, Japan's trade unions are centered on regular employees, increase and decrease in the number of regular employees are directly connected to increase and decrease in the number of union members, and the expansion of organization is

IV-14 Presence or Absence of Non-regular Workers/ Union Members

(%)

| | There are applicable workers | | | | | No applicable worker |
|-------------------------------|------------------------------|------------------------------|-------|---------------------------------------|--------|----------------------|
| | Qualified to join? | | | Making efforts for applicable workers | | |
| | Yes & has such members | Yes, but has no such members | No | | | |
| Part-time workers | 68.4 | (24.3) | (7.0) | (68.7) | (47.1) | 31.6 |
| Full-time non-regular workers | 68.9 | (26.0) | (7.1) | (66.9) | (50.3) | 31.0 |
| Dispatched workers | 64.6 | (1.9) | (5.1) | (93.0) | (23.9) | 35.4 |

Source: Ministry of Health, Labour and Welfare, *Survey on Trade Unions Activities*, 2010

Note: Values in parentheses are percentages with a score of 100 representing applicable workers.

IV-15 Ratio of Trade Unions by Contents of Efforts for Non-regular Workers

(multiple answers, %)

| | Creation of consultation services, check of realities by questionnaire, etc. | Holding of meetings/ study meetings on non-regular workers | Granting qualification for union members | Soliciting activities relating to the unionization | Demands for improvement of working conditions/ benefits | Collaboration with organizations in which non-regular workers join | Supporting for reemployment (after dispatching period) | Labor-management consultations on employment of non-regular workers | Others |
|-------------------------------|--|--|--|--|---|--|--|---|--------|
| Part-time workers | 20.4 | 11.9 | 2.6 | 13.6 | 30.5 | 1.9 | 4.1 | 19.3 | 4.0 |
| Full-time non-regular workers | 20.6 | 13.4 | 2.6 | 17.8 | 30.3 | 3.6 | 5.3 | 23.3 | 5.2 |
| Dispatched workers | 7.4 | 2.2 | 1.9 | 2.2 | 6.9 | 1.6 | 1.2 | 9.8 | 2.8 |

Source: Ministry of Health, Labour and Welfare, *Survey on Trade Unions Activities*, 2010

mainly for regular employees. In these circumstances, some trade unions are making efforts for organization of increasing part-time workers, etc., but large majority of trade unions are not forward enough to unionize them.

ii. Relationship with union shop agreements

○ Situation of concluded union shop agreements

Let's see trade unions' effort for organization from the viewpoint of concluded union shop agreements.

IV-16 shows the situation of concluded union shop agreements. The ratio of unions with union shop agreements is 60.9%. The ratio is especially high among large-sized enterprises; for instance, 71.1% among enterprises with 5,000 or more workers and 73.7% among those with 1,000 to 4,999 employees. As a matter of course, the higher the organization rate, the higher the conclusion ratio of union shop

agreements becomes.

According to the *Survey on Trade Unions* in 1993, the most common reason for organization of workers was "due to union shop agreements" (76.1%). It clearly tells us that workers are not unionized by independent decision.

○ Situation of efforts for organization

IV-17 to IV-19 show changes in the number of union members with or no union shop agreements. More of trade unions "with union shop agreements" answered "Increased" and "No change" and fewer those answered "Decreased" compared with those with "no union shop agreement". The most striking difference in reasons for increases in the number of union members can be seen among trade unions that responded that they "Have union-shop agreements", with few reporting that "Existing unorganized regular employees" had joined, while many of them reported

IV-16 Situation of Concluding Union Shop Agreements

(%)

[By size of enterprise]

| | With agreement | No agreement |
|------------------------|----------------|--------------|
| Total | 60.9 | 39.1 |
| 5000 or more employees | 71.1 | 28.9 |
| 1000 to 4999 employees | 73.7 | 26.3 |
| 500 to 999 employees | 71.4 | 28.6 |
| 300 to 499 employees | 61.3 | 38.7 |
| 100 to 299 employees | 50.3 | 49.9 |
| 30 to 99 employees | 38.8 | 61.2 |

(%)

[By organization rate]

| | With agreement | No agreement |
|----------------|----------------|--------------|
| 90% or higher | 72.5 | 27.5 |
| 70 to 90% | 70.1 | 29.9 |
| 50 to 70% | 53.1 | 46.9 |
| 30 to 50% | 46.2 | 53.8 |
| 10 to 30% | 40.4 | 59.6 |
| Lower than 10% | 60.7 | 39.3 |

Source: Ministry of Health, Labour and Welfare, *Survey on Trade Unions*, 2008

IV-17 Changes in the Number of Union Members

(%)

| | Increased | No change | Decreased | Unknown |
|----------------|-----------|-----------|-----------|---------|
| Total | 30.1 | 22.2 | 47.1 | 0.7 |
| With agreement | 33.9 | 23.0 | 42.5 | 0.6 |
| No agreement | 24.2 | 20.7 | 54.3 | 0.6 |

Source: Ministry of Health, Labour and Welfare, *Survey on Trade Unions*, 2008

Note: "Total" means total of unit trade union, "With agreement" means trade unions with union shop agreements, and "No agreement" means trade unions with no union shop agreement.

IV-18 Reasons for Increase in the Number of Union Members

(multiple answers, %)

| | Organization of new graduate/ mid-career workers | Organization of existing regular employees | Organization of non-regular employees | Workers' increase by enterprise integration, etc. | Others |
|----------------|---|--|---------------------------------------|---|--------|
| Total | 74.4 | 10.9 | 14.0 | 11.4 | 6.4 |
| With agreement | 72.2 | 8.0 | 14.5 | 13.8 | 6.3 |
| No agreement | 79.2 | 17.3 | 12.9 | 6.1 | 6.6 |

Source: Ministry of Health, Labour and Welfare, *Survey on Trade Unions*, 2008

IV-19 Reasons for Decrease in the Number of Union Members

(multiple answers, %)

| | Stoppage of recruitment of regular employees | Non-organization of new graduate/ mid-career regular employees | Existing workers' leaving trade unions | Retirement of union members | | | Decreased the number of workers due to corporate breakup | Others |
|----------------|--|---|--|-----------------------------|----------------------|------------------------|--|--------|
| | | | | Mandatory retirement | Voluntary retirement | Involuntary retirement | | |
| Total | 51.9 | 5.7 | 16.9 | 65.4 | 50.9 | 10.9 | 6.5 | 8.8 |
| With agreement | 52.3 | 0.3 | 7.8 | 68.8 | 54.5 | 13.7 | 9.0 | 10.7 |
| No agreement | 51.4 | 12.2 | 28.0 | 61.2 | 46.6 | 7.5 | 3.4 | 6.5 |

Source: Ministry of Health, Labour and Welfare, *Survey on Trade Unions*, 2008

an "Increase in workers due to enterprise integration, etc". On the contrary, as for distinctive difference of reasons for decrease in the number of union members, more of those trade unions have union shop agreements answered "Union members retired" and fewer of those answered "Non-organization of new graduate/mid-career regular employees" and "Existing workers' leaving trade unions".

iii. Relation with diversification in forms of employment

○ Diversification in forms of employment

In a reflection of structural changes of the economy and employment and diversification of values among the people, employment patterns and working patterns have changed and people working in very diverse ways other than regular employment such as part-time work and temporary work are increasing.

According to the Ministry of Internal Affairs and Communications "Labour Force Survey (Detailed Tabulation) in January to March 2012, the numbers of regular employees and non-regular employees were 33.34 million (64.9%) and 18.05 million (35.1%) respectively out of the 51.4 million employees except board members. The ratio of non-regular employees increased more than 10 points compared with 10 years ago. 12.5 million part-time workers accounted for 69.2% of these non-regular employees (24.3% of all employees).

According to the Ministry of Health, Labour and Welfare "General Survey on Diversified Types of Employment," the ratio of non-regular employees was on the increase (22.8% in 1994, 27.5% in 1999, 34.6% in 2003, 37.8% in 2007, and 38.7% in 2010), and the ratio of part-time workers, majority of non-regular employees, was 22.9% in 2010.

○ Situation of organizing non-regular employees

As above, trade unions whose establishments have non-regular employees such as part-time workers, dispatched workers are not necessarily to have an incentive to unionize these workers. According to the Ministry of Health, Labour and Welfare “Survey on Trade union” in 2008, trade unions dealing with expansion of organization as a priority issue were asked issues in unionizing regular workers or non-regular workers.

IV-20 shows the answers about issues in unionizing regular employees from such trade unions: “Labor side has little interest in trade unions” (66.2%), “Labor side has no time for organization” (34.3%), etc. On the other hand, issues in unionizing non-regular employees were “Labor side has little interest in trade unions” (49.9%), “Consolidation is difficult due to unconventional contents of demands” (28.2%), and “It is difficult to set/collect union fees” (22.4%). That is, in case of unionizing non-regular employees, issues are mainly caused by differences with organization of regular employees. Trade unions look bewildered by organization of non-regular workers.

Non-regular employees such as part-time workers and fixed-term contract workers have been essential both qualitatively and quantitatively in workplaces and trade unions cannot ignore them. If trade unions would not deal with organization of non-regular employees, they may not be regarded as representatives of workers. It is an important issue for trade unions to

unionize non-regular employees.

C. Situation of collective labor-management disputes, etc.

i. Changes in the number of labor disputes

Labor disputes, which are collective disputes between labor and management, peaked at 10,462 in 1974, after which they basically demonstrated a downward trend, despite a brief rise at the beginning of the 1980s; from 1991 onwards, they remained broadly around the 1,000 mark, but have fallen to around the 600 mark in recent years, with 682 such disputes being recorded in 2010 and 612 in 2011 (IV-21).

Among labor disputes, the number of disputes without industrial action (third-parties such as the Labor Relations Commission were involved for solution without industrial action) fluctuates nearly from 300 to over 800. It reached over 300 in the early 1990s, but in recent years, the figure has been around the 500-600 mark. On the contrary, the number of labor disputes with industrial actions such as strikes is, as same as total number of labor disputes, basically on a declining trend after peaking in 1974, 9,581, despite the increase in the early 1980s. It declined to less than 1,000 in 1991 and less than 500 in 1999, falling below the 100 mark to 92 in 2009, and reached 57 in 2011. The number of work-days lost to strikes, etc. was nearly 10 million days in 1974, but sharply decreased after that, falling to less than 1 million days in 1980, less than 100,000 in the 1990s and there were even years during the 2000s

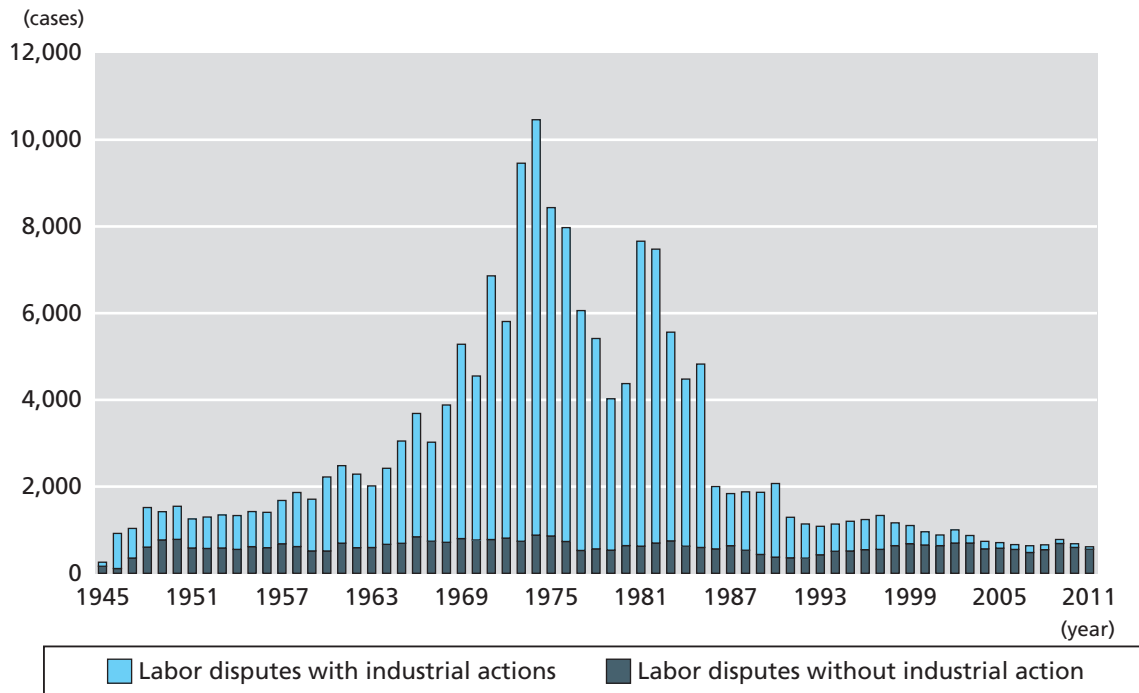
IV-20 Issues in Organizing Employees

(multiple answers, %)

| | Workers have little interest in trade unions | Workers have no time | Trade union side has no personnel or money for organization | Consolidation is difficult due to unconventional contents of demands | It is difficult to set/collect union fees | Others | No problem | Unknown |
|-------------------------|--|----------------------|---|--|---|--------|------------|---------|
| Regular employees | 66.2 | 34.3 | 33.7 | 13.2 | 14.8 | 15.9 | 14.3 | 26.1 |
| Part-time Workers, etc. | 49.9 | 27.5 | 25.8 | 28.2 | 22.4 | 25.9 | 7.4 | 36.9 |

Source: Ministry of Health, Labour and Welfare, *Survey on Trade Unions*, 2008

IV-21 Changes in the Number of Labor Disputes



Source: Ministry of Health, Labour and Welfare, *Survey on Labour Disputes*, editions for each year

when it fell below 10,000 days, and the figure was 4,378 in 2011.

ii. Changes in the number of cases handled by the Labor Relations Commission

In conjunction with the number of labor disputes, the number of adjusting labor disputes has also decreased.² The number of newly adjusted labor disputes was approximately more than 1,000 in 1970s. It became 2,249 in 1974, less than 1,000 in 1979, reduced to over 300 in the early 1990s but fluctuated from 500 to over 600 after that and was 543 in 2011.

The number of new requests to deter unfair labor practices³ to the Labor Relations Commission

reduced to over 500 after peaking in 1970s, over 900, except two years, 1970 and 1983, that were outstanding due to collective requests for public-sector-related cases. It became less than 300 in the early 1990s, fluctuated approximately over 300 in the past 10 years and was 376 in 2011.

iii. Increase in individual disputes

In contrast to decrease in the collective labor disputes combined with decline in the organization rate, the number of individual disputes between workers and enterprises are increasing (IV-22, IV-23).

The number of consultations received at the comprehensive labor consultation corner opened by the Ministry of Health, Labour and Welfare as a

2 Labor disputes are adjusted by the Prefectural Labor Relations Commissions and the Central Labour Relations Commission. Labor Relations Commissions are tripartite institutions. Adjustment consists of mediation, conciliation and arbitration and most of adjustments are mediation.

3 Unfair labor practices are stipulated by the Trade union Act to protect the right of organization. Employers are prohibited from doing unfair treatment of union members, concluding any yellow-dog contract, rejecting collective negotiations and predominantly intervening trade unions. If the employer carries out any of these prohibited acts, the trade union may seek redress from the Labor Relations Commissions.

IV-22 Status of the Resolution of Individual Labor-related Disputes in the Labor Bureau

(cases)

| | general labor consultations | individual civil labor dispute consultations | applications received for advice or guidance | applications received for conciliation |
|----------------------|-----------------------------|--|--|--|
| FY2001 (Second half) | 251,545 | 41,284 | 714 | 764 |
| FY2002 | 625,572 | 103,194 | 2,332 | 3,036 |
| FY2003 | 734,257 | 140,822 | 4,377 | 5,352 |
| FY2004 | 823,864 | 160,166 | 5,287 | 6,014 |
| FY2005 | 907,869 | 176,429 | 6,369 | 6,888 |
| FY2006 | 946,012 | 187,387 | 5,761 | 6,924 |
| FY2007 | 997,237 | 197,904 | 6,652 | 7,146 |
| FY2008 | 1,075,021 | 236,993 | 7,592 | 8,457 |
| FY2009 | 1,141,006 | 247,302 | 7,778 | 7,821 |
| FY2010 | 1,130,234 | 246,907 | 7,692 | 6,390 |
| FY2011 | 1,109,454 | 256,343 | 9,590 | 6,510 |

Source: Ministry of Health, Labour and Welfare, *Status of the Resolution of Individual Labor-Related Disputes*, editions for each year

IV-23 Number of Petitions under Each Individual Labor-management Dispute Resolution System

(cases)

| | Conciliation by the labor bureau | Conciliation by labor relations commission | Conciliation by bureau overseeing labor relations | Labor tribunals | Ordinary civil litigation concerning labor relations |
|--------|----------------------------------|--|---|-----------------|--|
| FY2002 | 3,036 | 233 | | | 2,321 |
| FY2003 | 5,352 | 291 | 1,370 | | 2,433 |
| FY2004 | 6,014 | 318 | 1,298 | | 2,519 |
| FY2005 | 6,888 | 294 | 1,215 | | 2,446 |
| FY2006 | 6,924 | 300 | 1,243 | 1,163 | 2,035 |
| FY2007 | 7,146 | 375 | 1,144 | 1,563 | 2,246 |
| FY2008 | 8,457 | 481 | 1,047 | 2,417 | 2,441 |
| FY2009 | 7,821 | 503 | 1,085 | 3,531 | 3,218 |
| FY2010 | 6,390 | 397 | 919 | 3,313 | 3,127 |
| FY2011 | 6,510 | 393 | 909 | 3,721 | 3,170 |

Source: Compiled by the author from each organization's website etc.

support of consultations under the law concerning promotion of individual dispute settlement has increased; for instance, 625,572 in FY2002 to 1,109,454 in FY2011. Among those consultations, the number of civil individual disputes such as deteriorating working conditions and dismissal that do not violate the law of labor relations has also increased; for instance, 103,194 in FY2002 to

256,343 in FY2011. Moreover, in FY2011, the number of cases involving requests for advice or guidance by the director of the local labor bureau and the number of cases involving requests for conciliation by the dispute coordinating committee rose to 9,590 and 6,510, respectively.

On the other hand (and this is not necessarily restricted to lawsuits concerning individual labor-

management disputes), after the number of new cases of ordinary civil litigation concerning labor relations that were received by district courts nationwide crossed the 1,000 threshold to reach 1,307 in 1993, the figure remained at around the 1,500 mark for three years in succession before experiencing a further sustained increase from 1997 and then remaining at around the 2,000-3,000 mark during the 2000s.

D. Typical trade unions (Are trade unions promising?)

As above, it came to light that unions do not necessarily regard organization expansion as one of their major issues. This is despite the fact that the number of union members decreased due to, for instance, the managements' reluctance to hire regular employees, the ratio of union participants in the workplace fell.

The necessity of trade unions remains unchanged, and their positive effects cannot be denied. In the system of determining working conditions, they have played a significant role in obtaining better working conditions than minimum standards through collective bargaining with the management. Their roles cannot be overlooked. Rather, expectations are still high for trade unions in the system of determining working conditions, and it is desired that they restore and expand their power of influence and use their energy to improve working conditions for workers. Nonetheless, looking at their current activities, we must admit that it is difficult to foresee their influence being recovered any time soon. On the contrary, it can be easily imagined that the decline in the organization rate and decrease in the number of union members will be further exacerbated.

Given these circumstances, it is possible, both theoretically and from the viewpoint of labor movements, to consider reinforcement of trade unions by reviewing labor-management relations laws with the aim of preventing the organization rate and number of union members from falling. From what we can see in their actual situations, however, it would be difficult to achieve social consensus for such measures. The existing labor-management relations laws offer systems to help trade unions

expand their power of influence, by, for instance, protecting trade unions' right to organize with the system to deter unfair labor practices and by granting general binding effect to collective agreements. In this light, the question is rather how can trade unions themselves regain and enhance their presence by making the most of the already-established labor-management relations acts.

When the overall system of determining working conditions is under review, we must pay close attention to trade unions' realities, and not their idealistic theories. In other words, we should now realize that it is time for us to give serious consideration to a new system to enable workers' voices to be reflected which should have as much practical influence as trade unions even in the case where trade unions do not exist.

4. Expansion of Legislations Such as Majority Representative System, Labor-management Committee, Etc.

During decline in the organization rate of trade unions and decrease in the number of union members, there are systems which can be evaluated as workers' collective influential voice systems distinct from trade unions under the current legal system: the majority representative system and the labor-management committee system.

The majority representatives system stems from the original articles in the enactment of the Labor Standards Act in 1947. The Law obliged employers to conclude and report to the authority an agreement concerning overtime work and work on holidays with majority representatives, as well as to conduct hearings from the majority representatives of workers when work rules are newly set or modified. Afterwards, regarding this majority representative system, only some regulations were added in the 1952 revision of the Labor Standards Act⁴ and a few rules were newly established in other acts than the Labor Standards Act,⁵ until in 1987 when the Law was amended to introduce a flexible working hour system involving labor-management agreements with majority representatives of workers. Following this amendment, the legislation of the majority

representative system has expanded, and a new system called labor-management committee (and the Committee on Improvement of Working Time Arrangements) was legislated.

These systems bring legal effects that allow employers to depart from a certain legal labor standards under the agreement between labor and management. As such background of allowing labor standards more flexible, the uniform legal labor standards cannot easily conform to, for instance, specificity of industries, circumstances of individual corporations, and diversification of workers as well as forms of employment, and workers themselves should select the regulation of protecting workers. That is, these systems are one of the two major pillars of the system to determine working conditions on the role of legal minimum standards fixed by worker protection laws and also reflect workers' collective opinion to realize flexible working conditions that conform to circumstances of workplaces and workers. Some researchers express their opinions that the majority representative system is definitely positioned as one of employee representative systems and the initial labor-management committee is regarded as "a step to the employee representative system ahead of the majority representative system".

The recent such trend of legislative expansion seems as if it had a negative correlation with decline in the organization rate of trade unions and decrease in the number of union members. Given more than 90% of enterprises have no trade unions, the existence of these systems becomes much more significant.

The overview of lawmaking trend on the majority representative system and labor-management

committee are as follows:

(Legal system of working hours)

Recently, for the purpose of making regulations concerning working hours more flexible, a series of amendments of the Labour Standards Act have been enforced. More precisely, the variable scheduling-working-hours averaging system over the span of either three months or one week, the flextime system, and the discretionary work system for specialized work and experts were introduced in 1987, under conditions of concluding labor-management agreements with a trade union organized by a majority of the workers at a workplace where such union exists or with a person representing a majority of the workers at a workplace where no such trade union exists". This has significance for realizing the introduction of a flexible working hour system that conforms to the circumstances of workplaces and workers to such workplaces, and brings legal effects that allow employers to depart from a certain legal labor standards, 8 hours a day and 40 hours a week, under the conclusion of labor-management agreement with the majority representative. In 1993, the applicable span of the working-hours averaging system was extended from three months to a maximum of one year, with a prerequisite of a labor-management agreement with a majority representative. Again, with the same prerequisite, the variable scheduling system over the span of one month was also the conclusion of labor-management with the majority representative approved in 1998.

In addition, the same year's amendment adopted the discretionary work system for management planning workers. It was decided that, upon introduction of this system, a unanimous decision

4 In 1952, it was provided in the revision of Labor Standards Act that agreements with the majority representatives of workers on commissioned management of savings for workers (Article 18, Paragraph 2), payroll deduction (Article 24, Paragraph 1) and payment of wages during paid holidays under the Health Insurance Act, standard remuneration by the day (Article 39, proviso to paragraph 6) shall be concluded.

5 For instance, it was provided in the Industrial Safety and Health Act enacted in 1972 that the employer should have input from the majority representative when preparing a safety and health improvement plan (Article 78, Clause 2), the employer needs a recommendation of the majority representative for a half of members of the safety committee, health committee and safety and health committee (except those who supervise the business) (Article 17, Paragraph 4, Article 18, Paragraph 4, Article 19, Paragraph 4). In the 1978 revision of the Workers' Property Accumulation Promotion Act, a written agreement with the majority representative on conclusion of workers' property accumulation benefit contracts (Article 6-2 Paragraph 1), a written agreement with the majority representative on establishment of workers' property accumulation fund (Article 7-8, Paragraph 1) and an agreement with the majority representative on increase in the number of fund establishment places (Article 7-25, Paragraph 1).

would be required by a labor-management committee half of whose members are appointed by a majority representative of workers, and that decisions made by this committee can be substituted for labor-management agreements with majority representatives concerning working hours. This system also brings legal effects that allow employers to depart from a certain legal labor standards under the resolution of labor-management committee. In 2003, the range of enterprises applicable to the discretionary work system for management planning workers was expanded, and one of the requirements imposed on the said labor-management committee was also relaxed (from a unanimous consent to a four-fifths agreement).

In addition, as for working hours, the Act on Temporary Measures Concerning Reduction in Working Hours was enacted and the Reduction in Working Hours Committee was established in 1992.⁶ If the requirements, e.g., a half of this committee members are nominated based on the recommendation of the majority representative, are satisfied, an exception of the provision on working hours of the Labor Standards Act shall be offered and if the committee decides, they shall be able to substitute it for the labor-management agreement with the majority representative on a flexible working hour system, etc.

In an attempt to improve workplace conditions, including working hours, in order that they can give consideration to workers' health and lifestyles and conform to a diverse range of employment patterns, the "Act on Special Measures Concerning on Improvement of the Setting of Working Hours, Etc." was enacted in 2005. This allows decisions reached in the "Committee on Improvement of Working Time Arrangements" to substitute for labor-management agreements with majority representatives concerning working hours and other similar arrangements. It was also stipulated that, in workplaces where the "Committee on Improvement of Working Time Arrangements does not exist," "the health committee"

or "safety and health committee" established according to the Industrial Safety and Health Act can play the role of the said special committee, on condition that such committees satisfy certain requirements. One of these requirements is that at least half of the total committee members are appointed based on recommendations from majority representatives of workers, and that they are assigned to research and deliberate on issues regarding improvement on working hours, etc. and then to present their views to the employers.

(Laws in other areas)

The Child and Family Care Leave Act also relaxes uniform rules on the premise of concluding labor-management agreements with majority representatives of workers. Established in 1991, the Law permitted employers to refuse requests for child care leave from specific employees, as long as they have reached labor-management agreements with majority representatives of workers. Furthermore, its 1995 and 2004 amendments also allowed employers to refuse requests for family care leave in 1995 and child nursing care leave in 2004 from specific employees in the above-mentioned years respectively, again on condition that they have reached labor-management agreements with majority representatives of workers.

The revision of the Worker Dispatching Act in 2003 stipulated that a user enterprise should fix the term of contract in advance when it intends to hire dispatched workers for more than one year and up to three years. In that case, it has to inform the majority representative of workers of the desired term and ask for his or her opinions. This is based on the following idea: "As the term which can be considered temporary or tentative apparently varies depending on the situations of the enterprise supplied with dispatched workers, it is appropriate for the employer of the user enterprise to individually judge if the term can be actually considered temporary or tentative even when it exceeds one year, after listening to opinions from the majority representative of

⁶ As legal committees that are placed in workplaces and consist of labor and management, there are safety committee (Article 17), health committee (Article 18) and safety and health committee (Article 19) under the Industrial Safety and Health Act since the date of enactment in 1972.

employees working in the same enterprise”.

When the Law concerning Stabilization of Employment of Older Workers was revised in 2004, it was stated that, in cases where the employer fixes the retirement age at under 65 years old, he or she should conduct any one of the following measures, in order to secure stable employment for older workers until the age of 65: Raising the retirement age, introduction of a continuous employment system, or abolition of the retirement age. In relation to this rule, it was also stipulated that employers can be regarded as having implemented a continuous employment system when they have designated standards concerning older persons who are subject to the continuous employment system and introduced a system based on the said standards, under a written agreement concluded with majority representative. This is based on the following idea: “In respect of the continuous employment system, as it is sometimes said that a uniform legislation cannot always properly reflect each enterprise’s management strategies and/or labor-management relationships, it is appropriate to allow enterprises that have designated standards concerning employees who are subject to the continuous employment system under a labor-management agreement to introduce a system applicable to workers who meet the said standards, so that enterprises can flexibly respond according to their individual circumstances incorporating innovative approaches adopted by both the labor and management”.

5. Issues in Making the Concept of Improving/Strengthening Workers’ Collective Influential Voice Systems

There are various opinions among researchers on enacting employee representative systems that are distinct from trade unions in Japan. The emerging legal issues are as follows:

A. Relationship between trade unions and employee representatives

- Does the enactment of employee representative system disturb the organization/activities of trade unions?
 - Coordination of roles/authorities between the two organizations
 - Position of minority trade unions under the employee representative system
- B. Is the establishment of employee representative organization obliged even if a majority trade union exists (concurrent employee representative system or complementary employee representative system)?
- C. Form of employee representative organization (permanent and comprehensive)
- D. Election of employee representatives
- The legitimacy as worker representatives (how to fairly represent diversified workers’ benefits)
 - Election procedure of employee representatives
- E. Functions/authorities of employee representatives

Based on these issues, according to actual examples on the relationship between trade unions and employee representative systems in foreign countries, in Germany and France, it is clear that trade unions dominate the determining of working conditions. In addition, trade unions are allowed to intervene and get involved in the election, operation, activities, etc. of the employee representatives. However, note that those trade unions are organized by industry in such countries, but since most Japanese trade unions are organized by enterprise, trade unions and workers’ collective influential voice system are in the same league. Furthermore, I point out that since detailed selection procedures of an employee representative are provided by law and the system reflects diversified opinions of workers in workplaces in Germany and France, there is no doubt about the reliability of the system. In addition, there are various protections for activities of employee representatives such as guarantee of status in both countries.