# JAPANESE UNFAIR LABOUR PRACTICE CASES IN MULTI-UNION BARGAINING SITUATIONS

Teruhisa KUNITAKE

## 1 INTRODUCTION

Article 28 of the Japanese Constitution provides that every worker has the right to organize, the right to bargain collectively and right to engage in other concerted activities(1). In addition to this constitutional provision, section 7 of the Trade Union Act(2), which is the most general legislation in the Japanese labour-management relations field, protects some union activities from an employer's "unfair labour practice". Of course, the concept of unfair labour practice was introduced from the United States, during the occupational era after World War Two, and was modeled on the National Labor Relations Act (the so-called Wagner Act). However, the Japanese Trade Union Act, unlike Canadian and American counterparts, has no provisions to regulate union's unfair labour practices. Section 7 of the Act prohibits only four types of employer's anti-union behaviours(3). The first one is to discharge or to discriminate against his employees because of their union activities. The second is to refuse to bargain collectively with the representatives of his employees without good reason. The third is to dominate or to interfere with unions' internal affairs. The fourth and last is to discharge or to discriminate against his employees who have filed a complaint or participated in the procedures provided by the Act.

As you already know, Japanese collective bargainings are usually conducted at either plants or enterprises level. Nevertheless, the Trade Union Act, unlike Canadian or American Acts, did not introduce any procedures to decide appropriate bargaining units and to elect exclusive bargaining representative agents for the units(4). Consequently, each employer must bargain collectively with all unions, so long as they represent some of his employees.

Japanese labour relations commissions are organized as tripartite bodies[5], just like in Canada except in the federal jurisdiction. In Japan, each prefecture has one local labour relations commission and the Central Labour Relation Commission was established in Tokyo to hear appeal cases from the prefectural commissions. These labour commissions have the authority to deal with unfair labour practice complaints filed by any union or employee. In addition, under the Labour Disputes Adjustment Act[6], the commissions are bestowed powers to conciliate, mediate or even arbitrate labour disputes, if one or both of the parties ask for it. Japanese courts are also conferred the authority to review any decisions or orders issued by any labour relations commission, even if the decisions or orders are supported by substantial evidence. In addition, courts maintain their own jurisdiction to hear unfair labour practice cases, if one of the parties wishes to take this route. As a result, Japanese administrative and judicial procedures to deal with unfair labour practice cases are very complicated. It means that each applicant could take up to five steps if he wishes to do so, starting from a local labour relations commission and progressing up through the various administrative and judicial review procedures finally reaching the Supreme Court of Japan. Upon top of all that, in multi-union bargaining situations, unfair labour practice cases are inevitably even more complicated, from both a practical and a theoretical perspective. Recently, the Japanese Supreme Court decided two important unfair labour practice cases which arose in multi-union bargaining situations.

## 2 RECENT SUPREME COURT DECISIONS

### (1) Japan Mail-Order Co. Case

The defendant, Japan Mail-Order Co., was a small commercial company employing about 230 employees. At the bargaining table in 1972, the employer offered the same standard of bonus payments to two unions on the condition that the unions would willingly support management's effort to increase productivity. The majority union, which represented about 120 employees, accepted the offer unanimously. But the minority union which represented less than 20 employees rejected it, in-

sisting that the so-called productivity increase would likely bring about some hardship to its members. Consequently, the employer did not pay any bonus to the minority union members. The minority union filed an unfair labour practice complaint with a local labour relations commission. The union alleged that the employer had discriminated against its members and even intended to destroy the minority union through this bargaining tactic. The commission upheld the union's complaint and ordered the employer to pay the same amount of bonus to its members as to the others(7). The employer appealed the case to the district court in Tokyo. That court sustained the commission's order and dismissed the appeal(8). On a further appeal, the court of appeals in Tokyo upheld the employer's argument and reversed the district court's decision and declared the commision's order was repealed(9). Then, the commission took the further step of appealing the case to the Supreme Court of Japan.

The Supreme Court in its turn reversed the decision of the court of appeals on the following four grounds(10).

(1) The condition attached to the employer's offer at the bargaining table was vague in its nature and even unreasonable as a premise for paying the bonus to his employees.

(2) The employer insisted that the different working conditions applying to the two unions' members resulted from each of the unions' own choice at the bargaining table. The Supreme Court rejected this defence saying it was not sufficient to justify the employer's discriminatory treatment of the minority unions' members.

(3) Although the employer offered the same standard of bonus payments to both unions, he expected that the militant minority union could not accept the condition attached to the offer.

(4) This kind of employer's bargaining tactic, motivated by his hostility against the minority union, could not be permitted under the unfair labour practice provisions of the Act.

### (2) Nissan Automobile Co. Case

The defendant, Nissan Automobile Co., is one of the biggest automobile manufacturing companies in Japan. In 1966, the Nissan Co. acquired a smaller automobile manufacturing company named the Prince

Motor Co. In 1967, the year following this acquisition, the employer and the majority union, which represented about 7,500 members composed mostly of original Nissan employees, reached an agreement which included a kind of shift-work with scheduled overtime-work. The minority union, which represented only 120 members (less than 2% of all employees, and composed mainly of former Prince company's employees), had opposed the employer's offer and demanded the overtime-work based on an individual requested basis. But the employer disregarded this demand. Consequently, the minority union members could not be offered any kind of overtime-work. Here, I must explain what the scheduled overtime-work means. This shift-work with scheduled overtime-work had already been introduced in all the plants of Nissan Company. However the Prince Company had no shift-work before the acquisition. Under the shift-work arrangement in Nissan Co, the daytime shift-work started at 8:30 and finished at 16:30. The night shift-work ran from 10 p.m. to 6 a.m. the next morning. Under this shift system, necessary overtime-work was calculated in advance and allocated to the two shift teams automatically. Therefore, the employer informed the minority union that no other overtime-work was needed. The minority union filed an unfair labour practice complaint with a labour relations commission, alleging that the employer discriminated against the minority union members and intended to weaken the power of the union through this behavior. The commission accepted this complaint and ordered the employer not to discriminate against minority union members in relation to the overtime-work[11]. The employer filed a petition for review to the Central Labour Relations Commission, which dismissed the petition[12]. The employer appealed the case to the district court. This court upheld the appeal and revoked the Commission order[13]. The Central Commission, on the behalf of the minority union, appealed the case to the court of appeals in Tokyo. That court upheld the appeal and sustained the commission order[14]. Finally, the employer appealed the case to the Supreme Court of Japan.

The opinions of the Supreme Court were divided[15]. The majority of the Court (4 of the 5 judges concurred with it) supported the decision of the court of appeals, but for differnt reasons. The majority opinion was divided in two portions. The first revealed the Court's legal and general understanding of unfair labour practice cases in multi-union bargaining

situations. This part of the judgement was composed of the following four points.

(1) Generally speaking, it is certain that the Trade Union Act conferred the right to bargain upon all unions, even if they represented only a small number of employees. However, subsequent differences in working conditions resulting from collective bargaining should be considered as an inevitable effect of each union's own choice.

(2) Nevertheless, in multi-union bargainings, every employer must perform the duty to bargain in good faith with every union. This means he must keep the same distance from each of the unions, and make an effort not to discriminate in favour of one union against another. That is to say, in this situation, an employer must perform the duty to retain neutrality among multiple unions.

(3) However, the Court recognized that in multi-union bargaining situations, giving the difference in bargaining powers of each union, it is natural for an employer to take into account of an attitude or response of majority union more seriously than that of minority union. In this context, an employer may respect an collective agreement reached with a majority union and urge a minority union to follow it.

(4) Finally, an unfair labour practice can be found only where an employer treats the members of a minority union differently, based on the employer's hostile or negative sentiments towards them, and only engages in surface bargaining with their union.

The second portion of the majority opinion shows its legal evaluation of this specific case. The two following points are made by the Court.

(1) In this case it was reasonable for the employer to request the minority union to accept the scheduled overtime-work to which the majority union had already agreed. But the employer, in fact, did not bargain in good faith with the minority union at the bargaining table. Consequently, his different treatment of its members was deemed as an unfair labour practice motivated by his hostile or negative sentiments towards the minority union.

(2) Finally, the commission order should be interpreted as simply ordering the employer to perform its duty to bargain in good faith with the minority union. This meant that if a bargaining impasse should occur during the course of the second stage of bargaining, the employer would

be free to exclude the members of the minority union from the scheduled overtime-work.

This is a summary of the majority opinion. However, Justice Kyuji Kidoguchi dissented. His dissenting opinion contained the following two points.

(1) So long as the minority union could not agree with the employer on the scheduled overtime-work, the application of different working conditions to the minority union members must be deemed an inevitable or incidental effect due to their union's own choice.

(2) The minority union's opposition to the scheduled overtime-work was so strong and explicit that the employer's bargaining attitude alone could not be condemned unilaterally. Therefore, the emloyer's bargaining attitude did not constitute a breach of the duty to bargain in good faith. The employer's appeal should be upheld.

I think, these two cases are good examples illustrating actual situations and legal problems to be resolved in multi-union collective bargaining situations in Japan. It seems clear that not only the Supreme Court but also some inferior courts and labour relations commissions are now confused how to reach an appropriate solution under the current legal scheme. I shall make some comments on this issue with a comparative viewpoint.

## 3 COMMENTS WITH A COMPARATIVE VIEWPOINT

Collective bargaining relationship between a single employer and multiple unions at enterprise or plant level is a very specific labour law phenomenon among the industrialized countries. In the North American contries, Canada and the United States, collective bargaining relationship is segmented along with so-called collective bargaining units, usually recognized at each enterprise or plant level. But the bargaining status can be given only to one union through the election of an exclusive bargaining representative. Therefore, multi-union collective bargaining scene along with Japanese lines does not occur. In contrast, in the European countries multi-union collective bargaining relations are relatively common phenomena. However, in these countries, collective bargaining relationships are much more centralized than in North America

or Japan. These are mostly established at national and industrial levels. That means, at each of enterprise or plant level, whereas joint consultation or co-determination with workers councils or plant committees prevails, collective bargaining with unions is not usually conducted. In addition to this, because of this centralized bargaining structure, there are almost no legal provisions regulating unfair labour practices in the course of collective bargaining. Consequently, even in these European countries, we find no labour law phenomena similar to those in Japan.

Of course, even in Japan, multi-union bargaining relationships are not common phenomena. **Table 1** shows that the proportion of employers who must bargain with multiple unions is only 11.6% on average of all Japanese industries. Nevertheless, it is surprising that about one half of the total alleged unfair labour practice cases have been brought in multi-union bargaining situations[16]. These cases have presented a lot of difficult problems to be resolved, both on a theoretical and a practical plane.

The Trade Union Act provides almost nothing about collective bargaining relationships. As I already mentioned, this Act does not introduce any procedures to determine the appropriatness of bargaining units or the selection of exclusive bargaining representatives. Also, it does not provide grievance arbitration procedures to control disputes occurred from the administration or interpretation of collective agreements. Instead, it simply requires employers not to refuse collective bargaining

**Table 1 Rate of Establishment with or without Another Union (1985)**

| industry | with or without another union | | |
|---|---|---|---|
| | total | with | without |
| mining | 100.0 | 31.4 | 68.6 |
| construction | 100.0 | 13.6 | 86.4 |
| manufacturing | 100.0 | 6.4 | 93.6 |
| wholesale & retail trade | 100.0 | 6.0 | 94.0 |
| finance, insurance and real estate | 100.0 | 24.6 | 75.4 |
| transport and communication | 100.0 | 14.9 | 85.1 |
| electricity, gas, water and heat supply | 100.0 | 26.3 | 73.7 |
| services | 100.0 | 13.5 | 86.5 |
| total | 100.0 | 11.6 | 88.4 |

Source: Ministry of Labor, *General Survey on Industrial Relations*, 1985

with unions. Consequently, employers can not refuse to bargain with any union, at any time and on any issue without good reason. Moreover, although the Act does not so provide explicitly, most of the labour relations commissions and some courts have interpreted that an employer's duty to bargain collectively includes a duty to bargain in good faith even though this duty has not applied to unions(17). However, this does not present a big problem for an employer who can bargain with a single union representing almost all of the eligible employees in the company. The difficult problems have usually appeared in multi-union bargaining situations.

Here, I shall briefly explain some specific figures about Japanese trade union organizations. Table 2 shows that the rate of Japanese un-

Table 2 Number of Labor Unions and Their Membership (As of June 30)

| year | labor unions[1] | union membership[2] (persons) | estimated union density (%) |
|---|---|---|---|
| 1935[3] | 993 | 408,662 | 6.9 |
| 1940[3] | 49 | 9,455 | 0.1 |
| 1945[3] | 509 | 380,677 | 3.2 |
| 1950 | 29,144 | 5,773,908 | 46.2 |
| 1955 | 32,012 | 6,285,878 | 35.6 |
| 1960 | 41,561 | 7,661,568 | 32.2 |
| 1965 | 52,879 | 10,146,872 | 34.8 |
| 1970 | 60,954 | 11,604,770 | 35.4 |
| 1975 | 69,333 | 12,590,400 | 34.4 |
| 1980 | 72,693 | 12,369,262 | 30.8 |
| 1982 | 74,091 | 12,525,619 | 30.5 |
| 1983 | 74,486 | 12,519,530 | 29.7 |
| 1984 | 74,579 | 12,463,755 | 29.1 |
| 1985 | 74,499 | 12,417,527 | 28.9 |
| 1986 | 74,183 | 12,342,853 | 28.2 |
| 1987 | 73,138 | 12,271,909 | 27.6 |
| 1988 | 72,792 | 12,227,223 | 26.8 |

Sources: Ministry of Labor, *Basic Survey on Trade Unions*, *Year Book of Labor Statistics & Research*, 1948, 1950.

Notes: 1) Based on Tan-i rodo kumiai (Unit labor unions). This is the basic organizational unit for unions in Japan and is comprised of workers in the factory, office site, etc, or an enterprise.

2) Based on Tan-itsu rodo kumiai (Enterprise labor union) which, in most cases, are comprised of the unions of a single enterprise.

3) The numbers of 1935, 1940, 1945 are at the end of year.

ion organization was approximately 26.8% in 1988 (it dropped to 25.2% in 1990). Table 3 reveals that more than 94% of Japanese unions are enterprise unions. The number of craft unions and industrial unions is extremely small. This might seem strange to you, because in the western countries trade unions are mostly organized along craft or industrial lines. In Japan, about 90% of employers are bargaining with single enterprise unions organized by their employees only. These employers can enjoy relatively cooperative bargaining relationships with those enterprise unions. This is the reason why some Japanese employers say it is not necessary for them to amend the Trade Union Act in order to introduce collective bargaining procedures based on the American or Canadian models. However, the situation of employers who must bargain with multiple unions is entirely different. They must bargain with multiple unions which presumably keep a strong rivalry with each other. Because, if more that two unions are organized in a same company, they may have a long history of competing with each others, mainly because of their different political or ideological backgrounds.

Chart 1 illustrates the historical development of Japanese trade union organizations. You can see the Japanese trade union movement developed along with two main streams. The first one was characterized as

Table 3 Unit unions and members classified by organization structure

| year | total | | enterprise union[2] | | craft union[3] | | industrial union[4] | | others | |
|---|---|---|---|---|---|---|---|---|---|---|
| | unions | members (1,000 persons) | unions | members (1,000 persons) | unions | members (1,000 persons) | unions | members (1,000 persons) | unions | members (1,000 persons) |
| 1964 | 51,457 | 9,652 | 48,386 | 8,819 | 493 | 66 | 1,217 | 476 | 1,361 | 292 |
| 1975 | 69,333 | 12,472 | 65,337 | 11,360 | 720 | 169 | 1,775 | 682 | 1,501 | 259 |

Sources: Ministry of Labour, *Labor Union Basic Survey*

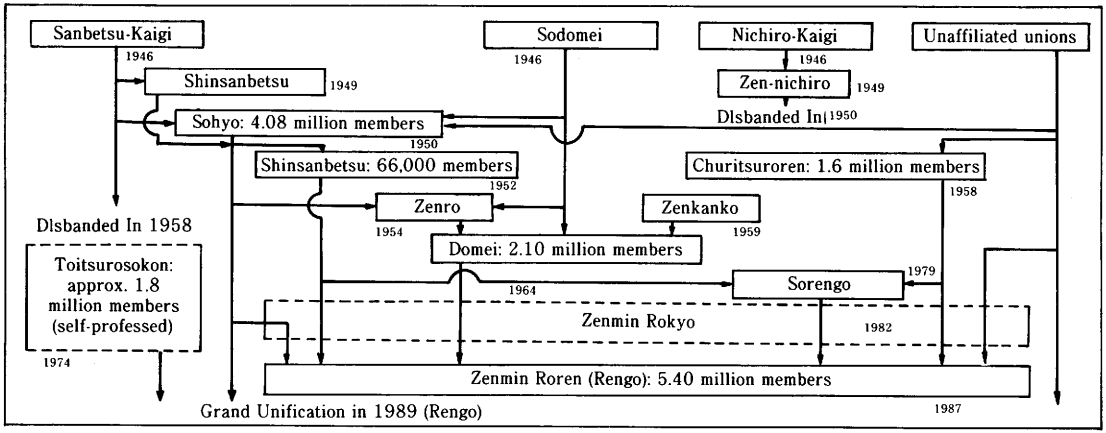
Notes: 1) "Unit Union" refers to the one whose membership is composed of individual according to its constitution.

2) "Enterprise union" refers to the one whose membership is composed of employees of the same enterprise.

3) "Craft union" refers to the one whose membership is composed of the workers of the same occupation across industries and regions.

4) "Industrial union"refers to the one whose membership is composed of workers of the same industry across enterprises and occupations.

## Chart 1 History of Postwar Labor Organizations




Source: The Japan Institute of Labour, *Japan Labor Bullelin, February* 1988.

Notes: Numbers of union members are based on the January 1986 survey by the Ministry of Labor.
Sanbetsu-Kaigi: Congress of Industrial Unions of Japan.
Sodomei: Japanese Federation of Trade Unions.
Nichiro-Kaigi: Japanese Congress of Labor Unions.
Shinsanbetsu: National Federation of Industrial Organizations.
Zen-nichiro: Japanese Federation of Labor.
Sohyo: General Council of Trade Unions of Japan.
Churitsuroren: Federation of Independent Unions of Japan.
Zenkanko: National Council of Government and Public Corporation Workers' Unions.
Zenro: Japanese Trade Union Congress.
Toitsurosokon: Conference of Trade Unions for Pormotion of a United Front.
Domel: Japanese Confederation of Labor.
Sorengo: National Federation of Trade Unions of Japan.
Zenmin Rokyo: Japanese Private Sector Trade Union Council.
Zenmin Roren: Japanese Private Sector Trade Union Confederation.

left wing organizations. In the chart the line comes from Sanbetsu-Kaigi to Sohyo. The second stream consists of relatively moderate organizations. These are represented by the line coming down from Sodomei to Domei in the middle. In addition, unaffiliated independent unions organized more than 4.1 million workers. These independent unions might also be counted in this stream. In the Japan Mail Order Co. case the majority union was an independent union, and in the Nissan Co. case the majority was a union affiliated in Domei. In both cases, the minority unions were affiliated in Sohyo. I should point out the inter-union struggle between Domei and Sohyo had produced a bitter rivalry in the Japanese trade union movement since the 1950's. However, in 1989, not only Sohyo and Domei but also some smaller organizations such as Churitsu-roren, Shinsanbetsu and some independents, were merged into the newly established central confederation named Rengo[18]. Now, you might suppose multi-union bargaining situations have already disappeared. But, this has not happened because the most radical organization called Toitsurousokon, which has now changed the name to Zenrouren, still remains. Furtheremore, another radical organization named Zenroukyo was organized recently. In this context, multi-union bargaining situations will continue to exist even in the future.

Now, I must turn back to the legal problems. As I have already pointed out, under the Japanese Trade Union Act, every union has the right to bargain collectively with an employer. It means, in multi-union bargaining situations, each union can conclude a different collective agreement. However, both employers and unions usually believe that same standard of wages and other working coditions should be applied to all employees working in the same enterprise, even if they belong to different unions. It might be strange for you, but this sentiment is very natural for Japanese employees. Because, in Japan, wages and other working conditions are usually standardized along with the seniority order (nenkoh-chitsujyo). This is a key point you must take into account, when you consider the employer's duties in multi-union bargaining situations. Here, a question on this issue must be presented as follow. If an employer offered the same standard of wages and other working conditions to two unions and one union accepted his proposal and another rejected it, as in the Japan Mail Order Co. case or Nissan Co. case, how would you evaluate the different working conditions among the em-

ployees in relation to the unfair labour practice provisions?

Under the current statutory scheme, this question might be answered through the following three approaches. The first approach is that the different working conditions must be considered an inevitable effect of each union's free choice at the bargaining table, and no complaint should be accepted by any labour relations commission. The second approach is that if an employer did not perform the duty to bargain in good faith, a labour relations commission should order him to perform that duty. The third approach is that an employer must keep an equal distance from each unions and retain a neutral position. If an employer has a hostile or negative sentiment towards a minority union, different working conditions between two unions' members should be corrected and a labour relations commission should issue a positive order. The Supreme Court said, in the Japan Mail-Order Co. case, the final approach had to be supported. In the Nissan Co. case, although the decision was quite complicated and even difficult to understand its real meaning, the Court probably said that the second approach was right.

## 4 CONCLUSION

I must confess that, under the present Japanese statutory scheme, it is not an easy task to find an appropriate solution on this issue. The most simple and even preferable solution might be to amend the Trade Union Act and to introduce the procedures of deciding appropriate bargaining units and exclusive bargaining representatives in accordance with the Canadian or American model. But, it seems almost impossible. Because Japanese trade unions have usually opposed to any kind of drastic legislative change in the labour-management relations field. Sometimes employers' associations such as Nikkeiren and Keidanren proposed to change it, but they could never succeed. Therefore, if we must try to find an appropriate solution under the current legal scheme, there are three conceivable approaches which I have just mentioned before.

The first one is the so-called "each union's free choice" approach. This approach seems relatively clear and acceptable on the surface. But I can not support this, because it makes minority unions' bargaining

rights protected by the Constitution almost meaningless. Also, I can not support the last one, the "equal distance" approach. Because insofar as an employer offered the same working conditions to both unions, and even if one of the unions rejected it, it is difficult to condemn an employer as doing an unfair labour practice at the bargaining lable. Nevertheless, most of labour relations commissions preferred to take this approach and issued positive orders to correct different working conditions. But I must say, this kind of orders allowed a minority union to keep better working conditions than it would agree with an employer at a bargaining table. The second one, the "duty to bargain in good faith" approach seems more moderate and acceptable rather than the others. But if we take this approach, we must resolve other difficult problems. The first problem is how to define an employer's duty in multi-union bargaining situations. I shall say, the Supreme Court decision of the Nissan Co. case did not show us an explicit standard to differentiate "hard bargaining" from "surface bargaining". Another difficult problem is appropriate remedies. If it is clear that an employer does not perform that duty, what kind of remedy should be given to a minority union. And if a labour relations commission orders an employer to continue a good faith bargaining, as in the Nissan Co. case, how long does he have to keep this up? The Supreme Court said, in this case, if the second stage of bargaining get into an impasse, the employer will take a free hand. In this context, how can you say this order is an appropriate remedy to relieve an unfair labour practice?

To resolve these problems, I shall advocate that "the Procrustean bed " must be removed from this approach. It means that unfair labour practice procedures should be connected with some kind of conciliation procedures, in order to deal with the disputes occurring in multi-union bargaining situations. There are several reasons. First of all, the duty to bargain in good faith should include duties such as to persuade another party to agree with him and to submit materials and papers on the bargaining table and so on. These are the similar duties to those usually required in the course of conciliation procedures. Secondly, Japanese labour relations commissions are, unlike their Canadian or American counterparts, responsible not only to adjudicate unfair labour practice cases but also to conciliate labour disputes cases. Therefore, they could do it easily rather than the Canadian or American counterparts. Finally,

the similar kind of approach has already been successfully introduced in Canada. If my understanding of Canadian legal practices is correct, some of the unfair labour practice cases occurring during the collective bargaining scene have been resolved through a kind of conciliative procedure(19). Of course, this approach is not the best resolution, but one of the possible alternatives to avoid a needless conflict in multi-union bargaining situations of Japan. There are so many cases difficult to be resolved, two of which we have seen in the Japan Mail-Order Co. and the Nissan Autmobile Co. cases.

Let me try to reflect this issue upon Canada. As you already know, many discussions on the constitutionality of the present collective bargaining legislations have been appeared since 1982 when the new Constitution was introduced into Canada. Especially, the Canadian Charter of Rights and Freedoms is now affecting in many areas. I suppose, those areas potentially subject to the constitutional scrutiny include union's exclusive bargaining representative status. I am not sure whether it would be or not, but if the Supreme Court of Canada were to declare that present legislations which granted an exclusive bargaining representative status only to a majority union was unconstitutional, you might have to deal with similar problems to those we have now in Japan. Because, so long as the Canadian Charter can be interpreted to protect individual workers rights more than their collective rights just like in the several decisions of Supreme Court of Canada(20), it could not be inconceivable that these legislations would be declared unconstitutional by that Court(21).

Now, the socio-economic circumstances of Post World War Two have been changing rapidly not only in the former Soviet Union and other socialist countries but also in every countries through the world. I think, it is a time for Japan to reexamine the whole legislation which enacted during the occupational era, in order to refine the programs under the light of newly developed circumstances. In Canada, you have already gotten into the new era of legal reexamination, under the light of the new Constitution. I shall say, in the contemporary peried, we must share similar legal problems to be resolved even in the entirely different circumstances.

* This paper was written on the basis of a speech presented at the law faculty

seminor of the University of Alberta on September 3. 1991. Here, I would like to express my deep appreciation to many Canadian friends who willingly made comments and suggestions on this paper for me.

(1) Article 28 of the Constitution of Japan (November 3. 1946) provides that "the right of workers to organize and to bargain and act collectively is guaranteed". The English version of Japanese labour statutes can be seen in Ministry of Labour. *Labour Law of Japan*: 1990 (published by Roumu Gyosei Kenkyusho).

(2) Trade Union Act (Law No. 174 of June 1, 1949). Sec. 7.

(3) From the historical viewpoint, section 7 was affected by the American model. By contrast, however, section 11 of the original Trade Union Act (Law No. 51 of December 22, 1945) simply prohibited employers not to discriminate his employees because of their union activities and not to conclude yellow-dog contracts with his employees. This section was modeled after the old Imperial Government's drafted Trade Union Bill of 1925 which could not pass through the Imperial Diet.

(4) In the legislative history, An Amendment Bill of section 25 of the original Trade Union Act submitted to the Diet by the Department of Labour in 1949 provided the procedures to decide appropriate bargaining units and exclusive bargaining representative agents. Unfortunately, this provision was deleted from the Bill at the final reading.

(5) Trade Union Act, Sec. 19.

(6) Labour Relations Adjustment Act (Law No. 25 of September 27, 1946).

(7) 50 Meireishu 235 (Tokyo L. R. C., May 8, 1973).

(8) 25 Rouminshu 106 (Tokyo Dist. Ct., Mar. 12, 1974).

(9) 26 Rouminshu 451 (Tokyo High Ct., May 28. 1975).

(10) 38 Minshu 802 (Sup. Ct., May 29, 1984).

(11) 44 Meireishu 392 (Tokyo L. R. C., May 25, 1971).

(12) 204 Roudouhanrei 32 (Cent. L. R. C. Mar. 19, 1973).

(13) 28 Rouminshu 649 (Tokyo Dist. Ct., Jun. 28, 1974).

(14) Rouminshu 614 (Tokyo High Ct., Dec. 20, 1977).

(15) 39 Minshu 730 (Sup. Ct., 23, 1985).

(16) In 1989, Japanese labour relations commissions received total 303 unfair labour practice complaints and 152 of them were brought by the parties of multi-union bargaining relationship. See Chuou-Roudou Iinkai, *Futouro-doukoui Jiken to Roudousougi Chousei Jiken no Gaiyo*, Chuou-Roudou-jihou, Gougai (1990) p. 15.

(17) These include the following cases: *Kobayashi Shouten*. 22–23 Meireishu 115 (Nagano L. R. C., May 4, 1960); *Tokyo Shouketsu Kinzoku*, 54 Meireishu 54 (Saitama L. R. C., Jul. 8, 1974); *Jyuntendou Byouin*, 19 Rouminshu 1360 (Tokyo High Ct., Oct. 30, 1973) etc.

(18) Rengo (Japanese Trade Union Confederations) was organized in 1989 and the number of its affiliated members are now reached about 8 million as a whole. It becomes the largest national labour center in the history of Japanese labour movement.

(19) See e. g., *C. K. L. W. Radio Broadcasting Ltd.*, [1977] 77 C. L. L. C. 16, 110; *Northern Telecom Canada Ltd.*, [1981] 1 C. L. R. B. R. 306.

(20) See e. g., *Reference re Public Service Employees Relations Act, Labour Relations Act and Police Officers Collective Bargaining Act.* [1987] 38 D. L. R. (4th) 161 (S. C. C.): *Government of Saskatchewan et al. v. Retail, Wholesale and Department Store Union, Local* 544, 496, 635 *and* 955 *et al.*, [1987] 38 D. L. R. (4th) 277 (S. C. C.); *Public Service Alliance of Canada et al. v. The Queen in Right of Canada et al.*, [1987] 38 D. L. R. (4th) 249 (S. C. C.).

(21) See D. M. Beaty, *Putting the Charter to Work.* pp. 135–184 (1987). However, in light of recent Supreme Court decision (Lavigne v. O.P.S.E.U. et. al., [1991] 2 R.C.S. 211), I must admit, this seems to be a remote possibility.