

Change in Labor Relations and Ideals of Legal System

Summary

Contributing Authors

Takashi Iida	Associate Professor, Faculty of Law, Seikei University
Shunichi Uemura	Research Director, the Japan Institute for Labour Policy and Training
Shigeki Uno	Associate Professor, Institute of Social Science, University of Tokyo
Kaoko Okuda	Associate Professor, Faculty of Welfare Society, Kyoto Prefectural University
Chikako Kankii	Doctoral Course, University of Tokyo Graduate Schools for Law and Politics
Yumiko Kuwamura	Assistant, University of Tokyo Graduate Schools for Law and Politics
Naofumi Nakamura	Associate Professor, Institute of Social Science, University of Tokyo
Yoko Hashimoto	Professor, Faculty of Law, Gakushuin University
Tamako Hasegawa	Researcher, Japan Society for the Promotion of Science
Junko Hirasawa	Researcher, the Japan Institute for Labour Policy and Training
Satoko Hotta	Assistant, Institute of Social Science, University of Tokyo
Yuichiro Mizumachi	Associate Professor, Institute of Social Science, University of Tokyo

Research Period

Fiscal Year 2005

Research Objective

Against the social trend of post-industrialization and globalization, labor relations are changing substantially around the world, making a drastic review of labor laws necessary. The Labor Law was supposedly designed for "indefinite, full-time, collective, dependent workers" who were positioned at the center of the industrialized society in the period from the 19th to 20th century, and it offered the State with facilities to establish blanket codes. Recent social changes, however, brought about dysfunction of

the conventional labor laws, urging a drastic reform of the labor law system. From a broad viewpoint covering the laws related to the system for regulating working conditions as well, this research proposes a new labor law model that responds to changes in the labor relations.

Method of the Research

1. This research proposes the following two hypotheses for the basis of analysis and observation.

[Hypothesis 1] Decision-making level: Decentralization of authority is more emphasized today for negotiation and communication in the labor-management relations and labor relations.

[Hypothesis 2] Decision-making process: In reality, collective negotiation and communication are more emphasized than individual negotiation and communication. Collective negotiation and communication tend to put emphasis not only on the decision made by the majority but also on opinions expressed by minorities.

Decentralization of authority, referred to in the above Hypothesis 1, implies a wide concept, including not only the shift from collectivization to decentralization at the level of labor-management negotiation and consultation (for example, the shift of labor-management negotiation from the industry level to the company/workplace level), but also the shift from centralized decision-making and codes set by law to flexible decision-making through negotiation of individuals. Decentralized negotiation and communication, referred to in the above Hypothesis 2, imply a diversified concept, including not only collective bargaining and labor-management consultations between labor and management but also such organizations represented by the employees under the law as business committees, business establishment committees, and labor-management committees, as well as complaint handling, dispute settlement, information collection and provision system, etc.

2. Based on the above two hypotheses, we conduct, in this research, analysis and make observations in the following three core areas to theoretically deduce a new labor law model that can respond to the changes.
 - (1) To clarify theoretical meaning of the two hypotheses, observation is made on issues related to changes in the labor relations from the multidisciplinary viewpoint covering law, political philosophy, labor history, and law and economics,

and

- (2) To analyze the trend of the labor relations and labor law in other countries, verifying the two hypotheses and examining various systems in the background in each country. In this research we analyzed the trends in France, Germany, Britain, United States of America and Japan, with careful consideration given to differences in the historical background and social foundation in each country and using interviews and other methods to collect information on the actual issues that each country faces and their reform programs.
- (3) To analyze the trend of labor relations and labor-management relations of Japanese companies and verify the validity and significance of the two hypotheses in Japanese companies. Formulation of a new legal system requires understanding of the actual conditions of Japanese companies to which the law is applied, solving the problems identified, and ensuring affinity of the new legal system to the actual conditions. The survey was conducted with repeated interviews on six companies, which were selected with consideration on ensuring diversity in the size of the companies, whether or not the companies have a labor union, the number of labor unions, nature of business, etc.

Outline of the Research

1. General discussions (Chapter 1)

(1) Observations from the viewpoint of law

From the viewpoint of law, implications and issues of the two hypotheses are identified through two legal approaches proposed within the context of recent social changes, namely, "proceduralization of law" mainly proposed in France and the "structural approach" proposed in the United States of America. On the decision-making level, decentralized negotiation and communication by the parties concerned is important from the viewpoint that "procedural reason" is given an emphasis as a new reason that supports legitimacy in an increasingly complex and uncertain society and from the viewpoint of "economic efficiency" that efficiently solves today's complex, deep-rooted problems and generates profits. Here, an issue arises regarding how to segregate decentralized decision-making from collective decision-making and how to strike a balance between the two. On the decision-making process, the collective, contextual decision-making process that also takes into consideration the views and interests of minorities, rather than individualized negotiation and decision-making, is important from the viewpoint of arriving at a new reason (procedural reason) through free discussion from multiple viewpoints and coordination of those viewpoints, as well as from the viewpoint of listening to workers' true feelings to address their dissatisfaction and problems and raise their motivation.

(2) Observations from the viewpoint of political philosophy

From the perspective of political philosophy, we examined the changes in the labor relations in the context of reorganization of the intermediate groups and "social elements." In short, these changes can be expressed as "welfare states" losing their basis (social solidarity) due to diversification and individualization of risk after 1970. Today, the "intermediate organizations" commonly play an important role in many countries in providing individuals with as many social bonds while adapting to the diversification of individuals. In relation to the two hypotheses, decentralization on the decision-making level is considered as moves to respond more precisely to the individualization and diversification of society. As for the decision-making process, the most valuable social right in today's society is the right to have social bonds, but this right cannot be realized through individual negotiations that lack social relation. In this case, social relation is there to better realize the rights of the individuals who belong to that society, and greater emphasis should be given to the views of diverse minorities in the decision-making process.

(3) Observations from the viewpoint of labor history

From the viewpoint of labor history, we examined the collective labor-management relations in Japan starting from its origins and tried to identify the historical premises of today's labor-management negotiations. Collective labor-management relations in Japan that formed through historical process are characterized by (1) the origin of "decentralized" relation was already formed by different companies before the war, (2) the labor unions that were established and grew in number after the war based on the foundation built before the war took the form of joint labor unions of both factory workers and office workers that unionized only regular employees, and (3) historically, workers' organizations in Japan were reorganized through the initiatives of employers, which meant that the views of individual workers were weak vis-à-vis the ideology of the family that ran the business.

(4) Observations from the viewpoint of law and economics

From the viewpoint of law and economics, we attempted to identify the guidelines for establishing a system by theoretically integrating "decentralization" and "collectivization." According to observations, it was indicated that (1) in society with diversified values and preferences, the "decentralized" method of negotiation and decision-making is preferred since it offers refined and diversified selections, and that (2) the "collective" method of negotiation and decision-making is advantageous for having the kind of negotiation that will increase the interest of both parties (cooperative surplus) through labor-management collaboration and improving the efficiency of negotiation through the participation of repeat players and reducing the cost of the negotiation and management (negotiation cost). As for the correlation between "decentralization" and "collectivization," "collective" functions are fully exercised only when an appropriate level of "decentralized" negotiation is set. To be concrete, when the agenda are of the nature that has bearing on the interest of a large number of workers (public property), the negotiation should be conducted in the place where the authority of decision-making rests.

2. Comparison of laws (Chapter 2)

(1) France

In France, there was traditionally the culture of collectivization where working conditions were determined by detailed provisions of the law and by labor agreement in each industry. However, since the 1980s in particular, "decentralization" has progressed. It consists of two major shifts: one from blanket regulations of the law to flexible

regulations of labor-management negotiations, and the other from negotiations and consultations at industry-level to company-level. In the course of decentralization, however, the law and industry-based agreement define the basic objectives and direction and the framework of the regulations in many cases, and decentralized negotiations give concrete form to the regulations or supplement them. The basic rights of workers' health and safety may also not be infringed upon by decentralization. For the decision-making process, collectivization is emphasized, disallowing opt-out of laws and regulations by individual agreement.

(2) Germany

In Germany, there have traditionally been two layers of labor-management relations: one of labor unions organized outside the company at the industry level and the other of labor committees organized within companies. Since the 1980s, decentralization has been in progress at the decision-making level, in terms of authorization of the company agreements with use of the open clause of the industry labor agreement and increase of the labor agreements targeting specific companies (in addition, provisions of the law are also increasing that are open to labor agreements). However, this "decentralization" is carried out based on the labor-management agreement on the industry level, and decentralization is not currently permitted beyond the boundary of the direction and framework established at the collective level. In the decision-making process, "collectivization" is still emphasized in consideration of the weak positions of individual workers, and the effectiveness of individual agreements that fall below the criteria set by the provisions of the law, labor agreements, or company agreements is not recognized. In the collective decision-making, consideration for the opinions and interests of minorities is legally institutionalized in the form of voluntary participation and guarantee of equal right in labor agreements, and the election system based on proportional representation and other institutional guarantee on the reflection of diverse interests as well as fair examination by the court in company agreements.

(3) Britain

In Britain, there was a tradition of the collective laissez-faire principle mainly in industry-level collective bargaining and labor agreements, which was justified by agreement of individuals on its binding power. Since the 1980s, as the rigidity of collective negotiation was pointed out and the rights of labor unions were legally restricted, industry-level collective bargaining declined, and, in its place, a number of laws were established to give rights to individual workers. The current Labour Party

government is attempting to form two collective channels from the viewpoint of ensuring efficiency and fairness. One of the channels is the promotion of collective bargaining by labor unions, and the other is the establishment of systems of information provision and consultation within companies. Although how much influence these collective channels will come to have is not yet known, it can be seen as a move towards institutional re-"decentralization." In the decision-making process, the emphasis is on the individuals as, for example, they may individually agree to exercise opt-out of the regulations on working hours.

(4) United State of America

In the U.S., collective labor relations were formed based on the collective bargaining and labor agreements under the legislation on collective negotiation system established in the 1930s. Since the 1960s, however, labor unions have gradually declined, and instead a number of laws have been established to directly secure the rights of individual workers. This can be interpreted as "collectivization" on the decision-making level. Recent court rulings and legislations have given emphasis on the collective process in identifying and solving problems, and such arrangements have actually been introduced into some advanced companies. In this regard, there are moves toward "decentralization." In the decision-making process, the traditional framework of collective bargaining is one of exclusive negotiation by representatives of the majority where "collective" decision-making by the "majority" holds sway. The new process of in-house collective problem solving allows minorities to be directly involved in the process, and their views and interests are considered.

(5) Japan

In Japan, there were two decision-making levels: one of collective decision-making and establishment of order by the State, and the other of decentralized decision-making through labor-management relations in each company. Since the late 1980s, however, there has been a move toward "decentralization" with a legal shift from blanket regulations of the State to flexible decision-making at the company level. In terms of the statutory law, this move toward decentralization can be observed over a wide area, including regulations on working hours, occupational health and safety, the period of accepting dispatched workers, the range of senior workers subject to continued employment, utilization of woman workers, support for parents raising children, and remuneration for employee's inventions. "Collectivization" is emphasized when setting exceptions to laws and regulations. With regard to the consideration of the opinions and

interests of minorities in collective communication, labor-management agreements that are based on the Labour Standard Law and the system of labor-management committee give emphasis on the union that has organized the majority of employees at a company (if there is such a union), and the opinions and interests of minorities are not considered.

3. Situation in Japanese companies (Chapter 3)

A fact-finding survey on labor relations and labor-management relations in Japanese companies was conducted to identify the channels of labor-management communication and decision-making process of each company, and observation was made in relation to the two hypotheses. The survey was conducted on Toyota Motor Corporation, East Japan Railway Company, general retail company *A*, UNIQLO, CyberAgent Incorporation and specialized construction company *B*.

All companies are in the process of reviewing and reinforcing their labor-management communication. Based on the idea that enhancement of labor-management communication is indispensable to address changes and to stabilize and improve corporate performance, they are attempting to build up multilayered communication channels and otherwise substantiate those channels.

From the viewpoint of the levels of communication, it can be said, based on two aspects discussed below, that the emphasis is generally on "decentralized" communication. Firstly, practical channels of communication are provided for discussions and proposals at the levels of blocks, departments, stores and workplaces, and workers are making their voices heard through these channels. This takes place regardless of type or size of business, or of whether or not there is a labor union within the company. In addition to the institutionalized channels of communication, senior officers and managers in the field pick up information on a daily basis. Secondly, with regard to collective labor-management relations, more emphasis is put on the flexible style of communication over collective bargaining and other formal modes of negotiations and consultations.

As for the process of communication, "collective" communication is important, while the role of "individual" communication with, for example, one's boss is also increasing. The type of "collective" communication varies from that done through labor unions to that initiated by the company, and from that which is institutionalized to that which is not institutionalized. Based on the idea that "collective" communication is more efficient and fair and that a higher degree of commitment is achieved through "collective" discussions, there is a trend to give more emphasis to "collective" communication. If we

categorize the contents of such communication, when there is a labor union in the company, opportunities for periodic labor-management meeting to discuss labor related issues, such as working conditions and working environment, are guaranteed. On the other hand, when there is no labor union in the company and the company has thoroughly implemented the merit principle, there generally tends to be more interest in business and management strategies, and the response to labor related issues tends to lag. Institutionalized mechanisms have advantages in that they promote stable, smooth response, while non-institutionalized mechanisms have other advantages in that they provide more opportunities for open discussions with people concerned. In addition to these collective processes, separate channels of communication are also provided through contacts with workers' superiors to pick up personal complaints and proposals from individuals. External third-party organizations are hardly used to verify the fairness of the collective process or to support in the problem solving. In negotiations and consultations with labor unions, issues related to management personnel, non-regular employees, who are non-union members, or members of minority unions (including clerical workers and members of small unions in this survey) are often not discussed, and the communication tend to revolve around the majority. On the other hand, all companies that do not have a labor union provide opportunities for any employee to participate and speak out.

4. Summary and a proposed model (Conclusion)

(1) Decentralization on the decision-making level

The process of decision-making through decentralized communication proves to be a preferable method. From the viewpoint of philosophy of law, it provides an opportunity of the practice of a new reason (procedural reason) in recognizing and solving complicated problems. From the viewpoint of political philosophy, it works as one of the "intermediate organizations" that incorporate diversification of individuals and provide social bonds to individuals. From the viewpoint of law and economics, it is one of the ways to provide more precise response to diversified values and preferences.

In terms of comparative law, there is a shift from collective decision-making provided by law to negotiations and decision-making by the parties concerned. At the same time, in France and Germany where collective labor-management negotiation has been traditionally practiced, the levels of labor-management negotiation are being decentralized. Even with the progress of decentralization, however, decisions on the basic objectives, direction, and framework are often made at the collective level, and infringement by decentralization of the basic rights of workers, such as equal right and

rights to protect their health and safety, is prohibited.

In Japan, decentralized labor relations are already implemented at the company level with a particular emphasis on flexible communication at the workplace. Also in terms of legislation, moves to give emphasis on flexible decision-making by labor and management can be observed.

(2) Decision-making process

In the history of labor-management relations in Japan, emphasis was put on the process of collective decision-making with a particular focus on regular employees. If we look at the current situation in Japan, some companies that do not have a labor union provide all employees with the opportunities to participate and speak out, regardless of whether the employees belong to the majority or minority, to pick up and reflect diverse opinions, but those companies tend to have difficulty in picking up opinions that are related to labor issues such as working conditions. In terms of law, the emphasis is on the decisions of the union that represent the majority of workers at a company (or a person representing the majority of workers if there is no such labor union) in the process of decentralization under the law.

In terms of comparative law, there are moves to emphasize collectivization because individual workers lack negotiating power and because of the ineffectiveness in realizing the rights without collective support (collectivization has traditionally been emphasized in France and Germany, while its importance is being recognized in the U.S. and Britain). At the same time, the systems are designed so that decisions are not simply based on the majority but the opinions and interests of minorities are also taken into consideration. This is done, firstly, by providing procedures to promote the participation and reflection of opinions of minorities (open collective bargaining, election of employee representatives based on proportional representation to facilitate the representation of minorities, problem solving process open to minorities, etc.). Secondly, there is a guarantee on the protection of the practical basic rights, which cannot be infringed upon even by the majority decision.

From the viewpoint of legal philosophy, coordination is required, including analysis and coordination of the views and interests of minorities, in recognizing and solving complicated problems. From the viewpoint of political philosophy, social bonds and relations are needed in today's society for the purpose of better realizing the rights of individuals who belong to that society, and priority should not be given simply to the opinions of the majority. From the viewpoint of law and economics, setting an appropriate level of decentralized negotiation is a condition for fully achieving collective

efficiency. To be concrete, negotiation should preferably be conducted in the place where the authority of decision-making rests, if the items on the agenda involve the interests of many workers.

(3) A new model of labor law

A new model of labor law derived from the above observations is shown below.

Firstly, a "decentralized" legal system needs to be established, putting emphasis on flexible negotiation and decision-making through labor-management negotiations, instead of uniform standards and regulations based on law and precedents. As for the method to achieve this, (1) after regulations are established as legal standards, they can be lifted if the decentralized process of negotiation and decision-making is properly practiced (the same method as practiced in the relationship between the current Labour Standard Law and labor-management agreements and committees), and (2) if considerations and preventive measures are sufficiently provided based on decentralized negotiation and decision-making on the obligations and responsibilities of employers established in the precedents, the responsibilities of the employers can be exempted. To promote an appropriate process of decentralized negotiation, it is important to set higher levels of regulations and responsibilities that are applied to cases where negotiations are not carried out appropriately. As the premises and the basis of decentralization, the basic objectives, direction, and framework of the system as well as the guarantee on the basic rights of workers must be collectively determined.

Secondly, as a process of decentralized negotiation, a process that has a collective function and is also able to reflect the opinions and interests of minorities must be designed. To be concrete, possible approaches include, for example, legally institutionalizing the election system of members who will serve in the organization that represent employees based on proportional representation, and legally promoting open negotiations carried out appropriately in light of the nature of the issues by labor, management, and other stakeholders (with use of legal sanctions if negotiations are not conducted properly).

The labor law model (basic framework) proposed here is only a tentative one derived generally from the results of the review and observation of this research. Taking this opportunity, our challenge will be to deepen our research from even more diverse viewpoints and carry on further discussions so as to contribute to designing a concrete legal system.

Contents of the Report

Introduction - Outline and summary of the report

1. Identifying the problem
2. Setting up hypotheses
3. Main observations
4. Summary of results

Chapter 1. General discussions

Section 1. Observation from the viewpoint of law - New trend of the study on labor law and its implications

Section 2. Observation from the viewpoint of political philosophy - Intermediate organizations and reorganization of social organizations

Section 3. Observation from the viewpoint of labor history - Focus on "collectivization" in labor history in Japan

Section 4. Observation from the viewpoint of law and economics - Economic analysis of "decentralization" and "collectivization" in labor relations

Chapter 2. Comparison of laws

Section 1. France

Section 2. Germany

Section 3. Britain

Section 4. United State of America

Section 5. Japan

Chapter 3. Situation in Japanese companies

Section 1. Labor communication in Japanese companies

Section 2. Outline of survey results

1. Toyota Motor Corporation
2. East Japan Railway Company
3. General retail company *A*
4. UNIQLO Co. Ltd.
5. CyberAgent Incorporation
6. Specialized construction company *B*

Conclusion - Summary and a model (tentative theory)