Isabelle VERRET ROUSSEL
Research Fellow

COLLECTIVE EMPLOYEE

REPRESENTATION SYSTEMS

IN JAPAN AND FRANCE

August 9th 2006

Collective employee representation systems in France and Japan[1]

Introduction:

Industrial societies necessary create industrial relations defined as the complex interrelations between labor, management and the government. These actors *"interact with each other, negotiate, and use economic and political power or influence in the process of determining the rules of the work places that constitute the output of the industrial relations system* » (DUNLOP, 1958, p. 13).

In both countries, federated employer's associations were formed at national level after the war. In Japan, Keidanren (the Japan Federation of Economic Organizations) was created in 1946 and Nikkeiren (the Japan Federation of Employers' associations) in 1948. These organizations merged in May 2002 and became Nippon Keidanren. The main role of Nippon Keidanren consists in guiding enterprise members in their decisions on the policies concerning industrial relations. In France, the employers founded a National Council of French Employers *(Conseil National du Patronat Français or CNPF)* in 1946. In 1998, the CNPF was transformed into the French Business Confederation (*Mouvement des Entreprises de France or MEDEF*). The small and middle size companies founded their own organization in 1944: the General Confederation of Small and Middle Sized Companies (*Confédération Générale des Petites et Moyennes Entreprises or CGPME*). Two other employers' organizations at national level represent employers of particular sectors: agriculture (FNSEA) and artisans (UPA).

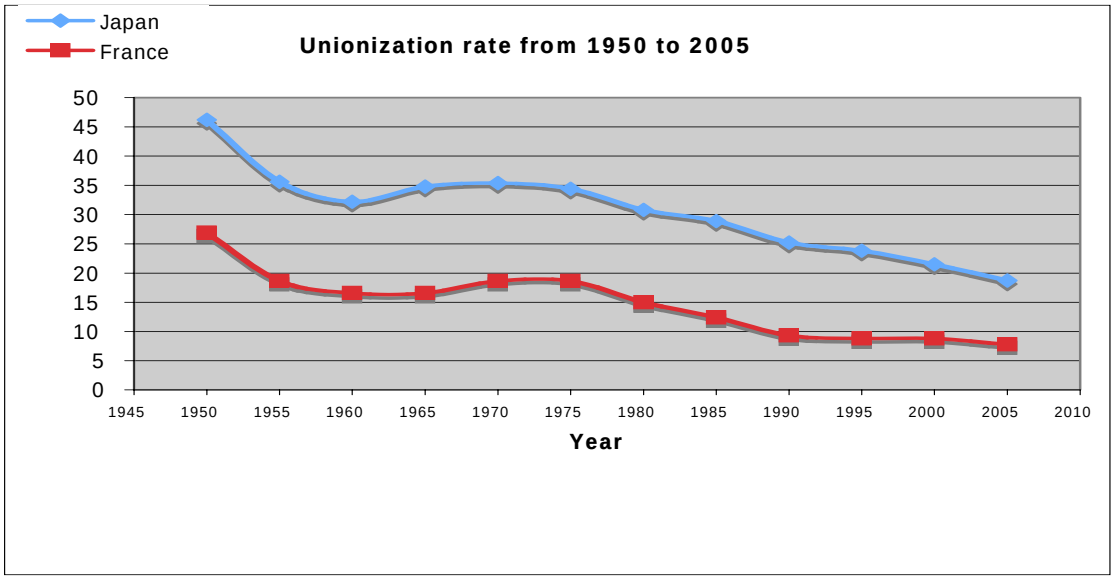
This report will focus on the actors representing labor and will study the collective employee representation systems of each country. Collective employee representation systems may refer to all types of informal or formal organizations that allow employees to express their opinions and defend their interests through representatives. This definition does not include direct and individual ways of expressions of workers. These collective employee representation systems may take wide forms. The most common ones are labor unions, joint consultation committees or elected representatives like the works councils. They may vary considerably in terms or organizations, level of operations, composition and powers.

[1] The author would like to thank JILPT for the kind acceptance as an invited guest researcher at the Institute and for its substantial support for this report, as well as all the persons interviewed that helped her draw up this report.

In Japan, as well as France, labor unions became the privileged way of expressing the opinions of employees in face of employers or public authorities. In France, the right to organize was recognized in 1884 by the *"Waldeck Rousseau"* Law. In Japan, the development and expansion of labor union movement occurred after the World War II. The new constitution of November 1996 guaranteed the right of workers to organize, to bargain and to act collectively, under article 28. The Labor Relations Adjustment Law of 1947 reinforced this constitutional right by establishing rules for adjusting labor disputes. The Trade Union Law of 1949 also immunized union members from civil and criminal liabilities. These changes enabled the spread of the labor union movement in Japan and France.

However, since the 1970's, this type of employee representation system is facing the same challenge: a continuous decline of the union density as shown by the chart. In Japan, the trade unionization rate declined from 46.2% in 1950 to 35.4% in 1970. Since then, it has been progressively decreasing and it dropped by 18.7% in 2005[2]. In France, a study of the Ministry of Labor shows the decline of trade unionization rate. In 1950, 26.9% persons were union members and this rate diminished to 16.6% in 1960. Between 1970 and 1975, the unionization rate increased slightly to 18.6 %. After the oil crisis in 1973 followed by an economic recession in 1975, union density has continuously declined to reach 8.2% in 2003.

2 Ministry of Health, Labor and Welfare, "Basic survey on Labor unions" in 2005.



Sources: Japanese Ministry of Labor, Health and Welfare and French Ministry of Labor.

External as well as internal factors caused the decline of union density in both countries. The industrial societies underwent long-term structural changes with the shift from secondary to tertiary industry. The employment structure was also considerably transformed with the development of other types of work like part-time or temporary work and the expansion of female employees. Labor unions have been encountering problems in organizing workers of the tertiary sector and new types of workers. Moreover, the ideological divisions of labor unions led to many conflicts and schisms which fostered the decline of trade unionization rate. Scholars in Japan and France also showed that labor unions have made weak attempts to unionize in companies. National characteristics can also give additional explanations to the decline of labor union movement. As in both countries the traditional employee representation systems of labor unions are facing the same challenge with the decline of trade unionization rate, it is interesting to study the way each industrial relations systems tried to solve this issue.

The report starts with explaining the main features of employee representation systems. We shall analyze the way the different systems of employees' representation evolved due to the decline of unionization rate in both countries. The report will also study the role of the State in labor-management relations **(Part I).**
In the second part, the report deals with interactions between employee representatives and management and government agencies in the regulation of the work place. We shall precise the role employee representatives play in the setting

up of the rules for the work place. The report will also focus on the nature of relations between labor and management through consultation and collective bargaining, as well as industrial disputes. (**Part II**).

First Part: The characteristics of employee representation systems in Japan and France

I. The traditional form of employee representation systems: labor unions

In both countries, the traditional way to express the workers' opinions is labor unions. As Professors ARAKI and OUICHI pointed out[3], in countries where collective bargaining is mainly decentralized, like Japan, the main channel to represent the voices of workers is labor unions (A). By contrast, in countries where the predominant levels of collective bargaining are the industry or regional levels, there is a double form of collective employee representation systems, like in France. Indeed, elected representatives and labor unions coexist. However, the supremacy of labor unions is recognized (B).

A. The organizations of labor unions

One main feature of Japanese labor union movement is that labor unions developed predominantly in enterprises and this is called enterprise unionism. Contrary to Japan, labor unions in France were originally craft unions consisting of blue-collar workers of the same profession. However, progressively the main form of labor unions became industry unions consisting of workers of the same sector in a certain geographical area (LANDIER, LABBÉ, 2004, p.71).

A.1. The predominance of enterprise-unions in Japan

In Japan, in 2005, the number of union members is around 10 millions (10.138 millions) and the trade unionization rate accounts for 18.7% in 2005. Most unions are organized not by occupation or industry but by enterprise or establishment. In 2004, around 86.2% of labor unions are organized in enterprises.

What can explain this characteristic? Authors have presented various explanations,

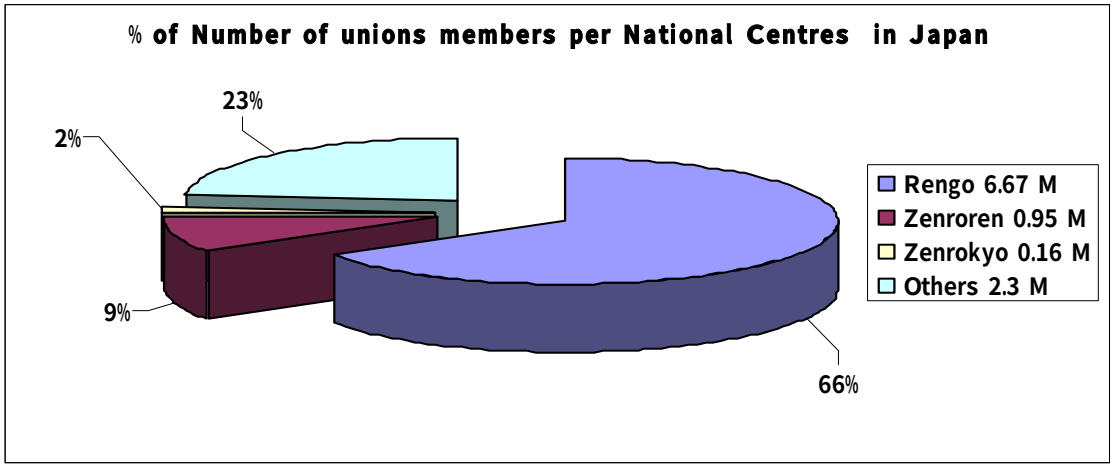
3 OUCHI Shinya and ARAKI Takashi, "Introduction", in Decentralizing Industrial Relations and the role of Labor Unions and Employee Representatives, JILPT REPORT, n.3, 2006, p.33

but they all more or less agree on the opinion that the Japanese enterprise unions developed from the seniority base system. This system refers to the practice of long term employment until the mandatory retirement age (so-called lifetime employment system), in-house training for workers and reward systems based on seniority concerning wages, promotions and other benefits such as retirement pay systems and welfare facilities (SHIRAI, 2000, p.31). There are other historical and cultural reasons. There was no craft union tradition, no custom of regulating working practices beyond the framework of a single company, contrary to France. In addition, in the post-war years, the state had abolished unions so after the war no organizations could serve as “nuclei” around which workers could huddle up. Even if National Centers and industrial unions were formed, they were only loose federations, which were unable to exercise effective leadership for their members unions. Furthermore, after the war managers did not want to negotiate with anyone from outside the company and sought by several means to ensure the unions were restricted to individual companies (NIMURA, 1994).

However, enterprise unions join in industrial federations affiliated to National Centers. After the enactment of the Trade Union Law in 1949, enterprise unions coordinated their activities at national level. Due to ideological discords, the labor movement split up and created three National Centers: Sodemei (the Japanese Federation of Trade Unions) in 1951, Shin-Sanbetsu (the National Federation of Industrial Organization) in 1952 and Churistsu Roren (the Federation of Independent Unions of Japan) in 1956. This situation prevailed until the late 1980's. After the first oil shock in 1974-1975, the Japanese economy fell into a deep recession and the union participation rate started to decline. Consequently, some enterprise-union leaders took the situation very seriously and launched the union identity movement (FUJIMURA, 1998).

In 1987, the four National Centers of the private sector merged and founded Rengo (the Japan Trade Union Confederation). Unions of the public sector and government employees also joined Rengo in 1989. However, certain groups of unions refused to be affiliated to Rengo due to different ideological positions. The unions in favor of communist ideas established Zenroren (the National Confederation of Trade unions). In addition, a left wing faction close to socialism founded Zenrokyo (the National Union Trade Council). Although, there are three National Centers, it can be deemed there was a unification of the labor union movement, as Rengo became the major National Center numerically. Indeed, in 2005, 65.8% of the organized workers are

union members of Rengo, whereas 9.4% are members of Zenroren and 1.6% of Zenrokyo.



Source: Japanese Ministry of Labor, Health and Welfare

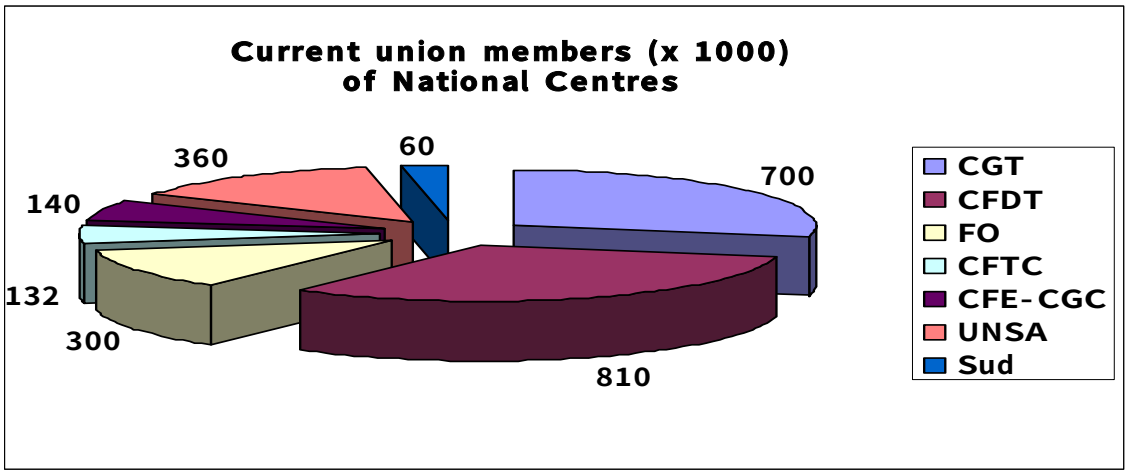
A.2. The predominance of industry unions in France

The origins of labor unions can be traced back to the guilds or crafts unions in the Middle Age during the 12th century. The *"Le Chapelier"* Act, passed in 1791 banned all associations. However, following the industrial revolution of the 19th century, which generated an increased number of blue-collar workers, craft unions progressively developed to defend the interests of these workers. In 1864, Napoleon the Third abolished criminal sanctions linked with strikes. As a result, the labor union movement expanded rapidly. Finally, the so-called *"Waldeck Rousseau"* Act, enacted on March the 21st 1884 granted individuals the right to organize. This law considered labor unions as associations protecting common interests of a professional group, such as farmers, small businesses, artisans, or professional self-employed. At the end of the 19th century, craft unions evolved to industry unions consisting of workers of the same sector in a certain geographical area in order to adapt to the changes of the industrial structure.

In parallel, labor unions organized at national level. In 1895, the first National Center of labor unions, named the General Confederation of Labor (*Confédération Générale du Travail : CGT*) was created. The internal divisions of the CGT inevitably led to schisms after the war, like in Japan. The anarchists and socialists defending the social revolution withdrew from the organization and founded the

National Confederation of Labor in 1946, linked with the communist party. The reformists, formed the General Confederation of Labor-Workers' Power *(Confédération Générale du Travail-Force Ouvrière or CGT-FO*) in 1947, not affiliated to a political party. In parallel, labor unions opposed to the idea of class struggle and linked to Christianity created another National Center in 1919: the French Confederation for Christian Workers (*Confédération Française des Travailleurs Chrétiens or CFTC*). The CFTC also underwent a schism in 1964 and changed its name to The French Democratic Confederation of Labor (*Confederation Française Démocratique du travail or CFDT*) in order to show its independence with the Christianity. The minority members who refused this change kept the initial name of CFTC. In addition to ideological divisions, professional divisions have characterized the French labor union movement, unlike Japan, but these divisions tend to tone down. In October the 15th 1944, engineers and executives founded the French Confederation for Executives (*Confédération Générale des Cadres: CGC*). In 1981 the CGC became the French Confederation of Managerial Staff and Executives (*Confédération Française de l'Encadrement-Confédération Générale des Cadres)* to widen its membership coverage to technicians and upper ranking blue-collar workers.

There was no movement of unification at national level in the 1980's, like in Japan. On the contrary, the existing divisions of labor unions increased. Another National Center called the National Federation of Autonomous Unions (UNSA) was created in February 1993. Furthermore, within the GCT and the CFDT, some federations of labor unions influenced by anarchist's ideas broke up their affiliation with the National Centers and created new organizations called SUD federations (meaning Solidarity, Unity and Democracy). These organizations federated at national level in 1998. Thus, one of the main features of the French labor unions is the pluralism of National Centers of labor unions due to ideological as well as professional divisions (VERDIER, 1987, p.56).



Source: websites of each National Center.

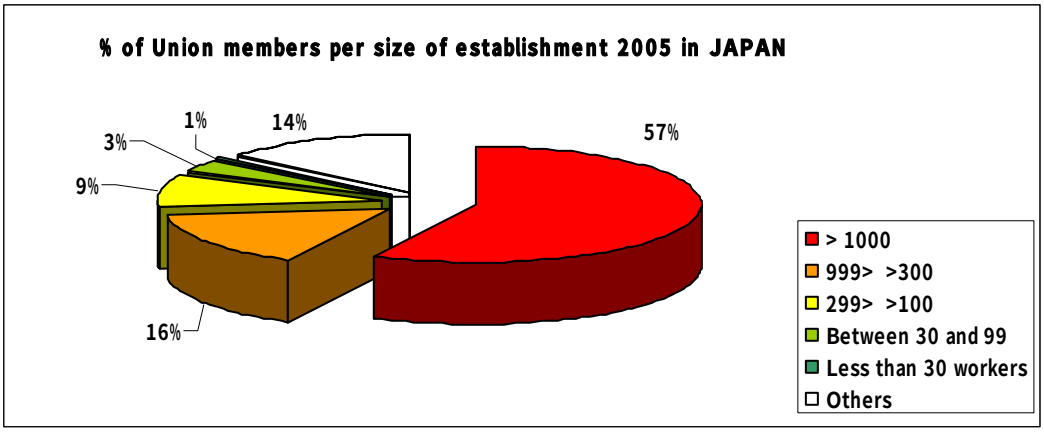
The fragmentation of labor unions is also linked with one of the French system peculiarities, namely *"presumed representativeness"* (*representativité presumée*) of labor unions. Public authorities granted an automatic right to represent workers at national level to five labor unions National Centers: CGT, CGT-FO, CFTC, CFE-CGC and CFDT through the enactment of an administrative rule in 1966. Any union (whether industry or cross-industry local unions) affiliated to one of the five National Center does not have to prove its quality to represent all the workers. The labor unions not belonging to one of the five National Centers have to prove they comply with different legal and judicial requirements to be able to represent workers.

B. The features and functions of labor unions

We will analyze the following issues: Where are labor unions located? What are the characteristics of enterprise-based unions? Who are the union members? In addition, what roles play labor unions?

B.1. The features and functions of enterprise-unions in Japan

In Japan, workplaces are bipolarized between large unionized companies and small and medium sized non-unionized companies. Indeed, in 2005 the unionization rate amounts to 15% in establishments from 100 up to 999 workers and to 1.2% for those with less than 99 workers. By contrast, 47.7% of the workers are unionized in companies with more than 1000 workers. In addition, trade union members are concentrated in big enterprises with more than 1000 workers as shown by the table.



Source: Ministry of Labor, Heath and Welfare (LHW)

Unions also cover more densely manufacturing industry and the public sector Indeed, a survey of the Ministry of LHW reveals that in 2005 more than 50% of the workers in the public sector are union members and 25.7% in the manufacturing. The lowest trade unionization rates occur in the tertiary sector like retail with 10%, services with 6% and real estate or restaurants with less than 4%. Indeed, tertiary sector is characterized by small and medium-sized enterprises, except in certain sectors like the transport sector (29.4%), telecommunication (22.3%), electricity-gas-water and heating supply (58.6%), finance and insurance (48.6%). Consequently the union density is higher in these sectors.

Secondly, the union shop system, whereby all the workers have to belong to a labor union in the company or establishment is predominant. In 2003, 63.4% of labor unions surveyed answered there are a union shop agreement in their company[4]. This does not mean that there is always a unique labor union in the company. Multiple unions may exist in a single company, each with the right to bargain and act collectively. Generally, workers opposed to the strategy of the major labor unions will form another union, but this is not frequent. Indeed, the same study reveals that 89.2% of the labor unions surveyed answered there are only one labor union in their company.

Thirdly, due to the existence of enterprise-unions, the workers acquire membership of a union by working in a certain enterprise or establishment. Therefore, a worker will lose the eligibility when he/she leaves the enterprise or establishment due to retirement, transfer to another company or dismissal. Furthermore, labor unions

4 Study of the Ministry of LHW

are representing the workers of a single company regardless of their occupational status up to lower-management level. The presence of white-collar and lower-ranking managers contributes to the cooperative stance adopted by Japanese enterprise unions towards management. Then, although there are no legal obstacles to prevent enterprise unions from organizing part time or temporary workers, enterprise unions have confined the eligibility for union membership to regular workers employed for an unlimited term. The latter have common interests to the improvement of the company's productivity in order to improve their working conditions. The interests of regular workers can enter into conflict with the ones of non-regular workers. Although recently unions have organized more non-regular workers than previously, the estimated unionization rate of part time workers is still low and amounts to 3.9 % in 2005[5]. As a result, union officials are elected among the regular workers of the enterprise. They temporarily leave their ordinary tasks, but keep their status as employees during their tenure. The full-time officials are paid out of unions dues.

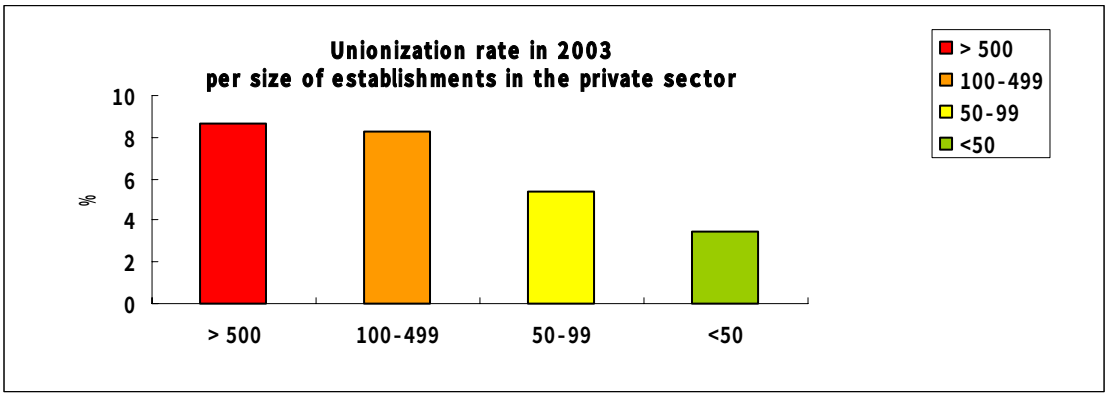
Finally, the role of enterprise unions is to defend the interests of union members through collective bargaining and the conclusion of collective agreements that only cover their members. Unions are also very much concerned about the competitiveness of their firm. Thus, they actively cooperated with managers in the rationalization of the shop-floor production (SUZUKI Akira, 2004) through joint labor-management consultation systems (see p.42). The goal of these councils is to improve the workers' productivity to strengthen the company's competitiveness. The specificity of Japanese labor union, mainly developed at enterprise-level explains difficulty of enterprise unions to join within industrial federations. Indeed, enterprises are in competition with each other within the same sector and have conflicting interests. Ideological divisions within the industrial federations and the National Centers, also contributed to the weak development of high-level labor unions organizations.

B.2. The main features and functions of labor unions in France

The main features of labor unions

We shall analyze the localization of labor unions. In 2003, 8.2% of the workers are unionized. The unionization rate increases with the headcount of the establishments, as shown by the graphic.

5 A study of the Ministry of LHW.



Source: the National Institute for Statistics and Economic Studies

Like in Japan, workers are more unionized in the public sector and in the manufacturing industry than in the tertiary industry. In 2003 around 15% of employees in the public sector joined a labor union. In the private sector, the unionization rate is the highest in manufacturing industry with 7.5% of union members out of the total of employees, whereas it falls to 2.5% in commerce and construction[6]. Moreover, non-regular workers are less organized than the other workers. Only 2.5% of workers under a limited contract or in interim are unionized and 6% of part time workers are union members in 2003. However, unlike Japan, unionized companies usually have plural unions. Indeed. In 1998[7], 37% of unionized companies have plural union delegates affiliated to different National Centers.

As for the union members, as labor unions were created outside enterprises and took mainly the form of industry unions, the eligibility to a labor union is not linked with the enterprise. It depends on the sector the worker is working for and his/ her location in a geographical area. Consequently, unemployed persons and retired persons can join labor unions (article L.411-7 of the Labor Code). Then, unlike Japan, the law forbids union shop agreements or closed shop agreements, whereby employers, have to hire only workers members of a labor union (article L.412-2). Consequently, the number of union members in enterprises has never been very high. Union members are usually militant unions, only consisting of active members.

6 - French Ministry of Labor, DARES, Premières Informations et Premières Synthèses, "Mythes et réalités de la syndicalisation en France " (Myths and reality of unionization in France), Octobre 2004.

7 Survey of the French Ministry of Labor.

The functions of labor unions

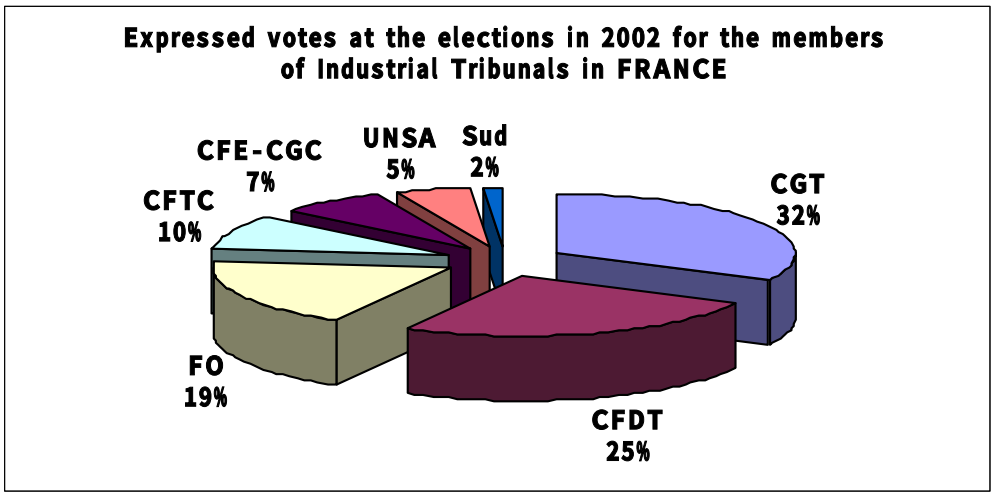
The main role of labor unions is to defend the interests not only of the union members, but also of all the workers through the conclusion of collective agreements at different levels. At national level, the five *"presumed representative"* (see p.10) labor unions National Centers can negotiate and conclude collective agreements with the National Centers of employers' associations. In 2005, they signed 44 cross-sector national collective agreements or amendments of agreements. These collective agreements covered various and major themes like outplacement for dismissed employees (April 2005), teleworking (July 2005), unemployment insurance (December 2005), and employment of elder workers (March 2006) for instance[8]. At industry level, any industrial federation affiliated to the five National Centers is entitled to represent automatically workers and to sign sector-wide collective agreements. In 2005, 1144 collective agreements were signed at industry level[9]. Many agreements are also signed at enterprise-level (see p.40).

Secondly, labor unions are in charge of administrative functions. Indeed, the five National Centers, together with employer's organizations are in charge of running jointly Welfare institutions, named joint-administration (*paritarisme*). It consists in giving equal seats to representatives of workers and employers. This system was first introduced in 1946 and in 1967 for the Social Security System. Thus, employees' and employers' representatives have responsibilities close to the ones of *"civil servants"* in social matters (ROSANVALLON 1988). Furthermore, representatives of labor and management play a role in the adjustment of industrial disputes between labor and management. They are members of the 271[10] Industrial Tribunals *(Conseil des Prud'hommes)* elected every five years by the workers and employers of the private sector. These elections are very important for the National Centers to show their influence.

8 Ministry of Labor, "the Annual reports on collective bargaining in 2005", released in June 2006

9 Idem.

10 Ministry of Justice.



Source: Ministry of Labor

Finally, the government consults labor unions representatives through many committees and councils (See p.30).

The privileged role of labor unions at enterprise level

Labor unions were not originally set up as an employee representation system within enterprises. The government created another channel of employee representation system with elected workers' representatives.

First, the law of April 1946 provided the elections of staff representatives in company or plant with more than 10 workers, every two years (articles L.421-1 to L.424-5 of the Labor Code). The idea of workshop representatives emerged as a way to solve disputes between workers and employers[11]. Their number varies from one company to another, depending on the workforce employed. In spite of this legal duty, in 1999[12] only 27.9% of enterprises or establishments between 11 and 49 workers elected staff representatives. However, their presence increases with the size of enterprises. In 1999, 79.8% of companies or plants with more than 50 workers established staff representatives. The role of these staff representatives is to express complaints related to the non-compliance of law in the work place to the employer. They are also entitled to communicate workers' request and demands on any subject to the employer (see p.44).

11 To put an end to an everlasting strike in the mining sector, Minister of labor Waldeck Rousseau imposed the elections of staff delegates by workers within the companies in 1899 (ROSANVALLON, 1988, p.223).

12 French Ministry of Labor, DARES, Premières Informations et Premières Synthèses,-"Les institutions représentatives du personnel" (Collective worker representative bodies), n.48.1, Novembre 2001.

Secondly, the lawmaker devised works councils as a tool allowing mutual understanding and cooperation between labor and management representatives. An ordinance of February 1945 imposed the settlement of works councils in companies and establishments with more than 49 workers. Unlike in Germany, the Works Council is not a co-management institution (PÉLISSIER alii, 2004, p. 837). Indeed any employer must inform and consult the works council but has no obligation to follow its decisions. According to a study of the Ministry of Labor in 1999, 88.1% of establishments with more than 49 workers established works councils (see p.45).
Then, in 1945, the lawmaker also devised the Health, Safety and Working Conditions Council. It must be set in all companies or plants with more than 49 workers (articles L.236-1 to L.236-10 of the Labor Code). It consists of a representative of the management, usually the head of the enterprise or the establishment, and a delegation of workers representatives (elected by a college of works council members and staff representatives) appoint the members of this council for a two-year term of office. Their number depends on the workforce employed in the company or the plant (article R.236-1). In 1999[13], 81.1% of company or establishment with 50 workers and more established this council. The role of this council is to protect health and safety of employees by controlling assessing the potential risks for the health and safety of employees and by improving working conditions.

After the aftermaths of demonstrations and riots in 1968, the Law of December the 27th 1968 guaranteed the right of workers to organize within companies.
In any company or establishment, workers unions can create a union branch (*section syndicale*, article L.412-4). Unlike Japan, a union branch is not an enterprise union. It consists of union members working in the same company or establishment, affiliated to an industry union. Then, the industry unions can appoint a union delegate (*délégué syndical*) in companies with 50 workers and more (articles L.412-11 and L.412-16 of the Labor Code). Union delegates represent the industry-union. They are also entitled with the power to represent workers in the negotiations with the employer of the company or establishment and to conclude agreements. In 2002, 55.2% of wage earners answered there is at least one labor union in their company or administration[14]. Even if there is no legal requirement to institute union delegates in companies with less than 50 workers, 19% of wage

13 See note 11.

14 Enquiries of the National Institute for Statistics and Economic Survey,.

earners asserted there is a trade union in these companies[15].
As a result, the feature of French employee representation in enterprises is a multi-layered system. However, labor unions were given a privileged role. Indeed, they have a monopoly to propose candidates in the first round of elections for employee representatives and they can become employee representatives (see p.45).

C. The structure of labor unions

Since the organizational structure of Japanese labor unions is based on enterprise-unions, the structure of labor unions is highly decentralized. On the contrary in France, as the labor unions mainly organized above the enterprise level, the structure is centralized.

C.1. The decentralized structure of labor unions in Japan

Enterprise unions affiliated to higher organizations are not subject to control. They enjoy full decision-making authority on issues such as their constitution, the appointment and dismissal of their members and unions officials. Enterprise unions also exert autonomy on the amount and method of collecting dues, as well as on the use of their fund. The National Centers of labor unions do not define the percentage each enterprise union has to perceive per union member. Most companies with labor unions accepted the check-off system, whereby an arrangement between an employer and a union allow the employer to deduct union dues from wages and to transfer them automatically to the union. In 2001, such system exists in about 94% of the surveyed companies[16]. Company-based unions affiliated to federations at industry-level, fix the amount of union dues transferred to the industrial federations within the federations. Therefore, this amount varies according to industry-level federations. Then each industrial federation affiliated to National Center gives a part of its budget to the central national organization. This part is fixed within the National Center and depends on the industrial federations (Interviews with Rengo and Zenroren in May 2006).

Furthermore, collective bargaining predominantly takes the form of internal negotiations between an enterprise-based union and the manager representatives of this enterprise union. However, enterprise-unions coordinated their actions at industry-level through their federations on wage demands.

15 Idem.

16 A study of the Ministry of Labor

In 1955, certain industry-level federations called for inter-industry union coordination on wage bargaining through a joint struggle, known as the *"Shunto" system"* or *"the spring wage offensive"*. Each spring, National Centers and industrial federations set the goal for wages increases and coordinate the time schedule of enterprise-level negotiations and possible strikes for each industry. By the mid-1960's, "Shunto" became an annual custom and an institutionalized feature of industrial relations. Until the early 1970's, unions achieved significant wage increases (TAKANASHI, 1996). The oil crisis in the mid 1970 has marked a turning point announcing a very significant decline in the annual wage increase. At the end of the 1970's, the subjects of negotiations were extended to employment and working conditions issues. Through the *""Shunto" system"*, industrial federations played an increasing role in directing and regulating wage negotiations. They directed their enterprise union's members and coordinated their wage raise target through scheduling dispute actions and fixing guidelines for figures of agreements (SHIRAI, 2000, p.87). They also came to play a greater role in regulating activities of their members, through financial backing for unified struggles, information and assistance services.

Moreover, inter-unions coordination also developed at national level, in close relations to the wage restraint policy exercised in 1975. In the bargaining process of this year on wages, union leaders of certain moderate unions engaged informal consultations with management and government. This consultation paved the way for the formalization of tripartite dialogue on a more regular basis (SUZUKI Akira 2004). The Round Table Discussion Meeting of Industrial Labor Problem *"Sanrokon"* was created in 1970 as a tripartite forum enabling representatives of labor, management and government to exchange information and opinions on labor and industrial issues. This council played an important role in wage restraint. Other types of advisory tripartite councils were also founded (see p.27).

However, even if there were industry wide offensives and sometimes unified or group bargaining, there has never been joint bargaining at industry level, contrary to France. Then, enterprise unions have no obligation to follow the guidelines set up by their federations or National Centers. They enjoy complete autonomy to determine wages increases within their company. Furthermore, although labor representatives are consulted at national level, there has never been practice of collective bargaining at national level.

C.2. The centralized structure of labor unions in France

As labor unions were created outside enterprises, the structure of labor unions is highly centralized, comparing to Japan. Thus, the autonomy of labor union formed in enterprises is under the authority of upper-level unions: federations and/or regional unions, which are also under the control of National Centers.

First, enterprise or establishment unions can exert their autonomy under the authority of the unions of which they belong. Industry unions have the authority to fix the amount of dues paid by each union member in companies or establishments. However, the industry unions affiliated to a National Center must respect the guidelines concerning union dues. For instance, union dues perceived must represent 1% of the annual net salary of any worker, as for the CGT, and 0.75% of the annual net salary, as for the CFDT. For the CFE-CGC, the industrial federations fixed the union dues perceived by industry unions[17]. Union delegates at enterprise or establishment levels are in charge of collecting union's dues for their unions. Concerning the CFDT union dues are transferred to the National Center, which then distribute funds to industrial federations, industry unions and company level unions. Unlike Japan, the French law forbids the check-off system (article L. 412-2). Consequently, assessing exactly the amount of salary paid by each union member is difficult.

Then, enterprise or establishment unions can exert their power to bargain and to conclude collective agreements within the framework determined by upper-level bargaining.

Until the Law of May the 4th 2004 relations between the different levels of collective agreements were based on the *"favorability principle"*. According to this principle, enterprise or establishment-based unions could conclude agreements containing more advantageous provisions than the ones of an upper level: industry-level or cross-industry agreements. For example, industry bargaining systems set minimum wages rates per work category. The unions at enterprise or establishment levels can adapt the agreement to the conditions of the firms by fixing their minimum ages taking into account the ones of the industry agreements as a basis. Hence, this system can provide flexibility at the enterprise level (MARSDEN, OECD Report, 1995).

17 The other National Centers don't give any information on their financial system on Internet.

Conclusions on the characteristics of labor unions in each country:

In both countries the traditional and main way to express the voices of workers are labor unions. However, it is difficult to compare the two types of labor unions due to their sharp differences.

Summary of the differences of Japanese and French labor unions

	JAPAN	FRANCE
Characteristics of labor unions	Enterprise unionism: creation of labor unions mainly inside enterprises.	Industry unionism: creation of labor unions outside enterprises.
Structure of labor unions	Decentralized structure - Complete autonomy of enterprise-level unions. - Inter-unions coordination at industry level on wages: the "Shunto".	Centralized structure - Framed autonomy of unions at enterprise-level. - Joint negotiations at industry and national levels.
Unions members	-Eligibility linked with company Lost of eligibility of a worker leaving a company. - Mainly regular workers -Election of union officials among regular employees of the company.	- Eligibility linked with the industry or the location. - Eligibility of unemployed and retired persons. - Militant workers - Appointment of union delegates by the industry or local union.
Type of enterprise unionism	- Mainly union shop agreements. - Mostly one labor union	- Ban of union shop or closed shop agreements. - Plural labor unions
Function of labor unions	- Represent and defend the interests of their members through consultation and negotiations mainly at enterprise level. - Defend the competitiveness of their company for the interests of their members.	Represent and defend all the workers not only their members through - Negotiations at different levels - Administration of welfare institutions.

As the main feature of Japanese labor union is enterprise unions, it is interesting to compare Japanese enterprise unionism with the French employee representation system at enterprise level especially works council. We shall study the following point in the second part.

II. The evolution of employee representation systems

Historically, labor unions played a privileged role to defend workers' interests and rights. Due to the continuous decline of trade unionization rate since the 1970's (see p.4), the lawmaker in each country tried to compensate the lack of trade unions. However, Japan and France chose different ways due to their historical and ideological backgrounds and traditions.

A. The development of non-union representation systems in Japan

The Labor Standard Law enacted in 1947 originally provided the system of a majority representative, whereby an employee chosen to represent the workers' majority can replace a majority union organizing the majority of workers. The lawmaker expanded gradually this system in 1985 with the Law related to Dispatched Workers and then in successive reforms of the Labor Standard Law in 1987, 1993, 1998, and 2003. Recently, other laws also introduced the majority representative system like the Child and Family Care Law in 2001 and the Law concerning stabilization of older people employment in 2004. In addition, in 1998 another type of system was instituted: Labor-Management Committees. Hence, non-union employee representation systems have been developing since the mid 1980's.

A.1. A majority representative

The Labor Standard Law (LSL) defined minima standards concerning working conditions. As a result, working conditions set forth by collective agreements, work rules or employment contracts that contradict these rules are void and automatically replaced by the norms of the LSL. In addition, they are enforced by the Labor Standards Inspection Office, as well as by criminal penalties. However, the employer can be exempted to comply with certain mandatory standards, especially on wages and working time matters, through the conclusion of a labor-management agreement with a majority representative.

For years, the LSL contained no provisions related to the qualifications of the person chosen to represent the majority of the workers. Critics pointed out these persons were in practice appointed by the management and were simply rubber-stamped. Therefore, the Ministry of Labor issued an administrative guidance concerning the appropriate selection process of these persons in 1988. Ten years later, the Enforcement Order in the 1998 revision of the LSL incorporated this guidance. First, it prohibits any person in a supervisory or management position to be entitled as a majority representative to preserve their independence from the employer. Then, it specifies the selection process requiring a vote by the raise of hands or other procedures. Finally, it provides that an employer shall not accord disadvantageous treatment to a majority representative on the grounds of his or her qualifications. As a result, the lawmaker strengthened the legitimacy of a majority representative.

A.2. The labor-management committee

The 1998 revision of the Labor Standard Law, put into effect on April 2000 introduced another type of non-union employee representation system: the labor-management committee. This committee is made of equal number of labor and management representatives. A majority union or the employee representing the majority of the workers must appoint the labor representatives.

The labor-management committee was created at the workplace to allow more flexibility on working time. In principle, the Labor Standard Law enacted in 1947 set maximum working hours standards. Thus, if the hours worked exceed the limits the employer is required to pay increased wages for the overtime work. The discretionary-work schemes introduced exceptions to this principle for workers who do not receive specific instructions from their employer due to the nature of their job (NAKAKUBO, 2004). The first type of this scheme was adopted in 1987 for professional jobs (article 38-3). In the late 1990's, business circles strongly defended the extension of the discretionary work scheme to most white-collar employees. By contrast, the labor unions fiercely criticized the expansion of the scheme that could deprive employees of their rights to paid overtime (ARAKI, 1996). A compromise was finally reached. Labor unions agreed the introduction of a new discretionary-work scheme, but in counterpart managers had to accept the establishment of a labor-management "committee," instead of the workplace labor-management "agreement." The second type of discretionary work scheme, was

introduced by the 1998 revision of the Labor Standard Law. It covers white-collar workers who are engaged in duties such as planning, surveys and analysis concerning management (article 38-4). In counterpart, the law required the settlement of a permanent labor management committee rather than an appropriate written agreement.

Contrary to the majority representative, the labor management committee is expected to play a more general role. This committee is entitled to investigate and deliberate on matters related to working conditions such as wages, working hours and to offer its opinions on such matters to the employer (article 38-4, Par1). The decision of the committee adopted by at least four-fifths of the members[18] can replace a workplace labor-management agreement as to working hours or annual paid-leaves. Nevertheless, as well as a workplace labor-management agreement, the decision of a labor-management committee does not have a normative effect on individual labor contracts like collective agreements. It only works to immunize the employer against criminal liability (MORITO, 2006).

Recently, on September 2005, the Study Group on the future labor contract law under the authority of the Ministry of Health, Labor and Welfare published a report proposing to promote the replacement of workplace labor-management agreement with a standing labor-management committee. They suggested attributing the committee the power to take part in the drawing up or the changes of working conditions in order to allow the employees to convey their opinions in face of management. The report triggered criticisms from Rengo (Rengo Updates of September 2005[19]) fearing that the council would impede on labor unions functions. The employers welcomed this council because they want to avoid collective bargaining. In June of this year, the government released a bill on the labor contract devising a new type of employee representation system to compensate the absence of a majority union. This draft of law allows employers to set majority representatives or labor management committees in the lack for a majority union. This bill is strongly questioned by Rengo and Nippon Keidanren.

18 Since the revision of the Law of 2003 that came into effect in January 2004 the decision must be taken by four fifths of the votes. Before this law the unanimity was required.

19 www.jtuc-rengo.org

B. The recognition of new actors for negotiations in France

As stated before, the main role of union delegates is to negotiate (article L.132-20). In principle, staff delegates or members of the Works Councils cannot conclude collective agreements. This privileged power attributed to union delegates to negotiate collective agreements raised serious problems given the weak presence of labor unions at company level, especially in small and medium size companies (See p.13).

B.1. Before 2004: a restricted power to negotiate

To solve the problem caused by the absence of union delegates at the workplace, the National Centers of employers' associations and labor unions concluded a cross-sector national agreement on October 1995. This agreement proposed to allow elected representatives negotiate collective agreements to compensate the lack of union delegates. The law of November the 12th 1996 embodied these proposals. This law authorized elected representatives to sign collective agreements on certain matters in the absence of union delegates. However, there is no legal obligation to elect workers' representatives in companies employing less than 11 workers. In addition in companies where there is a legal obligation to elect staff delegates and members of works council, there are not always such bodies in the absence of candidates (see p.15-16). Therefore, the lawmaker devised a new type of actor. In the absence of elected representatives, an employee mandated by a labor union is entrusted with the role to sign collective agreements at enterprise or establishments levels. At the same time, the Constitutional Council (*Conseil Constitutionnel*) rendered a decision on November the 6th 1996 asserting that the right to organize guaranteed by the Constitution could not be interpreted as given a monopoly on collective bargaining to labor unions. The working time acts of June 1998 and January 2000 also enabled elected representatives or an employee mandated by a representative labor union to sign a collective agreement in order to reduce working hours.

B.2. After 2004: a general power to negotiate

The Act of May the 4th 2004 on social dialog marked a turning point because it extended the possibility for elected employees' representatives or for a worker mandated by representative labor unions to negotiate and sign collective agreements on any maters with the employer.

The lawmaker allowed elected representatives (staff delegates or members of the work council) to negotiate at company or plant levels in the absence of union delegates. In the lack for elected representatives, an employee mandated by a representative labor union can be entrusted with the power to negotiate on specific subjects. However, the lawmaker set requirements to enable this change. First, in any case, an industry-level agreement must authorize the transfer of the negotiation power of union delegates to non-union representatives and define the items of the negotiations. Then, on the one hand if elected representatives sign an agreement an industry-level joint Commission (consisting of an equal number of labor or management representatives) must ratify it. On the other hand, if a worker mandated by a labor union signed an agreement, the employer must send it to the labor administration. Since the enforcement of the law, industrial labor unions and employers' organizations signed seven sector-wide agreements in trade, retail and food industries allowing negotiations by elected representatives on unlimited items[20]. These agreements were signed in very low unionized sectors.

Conclusion:

In both countries, the development of non-union employee representation systems occurred. Did these systems enable to compensate the decline of labor unions?

In Japan, a worker chosen to represent the workers' majority is not a permanent employee representation system, unlike labor unions. Furthermore, the latter is not entrusted with similar functions to labor unions. Then, although labor-management committees are permanently set up, their resolutions, like the labor-management agreements concluded by an employee majority representative, don't' replace collective agreements. Hence, the non-union representation systems did not compensate the lack for labor union. Although, a recent bill of the government proposes such change, it is doubtful that it will be adopted due to the fierce criticisms of Rengo and Nippon Keidanren.

The French lawmaker transferred the negotiation power of union delegates to elected representatives or employees mandated by representative labor unions in the absence of union delegates. The latter are permanent institutions. Thus, the lawmaker established an alternative system of employee representation to labor unions.

20 French Ministry of Labor, "La négociation collective en 2005", Bilans et rapports, Juin 2006.

Summary of the effects of non-union representation systems development

JAPAN	FRANCE
No compensation of the absence of labor unions	**Compensation of the absence of labor unions**
1. An employee majority representative is not a permanent employee representation system.	1. Elected representatives and employees mandated by the labor unions are permanent institutions.
2. Labor-management agreements or labor-management committees' decisions don't replace collective bargaining.	2. Transfer of labor unions' functions to bargain and to conclude agreements to these employee representatives.

III. The role of the government in the relations between labor and management representatives

In each country, the role of the State differs from a neo liberalism approach in which the State refrains from infringing into the regulation of the labor market. Due to the internal and external changes in the labor market, the government legislative activities are currently important in the arena of the individual employment relations law as well as in collective relations. The Japanese and French governments established various councils and committees at national-level to promote dialogue and consultation on issues related to labor policies. In addition, the government of Japan and France play a role in adjusting collective disputes between labor and management. However, the way state is involved in collective bargaining between labor and management representatives in each country is quite different.

A. The indirect and guiding intervention of the Japanese government

In Japan, as seen before, enterprise-unionism is the main feature of industrial democracy. Therefore, in most cases collective agreements are the result of collective bargaining at company level. There is no system or table of negotiations at national or regional level to determine jointly the rules for the work community (ASAO, 2001). As a consequent, the limitation and inefficiency inherent to enterprise

unionism only regulating micro level requires the intervention of the State to regulate the macro level (ARAKI, 2002, p.225). The government requests the opinions of labor and management through their high-level organizations, which are mainly Rengo and Nippon Keidanren. Both organizations select and send representatives to the various government commissions and councils.

A. 1. The participation of labor representatives in national policies

Rengo and its affiliated members send representatives in many advisory types of councils at national level. The oldest consultation committee between labor, management and the government is the Industry-Labor Consultation body, named *"Sanrokon"* created in January 1970. It consists of 25 members representing the government, Rengo, Nippon Keidanren and academics. It allows exchange of views, cooperation and mutual understanding on industrial labor policies such as wages, inflation, working conditions. Union leaders originally regarded "Sanrokon" as an important institution where they could present their requests and proposals on policies to the government. However, its role has been decreasing in the mid-1990's (OH, 2004).

In the 1990's in a context of economic recession, the government established other consultative councils. At the request of both Rengo and Nippon Keidanren, the government founded a new tripartite council on Employment Policy in 1998. The council was very active until November 1999. The government suspended this council for one year, in reaction to Rengo's strong opposition against the pension reform. It was reinstituted in June 2001, but the Council mainly serves as forum for exchanges of opinions, rather than a decision-making committee, like Sanrokon.

Moreover, the government enables Rengo, as well as Nippon Keidanren and representatives of the public interest to convey their opinions and proposals before the drawing up or the revision of a new law on labor policies. Rengo pays particular attention to the participation of union representatives in labor policies.

There were ten advisory committees subordinated to the Ministry of Labor and most of them involved three parties with representatives of labor, management and public interests. Until the middle of the 1990's, these committees adopted decisions with a consensus-oriented approach. However, in 1995, the government established a council attached to the Prime minister's office to promote administrative reforms and market deregulation. As a result, it became difficult for the advisory committees to maintain a consensual approach due to the oppositions of Rengo. For

instance, in spite of Rengo fierce criticisms towards the government's proposals on the revision of the Labor Standard Law in 1998, the Worker Dispatching Law or the Pension Reform in 2000, the government carried out these reforms. Therefore, the influence of Rengo in these advisory committees decreased.
In January 2001, in line with the merger of the Ministries of Heath, Labor and Welfare the ten advisory committees were reorganized. This led to the creation of the Labor Policy Council composed of 30 members equally representing labor, (named by Rengo), management (chosen by Nippon Keidanren) and scholars or experts (appointed by the Ministry).

Representatives of Rengo can also convey their opinions on wage matters through the Minimum Wage Council. Since 1978, its role is to establish criteria for minimum wages district by district, at the request of the Ministry of Labor and to submit them to the District Minimum Wage Councils settled in the 47 Prefectures. According to an announcement of the Ministry on September 2001, about 75% of these District Councils determined their minimum wages at the same level as the amount set by the Minimum Wage Council. Thus, representatives of Rengo can exert an influence in the determination of minimum wages through this Council.
The advisory committees at national level enables labor unions to exert an influence in the decision making process on labor policies due to the consensus-oriented approach. However, since the mid 1990's Rengo's influence has been decreasing due to the deregulation policy of the government.

The different channels of social dialogue between labor, management and the government have contributed significantly to mutual understanding between Rengo and Nippon Keidanren which help shape collaborative relations (OH 2004). The government has also been encouraging the stabilization of relations between representatives of labor and management through the support of Labor Relations Commissions in charge of adjusting collective disputes.

A.2. The encouragement of stable relations between labor and management representatives

One of the aims of the Ministry of Health, Labor and Welfare[21]is to guarantee the workers' rights to organize, to bargain and to act collectively, under article 28 of the

21 Until the end of 2000, the Ministry of Labor was in charge of the administration of labor Laws and labor policy. It was merged with the Ministry of Health and Welfare in January 2001.

Constitution. Therefore, the Ministry is responsible for creating procedures to adjust collective disputes.

For the resolution of collective disputes, the Trade Union Law of 1949 established Labor Relations Commissions. They are quasi-judicial institutions that have jurisdiction over these matters.

The national government supports the Central Labor Relations Commission at national level and the Prefecture governors are in charge of Labor Relations Commissions set up in the 47 Prefectures. Labor administration representatives are not members of these commissions, but they play a role in the selection procedure of its members. These Labor Relations Commissions are made of an equal number of commissioners representing employers and workers, appointed by labor administration among a list presented by the National Centers unions (Rengo, Zenroren and Zenrokyo) or by Nippon Keidanren for the employers. Members representing the public interests, which are usually lawyers or law Professors, also take part in these commissions.

The Labor Relations Commissions have two main functions. On the one hand, they examine claims for unfair labor practices that can lead to the issuance of remedial orders to protect workers in case the employer committed an unfair labor practice. On the other hand, the Labor Relations Adjustment Law of 1946 provides the Labor Relations Commissions for the adjustment of collective labor disputes through conciliation, mediation and arbitration procedures. Since 1975, the number of collective disputes has continuously decreased. In 2004, there were only 311 “unfair labor practices cases” filed before Prefecture (Local) Labor Relations Commissions, which is about a third of the 929 cases filed in 1975[22]. Moreover, the number of cases related to adjustment of collective disputes such as conciliation, mediation and arbitration have diminished for all the Labor Commissions (Central and local). In 1974, it amounts to 2,249, whereas in 2004, there were 531 cases[23].

The Japanese government did not interfere in relations between labor and management, but strived to facilitate the development of stable and fruitful relations. This enables the adaptation and the flexibility of companies.

22 Annual reports of the Central Labor Relations Commissions

23 Idem

B. The direct and significant involvement of the French government

The French government also developed many advisory committees with labor and management representatives, but there has never been a consensus-oriented approach in the decision-making process, like in Japan. The government has always been playing the main role in the rule-making on labor-related issues (GOETSCHY and ROZENBLATT, 1992). In addition, unlike Japan, the government has been directly committed into the collective bargaining process between labor and management representatives at different levels.

B.1. The consultation of labor representatives on national policies

The government hears the opinions of workers and employers through various commissions, committees and councils. The five National Centers: CFDT, CGT, CGT-FO, CFE-CGC and CFTC are representing workers in these institutions and can express the workers' opinions on various issues, especially on labor policies.

The Minister of Labor holds permanent and regular discussions and consultations with the five National Confederations of labor unions and the employers' organizations on labor policies. Within this Ministry, the Labor Relations Direction *(Direction des relations du travail)* in charge of protecting the rights of workers holds regular meetings with labor and management representatives through various committees. For instance, the High Council on Industrial Tribunals discuss on the organization and the working of these tribunals and the High Council on Prevention of Risks at Work is consulted on drafts of laws related to health, safety and work environment. One of the most important council is the National Council on Collective bargaining *(Commission Nationale de la Négociation Collective)* created on November 1982 (articles L. 136-1 to L.136-4) aiming at developing collective bargaining. It consists of representatives of the government and an equal number of members from labor and management sides.

The General Direction of Employment and Vocational Training (*Direction Générale de l'Emploi et de la Formation Professionnelle)* of the Ministry of Labor also consults labor and management representatives on specific issues related to employment and training. The most important council is the High Employment Committee where representatives of labor, management and government debate on the bills and proposals related to unemployment issues. In addition, labor unions and employers' associations are regularly consulted on European and International matters related to labor policies within the European and International Social Dialog Committee (*Comité du Dialogue Social International et Européen),* under

the authority of the Ministry of Labor, created in November 1998.

Furthermore, employees' and employers' representatives, as well as representatives of the public interests can convey their opinions on national policies through the Economic and Social Council. The Constitution of 1958 founded the current Economic and Social Committee. This national assembly became a fully-fledged institution working in close collaboration with the French government and has gained widespread recognition over the years. It is made up of 231 Council members with representatives of trade unions, employers' organizations and public interests like associations or specialists appointed by the government. The roles of the Economic and Social Committee are to issue recommendations to the French authorities on national policies, to provide information for political assemblies, and to take part in the legislative process on bills submitted for approval in the Parliament. Thus, it allows a fruitful dialogue between the various socioeconomic groups and public authorities. Labor unions as well as management and public interests representatives are also consulted at regional or local level through the same kinds of Councils. At regional level, the regional administration consults them trough Regional Economic and Social Committees, set up in the 22 French regions and consultative bodies called the Regional Committee on Employment and Training. At local level, the Departmental Committees on Employment and Training play the same role.

B.2. The commitment of the government in collective bargaining

To some extent, the government influences the issues, the jurisdiction, the level and coverage of collective bargaining.

First, the government can encourage the conclusions of collective agreements between labor and management. Indeed, at national level, the government will support the negotiations between CFDT, CGT, CGT-FO, CFE-CGC and CFTC and the MEDEF, UEAPME and UPA by giving information on the subjects of collective bargaining and asking experts to write reports and recommendations. At industry-level, the Minister of Labor or its representative can act as a go-between to facilitate negotiations between labor and government. Indeed, when negotiations are blocked, the Minister of Labor can at its own initiative or at the request of two labor unions or management, organizations carry up a Joint Peer Commission (*Commission mixte paritaire*). A representative of the Ministry of Labor chairs this

Commission. In 2005[24], 88 Joint Peer Commissions were set up. At the initiative of the Minister, negotiations were re-opened on minimum wages in nine sectors. At company or establishment levels, the Ministry of Labor also contributes to stable relations between labor and management through the informal intervention of Labor inspectorates. At the labor unions and/or management request, labor Inspectorate can listen to the opinions of each party and try to help them find a trade-off. In 2005[25], Labor Inspectorates handled 93% of the conflicts requiring third-party arbitration.

Then the government can incite labor unions and management to conclude collective agreements at different levels. First, the government is entitled to implement and precise the content of laws through administrative rules, under article 21 of the Constitution. However, the government can delegate this power to National Centers of labor unions and management organizations that will precise the content of the laws through collective agreements. Secondly, the government can decide to transform cross-sector collective agreements concluded at national level into laws. In this way, social partners played a crucial role in the drafting of a law, especially in the area of vocational training in 1971, 1991 and 2003. Thirdly, at industry-level, the Ministry of Labor can expand the scope of collective agreements through the extension and enlargement procedures (see p.41).

Finally, at enterprise or establishments levels, the government can also boost the conclusions of collective agreements in order to achieve its political goals. To reduce unemployment though the creation of jobs, several laws encouraged the conclusions of collective agreements to reduce working time. The first incentive law of this kind was enacted in December 1993. It rewarded employers through payroll taxes cuts in counterpart for working time reduction. Other laws were devised in the same line, both under right wing government with the so-called *"De Robien"* Law of June 1996 and under a left wing government, with the so-called *"Aubry"* laws of the 13th June 1998 and 19th January 2000. However, the *"Aubry"* laws, rather than incite to negotiate, imposed collective agreements and the signature of collective agreements on the reduction of working time to 35 hours in all companies by the end of a limited period of time (AUVERGNON 2000).

24 French Ministry of Labor, "La négociation collective en 2005", Bilans et rapports, Juin 2006.

25 Idem.

Conclusion:

The French government has always been highly committed into relations between employee and managers representatives, while in Japan this involvement was indirect.

The similarities and differences in the roles of the government in the relations between labor and management representatives

	JAPAN	FRANCE
In the mutual understanding	- Various advisory committees at national-level with a consensus oriented approach.	- Various advisory committees but no consensus oriented approach the government decides.
In adjusting collective disputes	Administrative and financial support of the Labor Relations Commissions	- Administrative and financial support of Industrial tribunals - Intervention to adjust conflicts in negotiations: At industry-level: Joint Commissions At enterprise or establishments levels: the Labor Inspectors.
In collective bargaining	- No involvement in collective bargaining at enterprise level - Autonomy of labor unions and managers	-Direct commitment of the government into collective bargaining: - At industry-level: extension and enlargement procedures. - At enterprise-level: laws inciting negotiations. Restricted autonomy of labor and managers.

Second Part: The role of employee representatives in the regulation of the work place

The actors of industrial relations system prescribe the rules of the work place. The rules of each system may take a variety of forms like consultation, collective bargaining, law, and customs for instance. They may be written or oral tradition as well as customary practices. There are two main types of regulations in the work place: unilateral regulations whereby the employer determines on its own the terms and conditions of employment, through work rules, and joint regulations between employers and workers representatives. Joint regulations can take different forms such as consultation or collective bargaining. The latter refers to a process of decision-making between parties representing the employer and employee interests with a view to regulate the terms and conditions of employment or their relations by means of collective agreements. This report shall examine the relations between employees', managers' representatives and the government by tackling the following issues: Which actor plays the main role in the regulations at the work place? What are the main types of relations between labor and management: consultation or collective bargaining? What is the nature of the relations between labor and management: confrontational or collaborative relations?

As seen in the first part, the main feature of Japanese employee representation system is enterprise unions. Thus, the right of workers to express their views, to bargain and to collective actions appears mainly at company or establishment levels through labor unions. The main function of labor unions is to conduct collective bargaining on employment and working conditions to defend the interests of the union members. By contrast, as stated before, in France relations between labor unions and employers' organizations developed outside enterprise or establishment. Thus, industry-level collective bargaining plays an essential role in regulating the workplace. Relations between employee and managers' representatives in companies take mainly two forms: joint consultations between elected representatives (staff delegates or the work councils) and collective bargaining with union delegates.

I. Unilateral regulations and joint regulations

We will analyze the role of employee representatives in the regulations of the work place. In that purpose, we will examine the scope and content of the works rules, set by the employers and of collective bargaining between employers and labor unions. Legally, work rules play a less important function than collective agreements in Japan, as well as in France. In Japan, work rules cannot contradict laws and collective agreements (article 92 of the LSL). In France, the same rule is provided by the law (L.122-35). What about in practice? We will also analyze the proportion of employees covered by collective agreements.

A. Work rules as an important means of regulating the workplace in Japan

Any employer in a company with 10 ten or more workers must draw up work rules, which are a set of uniform rules and conditions of employment at a workplace, (article 89 of the LSL). As most of the workplaces are not unionized, these work rules drawn up by the employer play a crucial role in ruling the workplace. However, in unionized companies, how is the unilateral power of the employer to set work rules balanced with the right of employees to bargain and to conclude collective agreements? Under the Trade Union Law of 1949, any employer has a duty to bargain with each union that meets statutory requirements. The infringement of this right is prosecuted as an unfair labor practice. Any employer must search for the possibility of achieving agreement even if he has no obligation to accept union's demands and contentions (SUGENO, 2002, p.566).

A.1. Unilateral power of the employer to establish and change work rules

The Japanese Trade Union Law of 1949 specifies the subjects of the work rules. The scope of the jurisdiction of work rules defined by the law is very broad. It covers many matters such as 1) working time matters: time of beginning and end of work, rest periods, rest days and leaves - 2) wages matters - 3) retirement and dismissals - 4) Safety and health – Accident compensation - 5) Discipline and sanctions - 6) vocational training and 7) other items enforceable for all workers at the workplace. On the contrary, the items of collective bargaining are not clearly defined by the law. Collective bargaining is dealing with the working conditions of union members (article 2 of the TUL of 1949) and relations between unions and employers.

Employers sometimes assert that matters affecting the management and operation of the company are not subject to collective bargaining. Nevertheless, these matters can also be related to working conditions. As a result, collective bargaining and work rules domains are hard to tell apart and may overlap. In practice, what kind of issues do collective agreements as a result of collective bargaining and work rules tackle?

Themes of collective agreements and work rules in 2001

Themes	Collective agreements	Work rules
Wage amount	54.8%	56.7%
Overtime	56.3%	69.6%
Dismissals	46.6%	82.7%
Supplementary work accident insurance	46.7%	56.4%

Source: Ministry of Labor, Health and Welfare

The companies surveyed could give several answers.

This study shows that 54.8% of companies surveyed answered collective bargaining dealt with wage amount and 56.7% answered that works rules dealt with the same theme. Therefore, collective agreements and work rules are dealing with the same subjects. Although any employer has a duty to bargain in good faith with a union (article 7 TUL), he/she is not compelled to make concessions or to reach an agreement. Thus, when the employer and the union cannot conclude a collective agreement, the employer can regulate or change working conditions through the modification of the work rules.

In addition, the requirements any employer has to comply with in the drawing up or change of the work rule are not very stringent, comparing to French law. The employer has a duty to communicate work rules to the Labor Standards Inspection Office and to display it to the workers. These duties are enforced by criminal sanctions. The employer is also required to consult a majority representative. However, even if the latter questions the content of the work rules, the employer may still submit them to the Labor Standards Inspection Office, which will accept it. In this sense, the employer can unilaterally establish and modify work rules unilaterally (ARAKI, 2002, p.52).

Thus, the distinction between the work rules and collective bargaining depends on the dynamics of the relations between labor unions and the employer at the workplace. Collective bargaining can lead to the conclusion of collective agreements setting some rules for the workers in the company. What place do collective

agreements play in relations between labor and management representatives?

A.2. A limited use and scope of collective agreements

Collective agreements are signed *"between a trade union and an employer or an employers' organization concerning conditions of work and other matters which is put in writing and is either signed by or with names affixed with seals by both of the parties concerned"* (article 14 TUL). Collective bargaining means an endeavour of workers to substitute a collective process to their previous individual deal with their employers with regard to the working conditions (SUGENO 2002, p. 548). Hence, collective agreements have a legal effect called the "normative effect", which affects the content of individual employment contracts (article 16 TUL). This means that collective agreements can supersede the portion of an individual contract that does not comply with the standards set forth in it, even if the latter are less favorable than the provisions of the contract. Work rules also have an imperative and direct effect on individual employment contracts, even for the disadvantageous modifications if there are "reasonable modifications", according to the Supreme Court[26].

In practice, how labor unions and managers' representatives reach an agreement regulating the working conditions and binding individual contracts? A 2004 study[27] on the relations between labor unions and managers reveals that only 16.1% of companies surveyed answered an agreement is reached after collective bargaining. Then, 10% of the companies answered an agreement is reached in joint consultation systems without collective bargaining, 26.8% responded that there is only an oral agreement. Moreover, 54.6% of the companies responded the agreement between labor and management representatives is embodied in works rules. Consequently, collective agreements as a result of collective bargaining do not play an important role in regulating the work places.

In addition, the works rules apply to all workers in a workplace or an establishment, while collective agreements only apply to union members of the union that signed a collective agreement. Due to the long-term decline of the unionization rate, an increasing share of workers is not covered by formal collective agreements (NAKATA, 1999).

26 The Shuhoku Bus Case, Supreme Court Dec 25 1968.

27 Study of the Japan Institute of Labor, Policy and Training.

The percentage of workers covered by collective agreements

Year	% of unionized workers in all industries	% of unions who have collective agreements	% of workers covered by collective agreements
1986	28.2	91.7	25.9
1991	24.5	93.3	22.4
1996	23.2	89.2	20.7
2001	20.7	91.5	18.7

Source: Ministry of Labor and Ministry of Labor, Health and Welfare

Indeed, from 1986 to 2001 the share of employees covered by collective agreements diminished by 7.2 points. In 2001, less than one fifth of Japanese workers are covered by a collective agreement.

However, the Trade Union Law provides two extensions procedures. Did the use of these procedures help increase the share of workers covered by a collective agreement? First, a collective agreement concluded at plant level can apply to all workers if it comes to cover three-quarters or more of the employees regularly employed in a workplace (article 17 of the TUL). This requirement is difficult to fulfill. Moreover, the TUL provides a possibility for a regional extension of a collective agreement (article 18 TUL). However during the last fifty years, there has only been one case of regional extension (MORITO, 2006). Therefore, these extension procedures of collective agreements did not compensate for the low share of workers covered by collective agreements.

Due to the rare use of formal collective agreements and the limitation of the scope of collective agreements to union members, work rules are a very important set of rules for regulating the work place, for all the workers, even in unionized companies.

B. Collective bargaining as the main means of regulating the workplace in France

The French constitution of October 1946 guaranteed the right of workers to express their opinions. At the workplace, any employer has a management power declined in a regulation power, which enables him/her to create rules for the work place and a disciplinary role whereby he/she can sanction a worker (PELISSIER, SUPIOT, JEAMMAUD 2004, p.982). Under the law, work rules cannot contradict the laws or collective agreements (L.122-35). How is the unilateral power of the employer balanced with the right to bargain and to conclude collective agreements of workers?

B.1. A framed power of the employer to establish and change work rules

Any employer must set up work rules in companies with more than 20 employees (L.122-33 of Labor Code). Until the Law of August the 4th 1982, any employer could include the rules he/she considered as useful for regulating the workplace. However, since this law, the scope of work rules is very limited. It encompasses two main subjects: heath and safety as well as discipline and sanctions.

In addition, this regulation power is also limited because employers must consult collective worker representation institutions, such as works council or elected delegate and the Council for Health-Safety-Working conditions, (article L. 122-35). If the employer does not abide by the law, these employee representatives can contest his decision before a criminal Tribunal and forces him/her to pay a fine or/and refer to the Labor Inspectorate. Any employer also has the duty to communicate the text to the Labor Inspectorate (representing the Ministry of Labor), whose main role is to ensure the enforcement of laws (articles L.611-1 and L.611-10). The Labor Inspectorate operates both a procedural check but also a substantial one the content of work rules.

Thus, unlike Japan, works rules have a limited content and are submitted to a stricter control.

B.2. The importance of collective bargaining

Several laws gave impetus to collective bargaining at enterprise level. In 1982, the so-called *"Auroux"* law, created an annual obligation for the employer to negotiate on wages and working time (article L.132-27). The lawmaker expanded the scope of this obligation to equality between men and women in May 2001 and the hiring of

disabled persons in February 2005. The law of January 2005 provides an obligation to negotiate every three years on the staff management related to the development of workers' employability. The employer has no obligation to conclude an agreement but when the parties cannot reach an agreement, they must write in a document their proposals. Moreover, if the parties conclude an agreement, any employer has to respect the content of collective agreements or he/she can be prosecuted to criminal sanctions (article L.135-3 of the labor Code).

In addition, to this annual obligation imposed on any employer for collective bargaining, many laws encouraged collective bargaining on specific themes. For instance, in 1998 and 2000, the working time acts, named *"Aubry"* laws also encouraged the conclusion of collective agreements by imposing companies to negotiate on the reduction of working time to 35 hours within a limited period.

Therefore, the number of collective agreements signed at company level grew significantly in the 1990's. From 1990 to 1998 labor unions and managers signed an average of 9000 agreements per year at enterprise or establishment levels[28]. Then, due to the enactment of the Aubry Laws, from 1999 to 2002 the number of collective agreements signed at enterprise level rose to an average of 35 000 agreements per year. Since 2002 this number decreased to 19 000 agreements per year. In 2005, 19 310 collective agreement were signed at company level. The main themes of collective bargaining are wages and working time. In 2005, 35% of the collective agreements signed dealt with wages and 27.8% with working time.

Furthermore, contrary to Japan, collective agreements are treated as regulations when they are applied (PÉLISSIER and alii, 2002, p.863). As a result, any collective agreement signed between labor union(s) and employers at enterprise or establishment levels covers all the workers irrespective of their membership to the labor union. Hence, collective agreements play a very important role in regulating the workplace for all the workers in unionized companies. Nevertheless, what type of rules regulates the workplace within non- unionized companies?

In principle, an industry-level collective agreement only covers the workers of the companies whose employers are affiliated to the employers' organizations that signed it. Since the Law of June 1936, the Minister of Labor can extend this industry-level agreement to companies of the same industry even if their employers are not members of the employers' organizations that signed the agreement,

28 Annual reports of the Ministry of Labor on collective bargaining.

through an extension procedure. This procedure enables the Minister of Labor to extend the implementation of collective agreements to all companies belonging to the same sector, at his or her own initiative or at the request of one organization representing the employers or the workers. The Minister of Labor has to consult the National Commission on Collective Bargaining, composed by an equal number of representatives of the employers' associations and of the labor unions National Centers (Article L.133-1). The number of requests for extending collective agreements has steadily increased from 1998 to 2005[29]. In addition, the Minister of Labor, through the same procedure, can expand the scope of a collective agreement to another sector or geographical area by using an enlargement procedure. Both extension and enlargement procedures brought the rate of employees covered by collective agreements to 93.4% in 1997, whereas it amounts to 86.4% in 1985[30].

Conclusion:

In Japan, the employer unilaterally set the works rules and the scope of their content is very wide. In addition, there is a blurred frontier between the subjects of collective bargaining and work rules. Then, the share of workers covered by collective agreements is very low. Thus, in Japan work rules set by the employers play a major rule in the definition of the terms and conditions of work, compared to collective agreements. Employers have huge autonomy to manage on their own the workplace, even in unionized companies.

In France, the content of the works rules is restricted and the employers are under the control of employee representatives and labor inspectorates when they draw up and change the work rules. Furthermore, the themes of collective bargaining listed by the law are wide. Then, the decline of unionization rate was not followed by a decrease of the share of workers covered by a collective agreement at the workplace, due to the commitment of the government. Therefore, collective agreements play a predominant role in the regulation of the work place, even in non-unionized companies. Thus, employers have less autonomy for regulating the workplace than in Japan.

29 French Ministry of Labor,"La négociation collective en 2005", Bilans et rapports, Juin 2006.

30 French Ministry of Labor DARES "La couverture conventionnelle a la fin 1997", (Collective bargaining coverage at the end of 1997) n.29.2 Juillet 1999.

II. Collective bargaining and consultation

In many countries, joint consultation systems developed enabling the representatives of employers and workers to exchange information and views on various issues such as management, production, welfare, as well as employment and working conditions. Indeed, these systems allow a form of workers participation in the management process.

In Japan, although there is no legal requirement to establish joint labor-management consultation systems, this type of system developed significantly in the 1960's. As the dominant form of collective bargaining is enterprise-based, it is important to consider the relations between collective bargaining and the labor-management consultation systems. As labor unions play both a role in joint-consultation institutions and collective bargaining, the frontier between the two types of relations between labor and management is not clear-cut.

By contrast, in France, the functions of collective bargaining and consultations are clearly shared between labor unions and elected representatives by the law. The former have the power to negotiate. The latter, via works councils or elected staff representatives are responsible for conveying the opinions of employees to the employer.

A. The distinction between collective bargaining and consultation

A.1. A blurred distinction between collective bargaining and consultation in Japan

In Japan, joint labor-management consultation systems as a channel of communication and sharing-information became a central feature of Japanese industrial relations.

Their origin is not well known, but the Japan Productivity Center (JPC) created in 1955 encouraged the development of joint consultation systems between labor and management as a means to improve productivity. The surveys of this center in 1960 and 1969 revealed that during this period most large companies adopted voluntary joint consultations institutions (SUZUKI and OGURA, 1995). In 2004[31], 37.3% of companies employing more 30 workers have such consultation systems. The survey

31 Ministry of Labor, Labor Management communication Survey 2004.

reveals that joint consultations are more likely instituted in unionized companies. In 2004, up to 80.5% of unionized establishments had such bodies; whereas only 17.1% of companies without enterprise-based unions did. Joint consultation machineries in unionized companies are often quite formalized and frequently set up by collective agreements. In 2004[32], 60.4% of these councils were established by collective agreements. Generally, union delegates and officials are representing workers whereas representatives of human resources department and top management represent employers. They hold regular meetings through Joint Labor-Management Committees; seven times or more a year on average[33].

What are the reasons explaining the development of these systems in unionized companies? First, it is a voluntary and informal procedure, which is not adversarial unlike collective bargaining. Then, another difference with collective bargaining is that the themes of communication between labor and management representatives are voluntary decided. Thus, the items discussed are very broad comparing to collective bargaining. In most cases, there are kinds of standing committee dealing with many different issues, ranging from the strategy of the company like plans of production or sales, organizational changes or rationalizations operations, to working conditions. About 80% of major management issues are referred to labor-management consultation as tends to show a 2004 survey[34]. If specific topics are discussed, special commissions like committees on health and security, manufacturing, or staff management, for instance, may be created. These committees will have to report to the joint consultations central body (SUZUKI and OGURA, 1995).

However, the borderline between joint consultation and collective bargaining is not clear-cut. First, joint consultations and collective bargaining take place at the same place: enterprise or plant levels. Secondly, the parties involved are usually the same. Finally, the subjects discussed through joint consultation systems and collective bargaining are not clearly told apart and can overlap. Indeed, according to a 2002 study[35], from 1999 to 2001, 56.8% of companies surveyed answered that wages' matters were treated by collective bargaining and 50% answered that this subject was also treated by joint consultation systems. As for working time matters,

32 Japanese Ministry of LHW, survey , 2004.

33 RENGO RIALS, survey published in May 2001.

34 Japanese Ministry of LHW, survey, 2004.

35 Japanese Ministry of LHW, survey, 2002.

joint-consultation systems dealt with this subject for 55.9% of companies surveyed and collective bargaining for 35.1% of companies surveyed. Joint consultation systems handle more items related to staff management, child or family care leaves or management policy than collective bargaining. In many cases, joint consultations are the first stage of negotiations and then the subjects are debated in collective bargaining or conversely when collective bargaining led to an agreement, the agreement is discussed in joint consultation systems. A 2004 study[36]shows that only 33.4% of companies answered the subjects treated by collective bargaining and joint consultations bodies are separate. On the contrary, 38.1% answered there are no precise delimitation between the two.

Thus, the distinction between joint consultation bodies and collective bargaining systems is vague. In other terms in unionized companies, labor unions have both communication and advisory functions through joint consultation machineries and a collective bargaining power.

A.2. A clear distinction between collective bargaining and consultation in France

Traditionally, there is a functional distinction between collective bargaining conducted by labor unions and consultations between employer and elected representatives at the workplace. Unlike Japan, the law provides for joint labor management consultation systems with elected staff representatives or works councils.

The aim of elected representatives is to enable workers to convey their opinions on various issues. Elected staff representatives set up in companies with 11 workers or more are in charge of communicating workers' request and demands on any subject to the employer. To that extent, any employer must meet those staff representatives once a month. In addition to these regular and mandatory meetings, the staff representatives can ask for a meeting with the employer when needed and the employer has to accept it (article L. 424-4 of Labor Code). Works councils have a similar communication and sharing-information role as staff representatives in companies with 50 workers or more, but with wider jurisdiction. The manager and the members of the work council must hold a meeting at least once a month to discuss on important managerial decisions. The members of the Works Council must express their opinions on any decision regarding organizational changes,

36 Study of the Japan Institute for Labor Policy and Training.

whether internal (introduction of new technologies) or external (merger or transfer) ones, of the company or the establishment. The Works Council must also convey its views on the management and general operations of the company and on any measures affecting the employees like working time, working conditions, vocational training among other subjects (article L.431-7 of Labor Code). In addition, Work Councils also run enterprise benefits scheme for workers and their family. By contrast, the functions of union delegates are to negotiate at least once per year with the employer of the company or establishment on specific issues (article L.132-6). Therefore, elected representatives and unions delegates have distinctive functions.

Furthermore, the actors of elected representatives and labor unions are also different. Works councils are joint consultative bodies representing labor and management, contrary to German "Betriebsrat". Indeed, the manager of the company participates at the meetings and can be assisted by a maximum of two colleagues, since the law of May the 4th 2004. Employees are represented by elected representatives whose number varies with the size of the company from 3 members in companies with 50 to 74 workers, up to 15 in companies with more than 10 000 employees. In addition, union delegates are also members of the Works Council, but they do not have the right to vote. By contrast, union delegates are not elected by the workers of the companies, but they are appointed by an industry or local union. Therefore, elected representatives and labor unions can be clearly distinguished because they are different actors and are endowed with different functions.

However, the distinction between labor unions and elected representatives is not clear-cut.

Indeed, union delegates can hold the functions of elected representatives. First, an industry union or local union can appoint a union delegate, in companies with more than 10 and less than 50 workers, as a staff delegate (L.412-11 §3). Then, in companies, where a works council is set up, with less than 300 workers, union delegates are automatically members of this council (article L. 412-17). In companies with more than 300 workers, any industry union or local union can appoint one representative in the works council, apart from union delegate in the company (MOURET, 2006). In addition, union delegates can also be member of the Health, Safety and Working Conditions Council. Indeed, a college of works council members and staff representatives elects the members of this council.

As a result, a union delegate can hold currently several functions as union delegate,

staff representative, member of the works council and member of the Health, Safety and Working Conditions Council. A 1999 study[37] reveals that there is a linked with the presence of union delegates and elected representatives. Furthermore, Works Councils or staff representatives are entrusted with the power to negotiate in non-unionized companies, since the Law of May the 4th 2004 (see p.24). Therefore, the precise functional difference between labor unions and elected representatives tend to tone down.

Besides, labor unions also play a crucial role in the elections for elected delegates or works council. They are entitled to negotiate and sign a pre-electoral agreement that governs the elections of employee representatives. They also have a monopoly on the presentation of candidates in the first round of elections for either elected institutions (articles L.423-3 and L.423-18). According to a survey, in 2004[38], trade unions list won 77.4% of employee's votes. The majority of the members of the Works Council are union members elected by employees. In addition, a recent law in January the 18th 2005 allowed companies to sign agreements with union delegates on the working of the works council in case of economic dismissals. Since the enactment of the law, 154 collective agreements have been signed.
Hence, actually, the distinction between elected representatives and labor unions is blurred.

Conclusion:

In Japan, in unionized companies, enterprise unions mainly have communication and advisory functions through joint consultation systems. Indeed, this type of relations between labor and management representatives have been privileged over collective bargaining. Therefore, Japanese enterprise unions are acting in a similar way to the French Works Councils.
The main difference lies in the formality of the communication between labor and management representatives. In Japan, labor-management consultation institutions are voluntary set up, while works councils in France are mandatory, according to the law.

37 French Ministry of Labor, study, in 1999.

38 French Ministry of Labor, survey, 2004.

Parallel between Japanese "Joint consultation systems"
And French "Works Councils"

	Japan	France
Purpose	Communicate and express the opinions of the workers on many issues.	
Composition	Joint councils with representatives of labor (generally union delegates or officials) and management.	Joint councils with representatives of labor and management. Representatives of labor are mainly union delegates.
Meetings Frequency	More than once every two months	Once per month
Functions	Information and consultation on the management policy and employee-related issues	
Themes of information and consultation	- Organizational changes: internal and external - Management and general operation: economic strategy, staff management - Vocational training - Welfare - Cultural or leisure activities	

B. A common trend of decentralization of collective bargaining

As stated before, the level of collective bargaining corresponds to the structure of the bargaining actors that is to say of labor unions (SUWA, 2004). In Japan, as the characteristics of labor unions is enterprise unions, collective bargaining mainly takes place at enterprise-level. On the contrary, in France due to the predominance of industry unions, the essential level of collective bargaining is industry level.

Nevertheless, in many countries, there were pressures for decentralization in the 1990's due to the necessity to give companies more leeway to adapt to increasingly volatile international markets and faster moving competition. In both countries, we can observe a trend towards the decentralization of the bargaining process. The term "Decentralization" is used in the sense of a shift from higher to lower levels in the decision process over certain issues, as defined by an OECD report[39].

39 OECD report in 1994 on "Collective bargaining levels"

This report made a useful distinction between disorganized and organized forms of decentralization. It defined the former as a breakdown or a dismantling of higher-level arrangements, whereas organized forms of decentralization refers to the delegation from higher-level parties to a lower level over certain issues in collective bargaining. Japan and France offer interesting examples of the two types of decentralization.

B.1. Disorganized form of decentralization in Japan

It has been said that the spring wage offensive, the “Shunto” system created in the mid 1950' compensates the defects of Japan's decentralized industrial relations such as the weak bargaining power of industry federations or National Centers and their lack of influence on national labor policies (ARAKI, 2002, p.166).

As seen before, this system intends to spread a level of wage increases from leading companies in key industries to other companies and industries by synchronizing enterprise-level collective negotiations. The outcomes of the "*Shunto”* affect wage levels in the public sector, because the National Personnel Agency refers to it in recommending standard wage increases for public service employees. It also indirectly has an impact on wages of employees in non-organized companies because regional minimum wages, revised every fall, are set with reference to the “Shunto” increases. In this manner, until recently, the “Shunto” system made Japanese decentralized collective labor relations work as if they were centralized.

However, since the mid 1990's, the effectiveness of the “Shunto” has been questioned. After the collapse of the bubble economy in 1990, the Japanese economy went into severe recession. In parallel, the labor market underwent important changes with the significant augmentation of “non regular workers, such as part-time workers and dispatched workers. Between 1995 and 2001, the number of this type of workers increased by 36 percent, according to surveys of the Ministry of Labor. Consequently the raise of wages declined continuously from 2.8 percent in 1995 to 1.7 percent in 2002, as shown by the studies of the Ministry of Labor.

Therefore, management and unions began to plead for a reform of the “Shunto” system”. The National Center representing employers, named Nikkeiren started criticizing the *“Shunto” system”*, because of the high-costs of this system for the Japanese economy. Nikkeiren defended the opinion that wage hikes should be based on the productivity growth and the capacity of each company. Until now, the

Japanese Business Federation has taken the same position. The Position Paper of Nippon Keidanren of 2006 "Employers, be righteous and strong" asserts that "*across-the-board base wage increase that raise wage levels even for companies that have not improved productivity belong to the past (...) Wage at each company should be determined by management and labor un accordance with that company's circumstances*". On the side of labor unions, industrial federations within Rengo also began to debate on the reform of *"Shunto"* in the mid-1990's due to the difficulty to achieve across-the board-wage increases and the administrative cost of the system. The declining importance of inter-union coordination became apparent in 2002. Indeed Rengo National Center decided no to stand for a unified request on basic wage increase during the 2002 *"Shunto"* and in 2003, it let each industry-level federation set an industry specific wage increase objective. Besides, some authors deemed that due to the increase practice of wages' individualization, the future of *"Shunto"* system is all the more uncertain. Indeed, it will be more and more difficult not only to set standard on wage hike during the *"Shunto"* period, but also to have the guidelines on wages affect individual employees' wages, (ARAKI 2002, p.471).
The inter-unions coordination through the *"Shunto"* system has been considerably weakening since the mid 1990's.
Hence, this movement can be analyzed as a dismantling of coordinated bargaining at level above the enterprise level and as a disorganized decentralization.

B.2. Organized form of decentralization in France

After the two oil crisis in 1973 and 1979, the economy went into recession, the inflation was around 12% between 1974 and 1982, the number of unemployed persons rose by around 8% and the growth rate decreased from 5.7% in the 1960's to 2.5% after the oil chocks. Thus, employers' organizations began to severely criticize the *"favorability principle"*, whereby the most favorable provisions of a norm always prevail, because it hinders the flexibility of companies. Consequently, the lawmaker authorized the conclusion of *"dispensatory collective agreements"* (*accords dérogatoires)* at enterprise or establishment levels that could contain less favorable provisions than the ones of an upper-level rules. The shift towards the decentralization was very progressive and was only embedded recently with the Law of May the 4th 2004.

Before the Law of May 2004, flexibility of collective bargaining at company or plant levels was encouraged, but it was restricted to certain matters. The Law of

November the 13th 1982 allowed collective agreements at enterprise or establishment levels to set different provisions, and even less favorable ones, than the law, named *"dispensatory collective agreements"*. These adjustments were limited to wages increases (article L.132-24) and working time (article L.212-10). The law of June 1987 extended this possibility (PÉLISSIER and alii, 2004, p.956). These reforms appear to have given considerable boost to bargaining activity at the enterprise level. In the late 1970's, industry level agreements outnumbered enterprise agreements by a factor of about two to one. However, by 1986 the number of enterprise agreements had more than tripled to about 6000, outnumbering industry agreements by six to one (EYRAUD and alii 1991).

The Act of May the 4th 2004 on social dialogue marked a turning point. This law broadened the authorization for company or plant levels collective agreements to include less favorable provisions than the industry-level collective agreements on all matters. The lawmaker set very restricted limits to this possibility offered to collective bargaining at company or plant levels. Under the new article L.132-23 of Labor Code, the latter agreements cannot contradict industry-level agreements on four subjects: minimum wages, job classifications, mutual benefits insurance systems on vocational training and welfare.

However, in spite of this move toward decentralization, collective bargaining at industry-level has actually continued to play an essential role (JOBERT and SAGLIO, 2005). Indeed, industry-level unions and employers' federations can forbid lower-levels collective bargaining to contain less favorable provisions than industry-level collective agreements. Thus, industry federations play a major role in the promotion of decentralization. Since the enactment of the Law of May 2004, the majority of industry-level agreements prohibited lower-levels collective bargaining to provide less disadvantageous provisions for employees[40]. In addition, even though labor and management were allowed to include less favorable clauses in enterprise or establishment levels collective agreements, they actually rarely used this possibility. Currently, it is difficult to draw conclusions on the impact of the law, but for the moment, a limitation of the decentralization movement towards collective bargaining at company or plant levels can be observed.

40 French Ministry of Labor,"La négociation collective en 2005", Bilans et rapports, Juin 2006

Conclusion on the decentralization of collective bargaining:

In Japan, the inter-unions coordination of National Centers and industrial federations took place in a decentralized context. There have never been joint negotiations, like in France, due to the weakness of high-level organizations. For this reason this coordination movement was not followed by a strengthening in the authority of National Center and industrial federations. As a result, the trend to decentralization in Japan can be interpreted as a *"re-decentralization"* movement (SUZUKI Akira, 2004).

On the contrary, in France, industrial federations have always played a crucial role in regulating working conditions through industry-level collective agreements. Therefore, currently even if the lawmaker tries to encourage a shift to enterprise level, the movement of decentralization is limited in practice, because the industry-level collective bargaining has continuously been playing an essential role.

IV. The nature of the relations between labor and management: industrial conflicts

In relations between labor and management, disagreements will from time to time occur if they have different perceptions of what is loyal and fair and when a resolution by discussions or negotiations become impossible. A failure of discussions and/or collective bargaining may lead to industrial conflicts. Therefore, it is difficult to establish clear distinctions between collective bargaining and strikes or other dispute acts. Industrial conflicts may be defined, in a restricted sense, as group or collective conflicts, which arise when there is a clash of interests between labor and management. This definition does not include disputes involving an individual worker, called individual disputes. Usually two types of collective industrial disputes; disputes of rights and disputes of interest are distinguished. Disputes of rights are about the implementation or interpretation of existing rights and responsibilities as set forth in laws, collective agreements and work rules or linked to customs. Disputes of interests can appear concerning the determination of new rights and responsibilities in the collective bargaining process.

However, in Japan the difference between disputes on rights and disputes of interests is blurred, because collective agreements, in most of the cases do not contain normative provisions that spell out specific working conditions in full details (SHIRAI, 2002, p.107-108). In France, the two types of collective industrial

disputes told apart as they usually occur between different actors (see p.44). Conflicts on rights will usually oppose elected representatives and management. Clashes of interests will generally arise between union delegates and management.

Both countries have a legal framework protecting the right for dispute of workers.
In Japanese, article 28 of the Constitution guarantees the right to act collectively, which as been interpreted as guaranteeing the right for dispute. Article 6 of the Labor Relations Adjustment Laws of September 1946 defines labor disputes as *"a disagreement over claims regarding labor relations arising between the parties concerned with labor relations resulting in either the occurrence of acts of dispute or the danger of such occurrence"*. Then, article 7 specifies the meaning of an act of dispute: *"a strike, a slow down, a lock out or other act or counteract hampering the normal course of work*". Consequently, any employer is not allowed to restrict the right to dispute without proper reason, and any act doing so will be deemed as unconstitutional. Then, workers involved in proper disputes acts are exempted from civil or criminal liability, in the exception of acts of violence (article 1 paragraph 2 TUL). In the public sector, severe restrictions exist concerning the right for dispute of civil servants, employees of a public corporation and of national enterprise under the Public Service Law and the Public Corporation and National Enterprise Labor Relations Law.

In France, the preamble of the constitution of October 27th 1946 guarantees the right to strike. Judges defined the strike as a collective movement of contests, leading to a total interruption of work in order to obtain professional claims on working conditions, wages, and security at work for instance. Employees involved in strikes are exempted from civil and criminal liability and cannot be dismissed by their employer. It is considered as a suspension of the labor contract, and thus the employee does not receive wages during the strike's period, but not as a break of the contract (article L.521-1 of Labor Code). In the public sector, certain professions don't have the right to go on strike for security reasons, like police officers, fire-fighters, soldiers or magistrates. Civil servants enjoy the right to dispute, but they have to respect a five-day notice period before going on strikes (article L.521-3).

The industrial conflicts of Japan and France take on national characteristics connected to their own history and culture.

A. Collaborative relations between labor and management in Japan

After World War II, labor-management relations were characterized by harsh confrontations due to the post-war situation. However, there was a shift towards more collaborative relations in the mid 1970's. Since 1975, the number of conflicts has steadily decreased from 7,574 conflicts to 4,230 in 1985. Then it continued to decline in the 1990's from 685 in 1995 to 173 in 2004. The number of man-days lost also felt from more than 8 millions in 1975 by 264 000 in 1985. In 2004, it represents less than 10 000 days (see above tables). In parallel, since 1975, the number of cases related to collective disputes filed before Labor Relations Commissions has continuously decreased (see p.29).

A.1. Current distinctive features of collective disputes

There is a correlation between the presence of labor unions in companies and the number of collective disputes. Indeed, conflicts with acts of dispute are increasing with the size of the company. As seen above, larger companies are more unionized than small and medium-sized companies are. In 2004, the number of workers involved in industrial actions amounts to 11,472 in companies with 300 up to 999 workers. It decreased to 5,191 in companies with 100 up to 299 workers and to 2,654 in companies with less than 99 workers. Then, there are more industrial disputes in the secondary sector especially the manufacturing industry and in the public sector where the labor unions are more strongly implanted traditionally, than in tertiary sector like bank and insurance and services. The main reasons of conflicts are wages and staff management. In 2004, labor unions surveyed[41] answered that 49.5% of collective disputes are linked with wages, 33.5% with staff management. As collective agreements are also dealing with relations between labor unions and management, the number of collective disputes due to the security of these agreements represents 24.4% of the sources of conflicts.

The characteristic of collective disputes in Japan, comparing to France, is the very low number of man-days lost (see p.59). In 2004, it amounts to less than 10 000 days. A low participation of workers and a diminution of the length of conflicts can explain this fact.

41 The labor unions surveyed could give two answers, because a conflict has always many reasons.

Short-time span strikes lasting less than half a day are more numerous than strikes lasting more than half day.

Strikes span in 2004

Strikes more than half day		Strikes less than half day	
Number of companies affected	Number of workers involved	Number of companies affected	Number of workers involved
105	6,998	476	30,942

Source: Japanese Ministry of LHW.

A.2. The reasons for the existence of collaborative relations

Historical as well as cultural reasons can explain the existence of collaborative relations between labor and management.

After the war, the labor movement grew steadily and committed into aggressive actions. From the mid 1950's until the mid-1960's the number of labor dispute increased significantly.

The direct intervention of the Allied power and the government had an impact on the relations between labor and management (ARAKI, 2002, p.208). In 1947, an order of General Mac Arthur and the Allied Powers cancelled a general strike planned by labor unions, where more than 90% of all organized workers were expected to participate. Then on July 1948, General Mac Arthur requested the deprivation of public sector workers' right to bargain and go on strikes to put an end to very aggressive public sector union's movements. The Public Corporation Law enacted in December 1948 comply with this order. In 1950, the occupational forces also ordered the expulsion of communists, which caused a change of union leaders from communists to moderates ones.

In parallel, the American government and the Japanese Ministry of Trade and Industry promoted cooperative relations between labor and management through the creation of the Japan Productivity Center in 1955. It aimed at promoting productivity through employment security, the distribution of the productivity benefits among workers and customers and labor- management consultation systems. This center created the basis for the development of collaborative relationship between labor and management.

The specificity of Japanese labor unions with enterprise-unions also helps build fruitful relations between labor and management. It creates a great solidarity

among union workers of the same company, against the other competitors. Workers have a feeling of identity with their company and interests in its prosperity. Thus, they don't see the benefits of strikes, but only the drawbacks: a bad reputation of their company, a loss of benefits and consequently difficulties to improve working conditions and employment opportunities. Enterprise unions think the same way. Indeed, according to a survey of the Ministry of LHW, in 2002, 0.4% of the surveyed unions think strikes are a way to solve problems between employers and employees. This triggered criticisms and has been refer to as “enterprise egotism”.

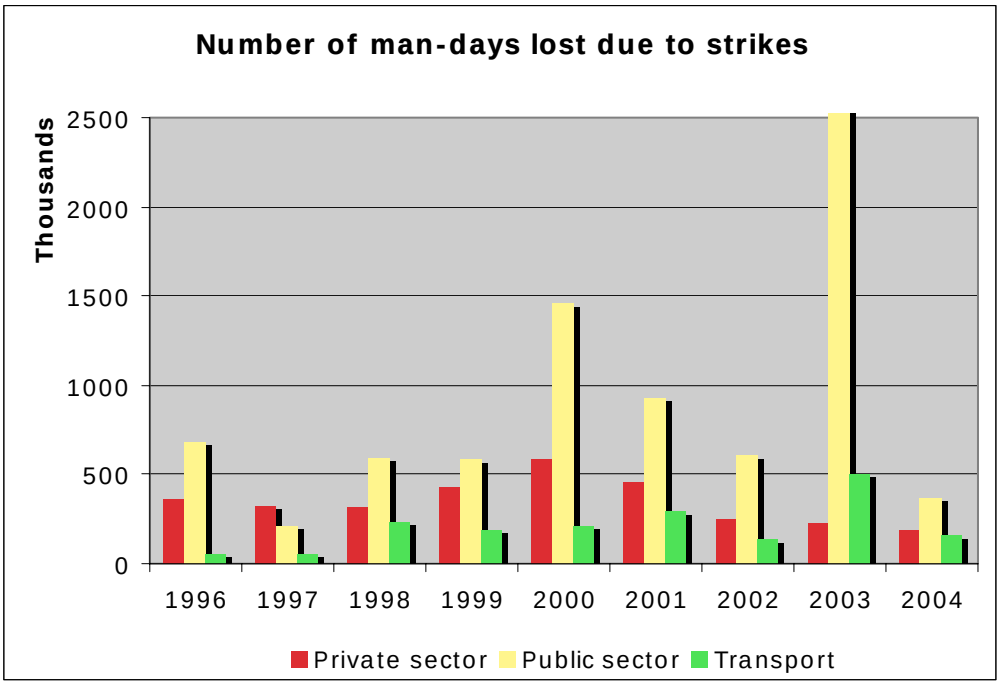
In addition, high-level labor organizations do not have the financial power for backing up strikes.

The society's disapproval towards strikes can also explain the reluctance of unions to engage strikes.

Finally, the people ignorance of their rights may cause for the low number of strikes. According to a survey of NHK in 2003, only 20% of the workers surveyed know their constitutional rights and thus the right to organize and to act collectively.

B. Confrontational relations between labor and management in France

Comparing to Japan, relations between labor and management are very confrontational as statistics on the number of strikes show (see p.59). Although this number has decreased since 1975, it is still very high. Since 1975, the number of strikes in the private sector which amounts to around 5 millions in 1975 dropped by around 1 million in 1985 and leveled of until 1998 where it was approximately 310 000 strikes. However, from 1999 to 2001, the number of strikes increased to 490 000 per year. Then, it continued declining until today. In 2004, 193 000 strikes were listed in the private sector. The public sector also follows the same trend. However, French characteristics of strikes are that they occur mostly in the public sector and the transport sector as shown by the table.



Source: French Ministry of Labor, DARES

In 2003, the number of man-days lost in the public sector reached a peak with more than 3, 6 millions days lost.

B.1. The current features of strikes in France

Like in Japan, strikes are linked with the presence of labor unions in companies. Indeed, the number of strike grows with the presence of labor unions in companies, as reveals by the table.

The number of strikes and the unionization rate by size of establishments 2003, in the private sector

Size of establishments	Unionization rate	Number of strikes per 1000 workers
More than 500 workers	8.7%	45
From 100 to 499 workers	8.3%	28
From 50 to 99 workers	5.4%	15
Less than 50 workers	3.5%	2

Source: Ministry of Labor.

Then, the most unionized sectors are the ones where strikes are more numerous. Indeed, the public industry sector with a trade unionization rate of 15% and the manufacturing industry where 7.5% are unionized are mostly affected strikes. By

contrast, in the tertiary sectors where the unionization rate is weak, like services, retail or building, the rate of acts of disputes is low.

The number of strikes by industry per 1000 workers in 2004 in the private sector

Industry	2004
Manufacturing industry	33
Services (without transport)	8
Retail	4
Building	3

Source: Ministry of Labor.

The number of man-days lost is very high, comparing to Japan. Indeed, in the private sector, the number of workers committed into strikes is quite important. From 1996 to 2004, it was around 33% on average. Moreover, strike-span is very long, even if it has decreased from 4 days in 2001 to around 3 days in 2004. Concerning the themes of collective disputes, wages and staff management are the main reasons of conflicts, like in Japan. In 2004, among all the listed claims of collective disputes, 39% dealt with wage-related matters, and 25% with employment questions. Working conditions are the third main reasons for conflicts.

B.2. The reasons for the persistent confrontations between labor, management and the State

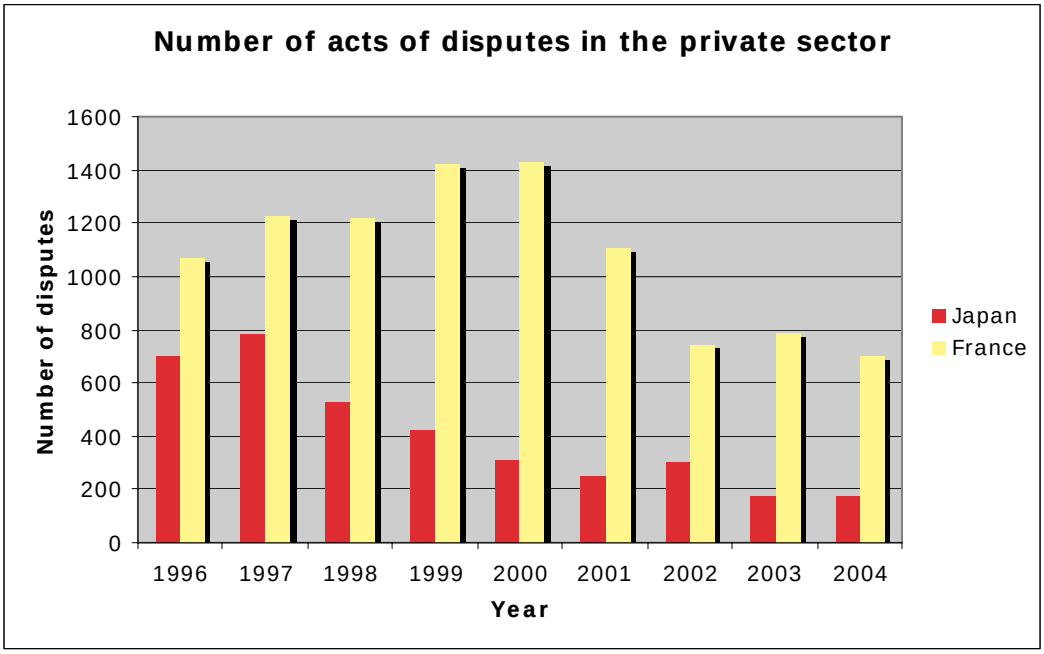
Historically, there has always been a habit of revolutions or demonstrations to topple over the government or to impose changes. The most important conflicts are still caused by the State's reforms. Indeed, the number of strikes reached a peak in 1995 with 5 millions man-days lost, due to oppositions against the government's proposal to reform welfare insurance. In 2003, more than 3.6 millions days lost of strikes were counted, because of the reform of the retirement pension system by Minister of Labor, Mr. Fillon. Recently, the proposal of Prime Minister De Villepin in January 2006 to create a new contract for promoting employment of young people under the age of 26 year-old, namely *"First Hiring Contract*", triggered many strikes. Students, at the beginning of February 2006, first launched demonstrations. The climax was reached in March 28th where 1 055 000 persons went on strike. At company or plant levels, in the private sector, the number of conflicts increased

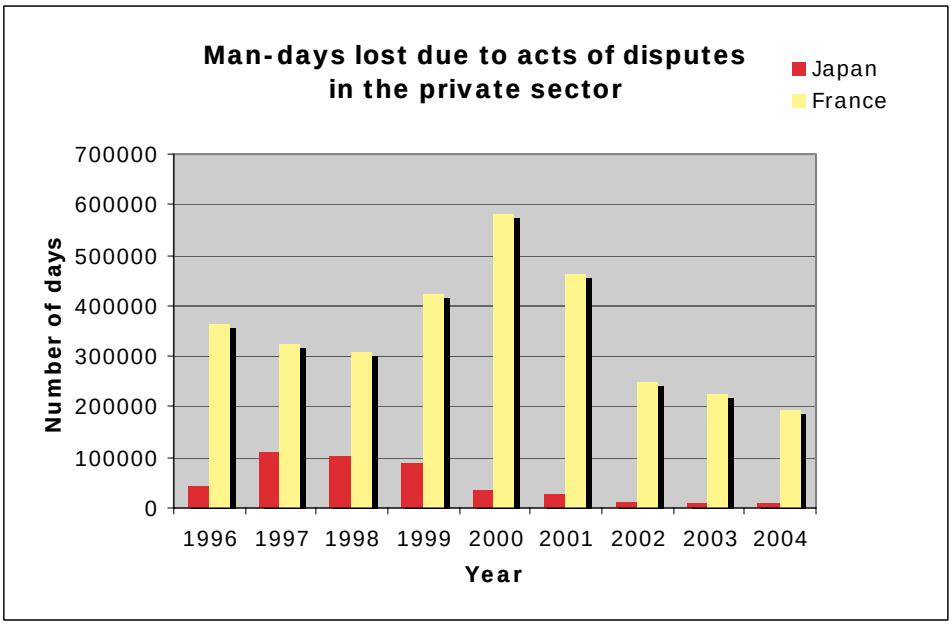
after the enactment of the *"Aubry"* laws of 1998 and 2000 on the reduction of working time imposing collective bargaining at enterprise or plant levels. In 2000, the second theme of collective disputes was working time after wages. It represents 29% of the reasons for conflicts, the highest rate never reached before[42]. Then, the specificity of French labor unions, formed outside companies, entailed great solidarity between workers of different companies. The centralized structure of labor unions also enables labor unions National Centers to organize important strikes. Finally, contrary to Japan, the attitude of society at large towards strikes is very favorable.

<u>Conclusion on industrial disputes:</u>

In both countries, collective disputes are linked with the presence of labor unions. However, the characteristics of Japanese and French labor unions shaped relations between labor and management representatives. In Japan, the structure of labor unions concentrated at enterprise level, as well as the development of joint labor-management consultation systems helped build fruitful and cooperative relations between labor unions and employers. In France, as labor unions were formed outside enterprises and have always been committed into aggressive movements aiming at obtaining changes from the government, their attitude is very confrontational towards employers and the government. As a result, the number of strikes as well as the man-days lost is very low in Japan comparing to France.

[42] French Ministry of Labor, *"Les conflits collectifs en 2002-2003" (Labor disputes in 2002 and 2003)* n.18-4, Mai 2005





Sources:

- The Japanese Ministry of Labor, Health and Welfare.
- The French Ministry of Labor.

Discussions on the contribution of a comparative approach

In both countries, labor unions are the traditional and main way to express and defend workers' opinions. However, the falling union density, the enlarging share of atypical workers and of skilled workers, as well as the evolution towards tertiary industry and the globalization are challenging this type of employee representation system. Therefore, it is necessary either to enable labor unions to adapt to these changes or to devise new types of communication channels between employees and employers through non-union employee representation systems.

In Japan, in light of the growing number of individual disputes, the major issue is to conceive a new type of collective employee representation system enabling communication between employees and managers to prevent conflicts. As stated before, in France, the lawmaker achieved creating an alternative employee representative system to labor unions. Indeed, the lawmaker embodied the proposals of labor unions and employers' organizations in the cross-sector national collective agreement of October 1995. Furthermore, the law avoided to create conflicts of jurisdictions between labor unions and non-union employee representation systems as the latter only act in the absence of labor unions. Therefore, labor unions and employers' organizations accepted the law of May the 4th 2004 more easily. In Japan, until recently there have never been jurisdictional conflicts between non-union representation systems and enterprise-unions as they are playing different roles. Nevertheless, the recent governmental proposal, released in June of this year on the labor contract, may entail conflicts of jurisdictions. Indeed, the new devised employee representation system will not be set up to compensate the lack of labor unions. The way French lawmaker tackled this issue may be an interesting contribution. First, a new type of collective employee system should be invented in the absence of labor unions to avoid jurisdictional conflicts. Second, labor representatives and manager's representatives could strive to propose their own solution.

In France, the main challenge is to create industrial peace. Contrary to Japan, labor unions have always been involved in harsh confrontations with the managers' representatives and the government. This can explain, among other reasons, France's problems to commit into major reforms to face the issues of aging

population and unemployment. The report pointed out that the borderline between labor unions, endowed with negotiation function, and elected representatives playing a communication role is fading. In other terms, the differences between two channels of employee representation systems at enterprise-level are less clear than before. This study has highlighted that in Japan, enterprise-unions are acting like the works councils, through labor-management joint consultation mechanisms. These systems enabled to create fruitful and cooperative relations between labor unions and employers. Hence, we can wonder if in France this connection between labor unions and elected representatives will lead to less adversarial relations between labor unions employers in companies, as it was the case in Japan.

Finally, it is interesting to point the effects of the state intervention in industrial relations. The French government has always been actively involved to compensate the structural deficiencies of industrial relations. Labor unions have relied on the state to initiate the development of collective bargaining. Therefore, labor unions have not been very much concerned by the divisions of labor union movement and did not make great efforts to organize new workers to limit the decrease of unionization rate, comparing to Japan. By contrast, due to the indirect commitment of the Japanese state into relations between labor and management representatives, labor unions did not count on the government to compensate the decline of the trade unionization rate. This can explain the efforts made by labor union movement to unify in the 1980's and they constant efforts to organize new workers.

In both countries, the most crucial issue is to find a good balance between the respect of the autonomy of labor and management representatives and the intervention of the State to compensate the defects of such autonomy.

ANNEX 1: Bibliography

I. Books

- **ARAKI Takashi**, *"Labor and employment law in Japan"*, The Japan Institute of Labor, 2002.

- **DUNLOP John Thomas**, *"Industrial relations systems"*, Harvard Business School Press, 1958.

- **LANDIER Hubert et LABBÉ Daniel**, "*Les organisations syndicales en France. Des origines aux évolutions actuelles"* (French Labor union organizations), Liaisons, 2004.

- **LALLEMENT Michel,** *"Sociologie des relations professionnelles"* (Sociology of industrial relations), La Découverte, 1996.

- **PARSONS Nick,** *"French Industrial Relations in the New World Economy",* Routledge, 2005.

- **PÉLISSIER Jean, SUPIOT Alain et JEAMMAUD Antoine,** *« Droit du travail »* (Labor Law), Dalloz, 2004

- **PETIT Franck**, *"La notion de représentation dans les relations collectives de travail"* (The notion of representation in collective Labor relations), Librairie Générale de Droit et de Jurisprudence, Paris, 2000.

- **ROSANVALLON Pierre**, *"La question syndicale"* (Labor union issue), Calmann-Lévy, 1988.

- **SHIRAI Taichiro**, *"Japanese Industrial Relations"*, The Japan Institute of Labor, Japanese Economy and Labor series n.5, 2000.

- **SOUBIRAN-PAILLET Francine**, *"L'invention du syndicat (1791-1884). Itinéraire d'une catégorie juridique"* (Labor union invention), Librairie Générale de Droit et de Jurisprudence-Droit et Société, 1999.

- **SUGENO Kazuo**, *"Japanese employment and labor law"*, Carolina Academic Press, 2002.

- **TAKANASHI Akira**, *"Shunto Wage Offensive"*, The Japan Institute of Labor, 1996.

- **VERDIER Jean Maurice**, "*Syndicats et droit syndical",* 2e édition, Volume I Liberté, Structures et Actions, Dalloz, 1987.

II. Articles

- **ARAKI Takashi,** *"The system of regulating the terms and conditions of Employment in Japan"*, in "The Mechanism for establishing and changing terms and conditions of employment/ The scope of Labor Law and the notion of Employees", JILPT REPORT, n.1 2004, p.3.

- **ASAO Yutaka**, *"The Labor situation in Japan (2001)"*, Kluwer Law international, 2004, p.65.

- **AUVERGNON Philippe**, *"Work-time reduction in France: The role of collective bargaining in implementing the law"*, The International Journal of Comparative Labor Law and Industrial Relations, Autumn 2000, p.201.

- **BUNEL Jean and SAGLIO Jean**, *"Employers' associations in France"*, in "Employers' associations and industrial relations, a comparative study", edited by Windmuller P. and Gladstone Alan, 1984.

- **INAGAMI Takeshi**, *"Changes in the employment system and future Labor policies"*, Japan Labor Review, Volume 1,Winter, 2004.

- **INOUE Sadahiko**, *"Japanese trade unions and their future: opportunities and challenges in a era of globalization"*, ILO, prepared by JTUC RIALS March 1999

- **FUJIMURA H**. *"The origins and destinations of Japan's Union leaders"*, Japan Labor Bulletin, May 1st 1999.

- **FUJIMURA H.** "*The Future of Trade Unions in Japan",* Japan Labor Bulletin, Vol.37, No.7, 1998.

- **GOETSCHY Janine and JOBERT Annette**, *"Employment relations in France"*, in "International and comparative employment relations", edited by BAMBER Greg J, LANDSBURY Russel D and WAILES Nick in 2004, p.176.

- **GOETSCHY Janine and ROZENBLATT Patrick,** *"France: the industrial relations system at a turning point"*, in "Industrial Relations in the new Europe", edited by Anthony Ferner and Richard Hyman, 1992

- **HIROKI Sato and allii**, "*Formation of Labor unions and responses to managerial crisis-Industrial Relations in the late 1990's"*, The Japan Institute of Labor, Research Report n°150, October 2002.

- **JOBERT Annette and SAGLIO Jean**, *"Derogation, how did industry-level agreements used the Law of May the 4th 2004?"* , Seminar on Social Dialog in International Perspectives, June the 29th 2006, organized by the French Ministry of Labor.

- **LOKIEC Pascal** "*The Framework of French Labor law and recent trends in Regulation"*, in "The Mechanism for establishing and changing terms and conditions of employment/ The scope of Labor Law and the notion of Employees", JILPT REPORT, n.1 2004, p.73.

- **MORITO Hideyuki,** *"Decentralizing Decentralized Industrial Relations? The Role of Labor Unions and Employee Representatives in Japan"*, in "Decentralizing Industrial Relations and the role of Labor Unions and Employee Representatives", JILPT REPORT, n.3, 2006, p.1.

- **MOURET Julien**, *"Collective relations in France: a multi-layered system in Mutation",* in "Decentralizing Industrial Relations and the role of Labor Unions and Employee

Representatives", JILPT REPORT, n.3, 2006, p.33

- **NAKABUKO Hiroya**, *"The 2003 Revision of the labor standards law: fixed term contracts, dismissal and discretionary work schemes"*, Japan Labor Review, Spring 2004.

- **NAKATA Yoshifumi**, "*Trends and Developments in Japanese Employment Relations in the 1980s and 1990's"* in "Employment relations, individualization and union exclusion. An international study", edited by DEERY Stephen and MITCHELL Richard, The Federation Press, 1999.

- **NIMURA Kazuo**, *"Post-Second World War labor relations in Japan"*, in Industrial relations in Australia and Japan, edited by Jim Hagan and Andrew Wells, 1994.

- **OH Hak-Soo**, "*High Level Consultations in Japan and their contribution to the success of Social Dialogue"* , The Japan Institute of Labor Policy and Training, 2004.

- OUCHI Shinya and ARAKI Takashi, "Introduction", in Decentralizing Industrial Relations and the role of Labor Unions and Employee Representatives, JILPT REPORT, n.3, 2006, p.33

- **SHIMADA Yoichi**, *"Working-hour schemes for white-collar employees in Japan",* Japan Labor Review Volume 1, Autumn 2004.

- **SUWA Yasuo**, "*The actors of collective bargaining: is the system really sustainable in the future?"*, Kluwer Law international, 2004, p.23.

- **SUZUKI, Akira,** *"The rise and fall of inter-union wage coordination and tripartite dialog in Japan"*, in "The new structure of Labor relations: tripartism and decentralization", edited by KATZ Harry C. and alii, 2004, p.119.

-SUZUKI Hirosama and OGURA Kazuya,*"Shopfloor/Entreprise Labor management consultations in Japan"*, Waseda Business and Economic studies, n.31, 1995.

- **SUZUKI Hirosama**, *"L'individu, le collectif et l'Etat dans les pays d'Asie du Nord-Est"* (*Individual, Collective and State in North East Asian Countries),* dans "Mondialisation, travail et droits fondamentaux", sous la direction de DAUGAREILH Isabelle, Bruylant, Bruxelles et LGDJ Paris, 2005.

- **VAN RUYSSEVELDT Joris and VISSER Jelle,** *"Contestation and state intervention forever? Industrial relations in France"*, in "Industrial Relations in Europe", edited by VAN RUYSSEVELDT Joris and VISSER Jelle, 1996.

- **YAMAKAWA Ryuichi**, *"Japan"*, in "Corporate Restructuring and the Role of Labor Law", Kluwer Law international, 2003 p.103.

- **YAMAKAWA Ryuichi**, *"The labor Dispute Resolution System in Japan: Recent developments, Their background and Future Prospects"*, Labor Policy Research Conference organized by JIRRA and JILPT, 12/2005.

- **YAMASHITA Mitsuru**, *"Japanese labor-management relations in an era of Diversification of Employment types: Diversifying Workers and the role of Labor Unions*", Japan Labor Review, Winter 2005, p. 105.
- **WEATHERS Charles,** *"The decentralization of Japan's wage setting system in comparative perspective"*, Industrial Relations Journal, 2003, p.449.

III. Statistics and reports

French Ministry of Labor, DARES, Premières Informations et Premières Synthèses :

- *"Les élections aux comités d'entreprise"* (*Works Council elections in 2004)*, n.08.3, Février 2006.
- "*Les conflits collectifs en 2004 "* (*Collective disputes in 2004)*, n.45.1, Novembre 2005.
- *"Les conflits collectifs en 2002-2003" (Labor disputes in 2002 and 2003)* n.18-4, Mai 2005.
- *"Mythes et réalités de la syndicalisation en France " (Myths and reality of unionization in France)*, Octobre 2004.
- *"Les institutions représentatives du personnel" (Collective worker representative bodies),* n.48.1, Novembre 2001.
- *"Ou sont les délégués syndicaux" (Where are union delegates ?)*, n.41.2, Octobre 2000.
- *"La couverture conventionnelle a la fin 1997", (Collective agreements coverage at the end of 1997)*, n.29.2, Juillet 1999.

French Ministry of Labor, Bilans et rapports:

- *"La négociation collective en 2005",* Juin 2006.
- *"La négociation collective en 2003",* Juin 2004.

Japan Business Federation (Nippon Keidanren):

- *"Employers, Be righteous and strong"*, Position Paper 2006.
- *"The Current Labor Economy in Japan"*, 2005.

OECD reports

- **OECD Jobs Study working paper**, *"The impact of industrial relations practices on employment and unemployment"*, David Marsden, 1995.
- **OECD Employment outlook 1994**, *"Collective bargaining levels and coverage"* chapter 5, July 1994.

ANNEX 2: Interviews

- THE JAPANESE MINISTRY OF LABOR, HEALTH AND WELFARE.

- NIPPON KEIDANREN, the Japan Business Federation.

- RENGO, the Japan Trade Union Confederation.

- ZENROREN, the National Confederation of Trade Unions.

- UI ZENSEI, the Japanese Federation of Textile, Chemical, Food, Commercial, Service and General Workers' Unions (affiliated to RENGO).

- JAM, the Japanese Association of Metal, Machinery and Manufacturing Workers' Union (affiliated to RENGO).

The author also conducted interviews with enterprise-based unions in one large company and two small and medium-sized companies.

- Yuichiro MIZUMACHI, Associate Professor of Labor Law at the University of Tokyo.

- Yoichi SHIMADA, Associate Dean and Professor of Law at Waseda University.

- Hiromasa SUZUKI, Professor of Labor Economics at Waseda University.

- Kaoko OKUDA, Professor of Labor Law at the University of Kyoto.