

JAPANESE INDUSTRIAL RELATIONS AND LAW WITH REFERENCE TO INTRODUCTION OF HIGH TECH AFFECTING UNEMPLOYMENT

Masahiro Ken Kuwahara

JAPANESE INDUSTRIAL RELATIONS : VIABILITY TO FOREIGN COUNTRIES

I PURPOSE OF LEARNING THE JAPANESE MODEL

The Japanese economy has so far attained a remarkable level. Many foreigners consider this development to have stemmed from harmonious Japanese industrial relations. Some leaders of Asian countries say "look east", meaning that they intend to use Japanese industrial relations as their model. Therefore, the real aim for these countries in studying Japanese industrial relations may be to find a guide for promoting their economic and social change, and even to forecast future industrial relations in their home countries.

This paper, by describing some characteristics of Japanese industrial relations and also by giving some historical-sociological background, hopes to present foreign readers with the specialities, or peculiarities, as well as the universality, or common features, of Japanese industrial relations.

II SOME CHARACTERISTICS OF JAPANESE INDUSTRIAL RELATIONS

1. Lifetime Employment System (LES)

Lifetime employment system means job security until compulsory retirement age as defined by a company's rule (charter) or through a collective bargaining agreement. This lifetime employment system

starts, in most cases, when employees are recruited directly from their high schools or universities. These employees are trained specifically through the company programs, and transferred to various jobs within the company. The employees then remain with their company until retirement age, which is mostly between the years of 55 and 60.

2. Seniority Wage System (SWS)

SWS means that wages are raised at certain times of the year, accumulating in proportion to the length of service in the company. These wages, therefore, are not correlated to workers' skills or jobs, nor are they necessarily related to promotion. SWS can benefit workers who remain with the same company for a longer period of time.

3. Extended Fringe Benefits (EFB)

EFB means comprehensive fringe benefits provided by the company as a system including annual bonuses, which are paid during the summer and at the end of the year, the times when workers need them the most, free housing cheap recreation facilities, family allowances, etc. The EFB system gives workers the impression that the company is taking care of the workers' family as well.

4. Before the Decision Maneuvering (BDM)

BDM means that, in order to get a unanimous opinion on proposals and to assure participation by middle management, managers usually first give a new idea on company matters to lower management which is required to submit a concrete proposal on the situation. This proposal will be discussed by various levels of the hierarchy of the company, finally reaching the top management again. In the course of discussions, which are held to correct or add to an initial proposal, many lower and middle management employees will feel satisfied that they have been able to participate and contribute in the decision making process.

5. Quality Circle (QC)

QC is a shop floor meeting to raise productivity. This meeting is organized by workers themselves. In many cases, workers, from 5 to 10 in number, gather during lunchtime or after working hours to discuss

how to raise productivity on the shop floor. There are usually no overtime payments.

But ideas or designs adopted from the workers by the employer are rewarded in some companies. QC is said to have contributed to raising productivity of the Japanese economy as a whole.

6. Enterprise Union (EU)

EU means a trade union organizing only workers employed by the same company, regardless of whether they are blue or white collar workers. In many large companies which establish plants at different locations throughout Japan, the EU at each plant affiliates with the larger federation of EUs which are composed of unions belonging to the same company. These EUs are apt to the company's increased productivity as their primary interest. At a national level, industrial unions or national labor union centers exist, however, their functions are to set annual pay hike guidelines, spring labor offensive strategy or help coordinate political activities. These are some of the dual characteristics within Japanese labor movement.

7. In Summation

Japanese industrial relations contain six characteristics. LTE, SWS, EFB, BDM, QC, and EU. These have been given birth through the process of the industrialization of Japanese society and the recovery of the Japanese economy. These features have their own historical background which can suggest the feasibility or non-feasibility of Japanese industrial relations for foreign countries.

III HISTORICAL BACKGROUND OF JAPANESE INDUSTRIAL RELATIONS

1. Japanese Industrial Relations as a Whole

Some famous scholars explain LES as being descended from the Japanese feudal system which demanded that farmers and warriors serve only one master (Shogun). Japanese Confucianism is another origin to explain the creation of industrial paternalism of the "wa" spirit, the peace and harmony so necessary in Japanese industrial

relations. Japanese industrialization in 1920, what necessitated a number of skilled workers at factories, gave economic circumstances to employers to keep workers from leaving their company. This was so that Japan could catch up with the industrialized countries at that time. There was no way for workers to resist these employers' demands because they were prohibited from organizing trade unions under legislation. During World War II, employers recognized the value of manpower under the shortage of labor. Just after the war was over, both employers and workers eagerly wanted to reconstruct Japanese economy. Therefore, on the other hand, employers tried to keep trained workers in their companies through economic incentive and benevolent treatment. On the other hand, workers did not want to leave their companies because of a high national unemployment rate and a closed labor market. Enterprise-wide unions, therefore, demanded job security at that time. These above mentioned reasons have helped to build up Japanese industrial relations.

2. EU Specifically

The EU structure has its own historical background. The Japanese trade union movement was legalized to organize and to take collective action against employers only after the Second World War ended. At that time General Headquarters (SCAP) wanted Japanese trade unions organized in order to democratize Japanese industrial society, while bettering working conditions. Trade unions tried to organize as many workers as possible within companies including the foremen and supervisors because they could be treated as equals once they became union members. This induced democratization, or equalization of human relations within companies. Because of the drastic and urgent situation of the immediate postwar period, trade union leaders hastened to organize workers by taking the wartime labor organization in Japan as a model : allinone organizations which organized most workers into one organization (Sangyō Hōkokukai) for the purpose of making them serve to the nation.

3. In Summation

Japanese industrial relations have their own history. Japanese feudal society, Japanese Confucianism, Japanese industrialization, the

Japanese defeat in the World War II, Japanese experience of sudden legalization of trade union rights, etc., there are all significant in the development of Japanese industrial relations. These historical experiences special to Japanese industrial relations help to explain the difficulties of adapting Japanese industrial relations to foreign countries.

IV SOCIOLOGICAL BACKGROUND

1. Vertical Principle

A vertical principle (VP) exists in many facets of Japanese society, typically in industrial relations. VP means that persons positioned at a higher rank or employed by the company for a longer period of time can behave as superiors to persons ranking at lower levels, regardless of their skills, insight, experiences, etc. Lower ranking or more recently employed personnel are expected to act with respect and loyalty towards their superiors or longer employed personnel. Under Japanese industrial relations, both managers and workers, who are in higher positions or in seniority positions, can naturally demand loyalty or generosity from lower or recently employed person in the company. This system of VP can explain, to some extent, the peaceful and harmonious Japanese industrial relations of LES, SWS and QC which might seem irrational to foreigners.

2. Homogenous Mentality of Groupism

The Japanese people are a homogenous race and love groupism. Most workers are afraid of being treated indifferently by their colleagues or foremen and thus refrain from stating strong opinions against them at any meeting. Most workers carefully consider their dress, hair style and even hobbies in order to belong to their own group. This sort of mentality can be explained as "a feudal form of patron-client style patronism and loyalty derived from Japanese tradition".

It is important to note that young workers are trained to learn this type of groupism through a company's education program after their recruitment. But this does not mean that their perception of their

company is an extension of their family lives. Japanese workers have already modernized and individualized enough to keep their own home life separated from company life.

3. In Summation

Sociological background such as vertical principle and homogenous mentality of groupism are deeply rooted in Japanese society. Again these facts suggest obstacles for introducing the Japanese model of industrial relations into foreign countries.

V EVALUATION AND DEFICIENCIES

1. LTE and Conflict Resolution

LTE can make Japanese workers feel that they are "belonging to their company for the long time". Therefore, Japanese workers think that compromise and conciliation are better ways of resolving disputes, even if those disputes are industrial ones. This way of thinking can minimize a number of industrial disputes and can soften the worst problem arising out of industrial disputes.

2. LTE and "Majority" workers

It is important to note, however, that LTE is only for regular workers which make up approximately thirty percent of the whole Japanese working force. The rest of the workers are mostly part-time women workers, or low paid subcontracting workers. This constitutes a dual labor market.

Statistics show that :

- (1) One-fifth of Japanese employees are working in manufacturing industries.
- (2) Thirty percent of the Japanese work force are civil servants and male workers employed by large corporations.
- (3) Thirty five percent of Japanese workers are employed by large corporations.

The important thing is that about seventy percent of the working force can not enjoy LTE, and these workers are used to produce the

flexibility of possible firing at the time of economic depression.

3. SWS and Cost Push

As SWS provides higher wages to relatively elder workers of longer employment service at the same company, regardless of their skills or energy, younger workers of shorter employment service are usually not satisfied at the amount of wages they are paid when they compare these wages with those of elder workers. This is because younger workers can adapt to new technology, and are more powerful as blue collar workers. In order to adjust these irrational wage drifts, employers had to raise the pay scale for younger workers since they cannot decrease the amount of wages paid to elder workers. Thus, gross pay cost has risen and this, in turn, has pushed up production cost as a whole.

4. EFB and Cost Push

A recent trend has been that trade unions have begun to demand more EFB at the bargaining table. The reason for this is that the slow expansion rate of the Japanese economy has helped employers to refuse higher pay increases demanded by unions. Thus, unions strategy has shifted from putting emphasis on pay hikes, which forced employers to pay more money allocated to EFB, which does not necessitate employers to allocate money from the company's budget. However, the increases of EFB have also resulted in a cost push to the company concerned.

5. BDM and Workers' Participation

BDM guarantees workers' participation at some stage in the company decision making process. To some extent, BDM will give participating workers a sense of job satisfaction.

6. QC and Exploitation

It is true that QC has raised productivity of Japanese economy as a whole, and has also given workers job incentive and job satisfaction. However, most QC activities are not rewarded by pay even if they are carried on outside of working hours. Employers justify QC activities as voluntary, but the results of QC activities are directly connected with

productivity and profits. Therefore it is not fair not to pay for QC activities.

7. Enterprise Unions and Sacrifice of Workers

EUs naturally seek their own economic interests by cooperating with a company's productivity. That is to say that in order to make a pie bigger, EUs will always use restraint in striving for economic demands taking care to make sure that these demands are within the company's ability.

EUs guarantee a company certain amount of profit which in turn supports the Japanese economy as a whole. However, it is important to note that these profits are secured at a sacrifice of workers demands which have downgraded their standard of living at times of inflation.

8. Industrial Conflicts

Japanese industrial relations also contain industrial conflicts between employers and trade unions on wage hikes, shortening working hours and so forth. Competition between employees and internal power politics between managers sometimes involve industrial disputes between an enterprise-wide union and its employers.

These conflicts exist in Japanese industrial relations because they are relationships between and within sociological organizations. Rational or money-oriented calculation is also important for enterprise unions to act, or negotiate with their employers because Japanese EUs also pursue economic interests. These elements are often neglected by foreign observers who see Japanese industrial relations as harmonious, cooperative and a type of family-like relationship.

9. Japanese Trade Union and Its Independence

Even if EUs have been cooperative with its company at the expense of workers, EUs choose their own way. In other words, EUs do not necessarily mean dependence on employers.

EUs independence is also guaranteed by legislation which does not grant administrative discretion to intervene in trade union activities if EUs are in the private sector.

10. In Summation

Japanese industrial relations are not perfect for both employers and employees at the same time. LTE might ease industrial conflicts by inducing workers to compromise or conciliate. BDM might give workers the impression of workers' participation in management or industrial democracy. QC gives workers a sense of participation in the production process and job satisfaction with a result being higher productivity. EUs still enjoy independence from both employers and the Government. However, on the other hand, LTE covers only 30% of the whole working force in Japan. Therefore there are different employment practices for female workers and others. SWS and EFB demand that employers pay more money. QC functions as an exploitative activity if employers do not pay workers for their activities. EUs have been cooperative with employers at the sacrifice workers' standard of living.

VI TRANSFERABILITY OF JAPANESE INDUSTRIAL RELATIONS

Japanese industrial relations contains a universality as a capitalistic model, however most industrial relations are deeply rooted in Japanese history and society. One can think of transferability as the Japanese way of evaluating workers' incentives on the job through various channels or the workers' participation. Also the Japanese way of building up mutual trust between employers and EUs can soften the tension between them during a time of conflict. But these ideas are not separate from Japanese industrial relations within a historical and social framework. Therefore, countries may have to find their own way of industrial relations which can contain these ideas.

It is not a feasible target to try to transplant the whole system of Japanese industrial relations into foreign countries, but the achievement attained by Japanese industrial relations is important to these countries even if the transfer of Japanese industrial relations is undesirable or impossible.

Some of the lessons are :

- (1) to raise productivity at less sacrifice of working conditions ;
- (2) to increase job satisfaction among workers by establishing various channels and granting workers opportunities to do so ;
- (3) to keep trade unions organized and leave them independent from both employers and the Government so as to rely on their own choices ; and
- (4) to adopt industrial relations to the legal framework introduced from advanced countries, the so-called "soft ware" side of industrial relations.

HIGH TECHNOLOGY AND UNEMPLOYMENT IN JAPAN — WITH SPECIAL REFERENCE TO THE INTRODUCTION OF MICROELECTRONICS —

I INTRODUCTION

In recent years, specifically during the 1980's, the introduction of high technology (high tech), such as microelectronics (ME) and office automation (OA) into the various scales of industry in Japan has become popular. The reasons for this might be these industries' efforts to economize or rationalize production processes or clerical work. Some common examples are as follows. (1) Japanese companies usually want to compete not only with foreign companies but also even with other Japanese companies in the international market. (2) Japanese companies generally try to keep their economic activities up even under such shortages of resources as became apparent to Japan after the Oil Shock. (3) The trade friction between Japan and foreign countries has pushed Japanese companies to try to be more competitive.¹ These reasons are probably the main ones leading Japanese companies to introduce high tech into their workplaces.

The objectives of this paper are to show the realities of the introduction of high tech into workplaces and their effects on employment and terms and conditions of employment. Some commen-

taries on these topics are based on an analysis taking into consideration certain features of Japanese industrial relations and labor law, as illustrated by court decisions and scholars's opinions.

II REALITIES OF THE INTRODUCTION OF HIGH TECH

It is a generally supported assumption in Japan that the introduction of high tech into workplaces has changed working conditions. However, it has not yet had serious impact on employment as a whole. But it has caused a number of transfers of skilled workers within or outside of companies which have introduced high tech. A recent survey which was published by the Ministry of International Trade and Industry in June 1983 shows that sixty two percent of the two thousands companies surveyed (each companies three hundred or more employees) have made transfers as the result of industrial robots into their factories. However, it is important to note that the survey does reveal that few actual discharges have been reported.²

CHART I CHANGE OF NUMBER OF EMPLOYEES BY THE INTRODUCTION OF HIGH TECH

Industry	Increase	No Change	Decrease
Industry Average	17 %	64 %	14 %
Machine Manufacturing	11	74	11
Auto Maker	13	50	36
Electric Machine	27	60	7

(Source) Department of Labor, "Effect on Employment by Intoduction of ME into Factories", SHOKUGYŌ ANTEI KŌHŌ (Monthly Employment Stability Report) April 1981.

CHART II REASONS FOR REDUCTION OF NEW HIRES

Sex and Industry

		Totals	Introduction of industrial robots	Introduction of Office Automation	Financial difficulty	Restraint of payroll cost	Small number of retiring employees last year	Large number of employees hired last year	Minimum recruitment to keep yearly hiring plan	Miscellaneous
High school graduate	(Male)									
	Manufacture	100%	7%	2%	23%	34%	17%	18%	13%	15%
	Wholesale, Retail	100	-	4	10	47	17	22	20	9
University graduate	(Female)									
	Manufacture	100	3	12	21	29	28	17	9	11
	Wholesale, Retail	100	2	9	8	42	28	15	11	11
	(Male, Clerical)									
	Manufacture	100	0	8	25	38	12	13	7	15
	Wholesale, Retail	100	-	7	14	53	13	11	17	9
	(Male, Tech)									
	Manufacture	100	-	2	26	33	12	18	13	15
	Wholesale, Retail	100	-	2	5	52	10	21	21	12
	(Female)									
	Manufacture	100	1	8	26	30	18	15	5	18
	Wholesale, Retail	100	-	12	10	48	26	12	2	12

III JAPANESE INDUSTRIAL RELATIONS AND HIGH TECH INTRODUCTION

It is not surprising to see that no serious labor disputes have arisen out of the introduction of high tech into workplaces. This is because of the special characteristics of Japanese industrial relations.

(A) The first feature of Japanese industrial relations is rooted in the past practice or labor custom that most employees do not object to their employer ordering them to be transferred from one job to another. Exceptional cases are reported in court cases which I will mention later. This type of labor practice developed in Japan due to the prevailing fact that employees are usually not hired on a job oriented basis, but in most cases they are hired as employees by their companies

regardless of their skills. This practice is possible because these employees are generally recruited in April every year just after they have graduated from their schools, colleges or universities. Then they start to enjoy their life time employment until their retirement age except by the fact that they will be dismissed or they will quit their companies at their will. These employees will be well trained by their companies after they are employed under their companies' educational policies. Therefore, even though the high tech introduction into workplaces would cause transfers of employees from old workplaces to new ones, these transfers are generally accepted by employees with no serious labor disputes, either in the form of individual grievances or in the form of collective actions.³ Minor conflicts over terms and conditions of employment which would change on account of high tech introduction may arise in some cases, however, these conflicts would be settled by resolutions of reaching provisions in the form of memorandum or a collective agreement, or the setting forth of provisions in the form of a work rule. The key is that transfers in Japanese companies usually do not hurt the job value of employees. Employees in Japan are not considered to have the same notion of the property of job. Therefore, employees are easily transferable in Japan at the time of the high tech introduction.

(B) The second feature of Japanese industrial relations is that employees are trained under their companies educational plans in order to make employees adjust to the skills necessary to work in the the companies. At the time of the introduction of high tech into the workplaces, companies are undoubtedly set up specific plans to train their employees for that purpose. Problems may arise when employers try to educate their employees to get their middle aged or old employees to acquire the new skills needed to deal with new and high technology. This is because these employees may not be young enough to absorb such skill of knowledge. However, generally speaking, the introduction of high tech into workplaces, which requires employees to learn new skill, does not cause serious problems for employees because they will receive the necessary training from their companies to adjust to the new high technology, for instance, industrial robots, microelectronics, or office automation machines.

(C) The third feature of Japanese industrial relations concerns the so

called quality circle meetings (QC) held at many workplaces and organized by foremen. QC means meetings consisting of small number of employees working in the same shopfloors in order to discuss how to raise productivity. These meetings are generally organized by foremen after working hours. Overtime pay is paid for attendance. Employers try to motivate their employees to hold QC meeting by making groups of employees competitive in the same companies. Almost 80 percent of the employees in Japan are reported to have participated in QC meetings held at their workplaces. Therefore, before or after the introduction of high tech into workplaces, QC meetings, where employees will discuss how to raise productivity by operating newly introduced high tech, will be held. These meeting will certainly help new employees who had been transferred from other jobs to adjust easily to their new jobs dealing with high tech.

(D) The fourth feature of Japanese industrial relations is found in the structure of trade unions which are mostly organized on a company-wide basis rather than on craft or industrial basis. These company-wide unions can affiliate with industrial unions, however, even in these cases the balance of power between each employer and trade union is usually shifted to the employer. The main reason for this might be the mentality produced out of company unions; the leaders as well as members who are enjoying the life time employment and the seniority based pay system. Generally speaking, they think of the future of their companies as their own property. Therefore, the introduction of high tech has the tendency not to pose serious problems for trade unions in Japan unless unfair mass discharges are planned by employers, or job training for new high tech would be too rigorous.⁴ The company wide unions which might be initially opposing to high tech introduction will gradually reduce their opposition when they reach the point of considering the danger that companies might also modernize their production processes or service supplying facilities by introducing high tech.⁵ Besides this, it has been reported that approximately one third of the union leadership has been promoted to the board members level in Japanese companies.⁶ These facts and assumptions can explain the conclusion that high tech. introduction into workplaces in Japan has been rather smoothly accepted by company-wide Japanese unions.

(E) In summation, there are several reasons for the rather well

accepted introduction of high tech into workplaces without causing the unemployment. These reasons found in the field of Japanese industrial relations are the easy transfer of employees, the new education by employers on the job training, the positive attitude of employees for quality circle meetings, the cooperative policy by trade unions, life time employment and the seniority based wage system. It is very important to note that most of the authorities writing about the future perspective on unemployment which is affected by the high tech introduction into workplaces are predicting uncertainty about it, in other words, rapid and large scale introduction of high tech might possibly cause unemployment in Japan. The uncalculable scale of introduction of high tech might exceed the possible adjustment to it by transferring relevant and affected employees.⁷ Especially large amount of introduction of high tech into small or middle scale companies might necessitate employers to discharge surplus employees.⁸ Also high tech introduction will necessitate the cultivation of professionals with new skills for which employers will attach additional payment. This might partially change the seniority based pay system. The increasing number of hiring of new new type of professionals might affect the life time employment practice which is based on hiring, not based on skills. These factors may grant employers a more easy sense of discharging their employees.⁹

IV JAPANESE LABOR LAW AND THE INTRODUCTION OF HIGH TECH

It is interesting to examine the legal issues which might arise in Japan in the future in connection with the introduction of high tech. This examination can be made by applying the Japanese Labor Law and the Japanese Civil Code with the case law developed for them. The first issue will be found in the field of collective actions by trade unions. For example, joint consultation machinery could prevent labor disputes arising out of the introduction of high tech. The second issue will be found in the field of individual rights of employees. For example, unfair or irrational discharge of employees resulting from the introduction of high tech will be forbidden by the provisions under the

Labor Standards Act (L S Act), and the Japanese court doctrine called "abuse of employer's right to discharge" or "just cause of discharge".

1 JOINT CONSULTATION

The good instance of joint consultation machinery on the introduction of high tech is the Niisan case. On March 1, 1983, All Niisan Motor Workers' Union (Federation of Japan, Automobile Workers' Union) and Niisan Motor Co., Ltd. signed an "Agreement Concerning Introduction of New Technology". This a recent and interesting example of a collective agreement providing for joint consultation between the parties on various matters relating the introduction of high tech. It defines "high tech" as "automation, labor-saving equipment and instruments which utilize M E and other advanced technologies". The purpose of this agreement is to facilitate a harmonious introduction of new technology by cooperating with each other, based on the common recognition that such improvements are indispensable to the continuation and development of both the company and the society. In this agreement the joint consultation is called "Labor-Management Consultation". The basic obligation on the part of the company is "to inform the union in advance of any such proposed high tech program, to assess any undesirable effect on union members, and to make proposals for countermeasures against such undesirable effects". Under Article (Art.) two of the agreement the company must consult with the union prior to the introduction of high tech. On the important issue of preservation of employment, Art. three provides that "the company shall neither dismiss nor lay-off union members because of the introduction of new technology". Concerning reassignment and changes of jobs or transfers, Art. seven of the agreement stipulates that "the company has to fully take into consideration the aptitude and ability of the persons concerned, and provide them with necessary education and training on jobs". Other provisions deal with preservation of working conditions (Art. four), and assurance of health and safety (Art. five). Further, concerning education and training on jobs, Art. six says that "for the purpose of enabling the union members of the workplaces concerned to master skills and secure their safety, the company shall provide the union members with necessary education and training on jobs with their aptitude and ability". The

agreement's term is one year, expiring February 29, 1984. The agreement shall automatically be renewed for another year (Art. eight sub Art. 2), unless one of the parties gives a notice to terminate or revise at least one month before the expiration date.

In Japan "joint consultation" process is different from the collective bargaining process, the last resort of which is a strike. "The joint consultation" allows the employer to put his policy into practice if sincere consultation has been exhausted, even when the union remains opposed to it.¹⁰ Regardless of the fact that such joint consultation machinery is provided in the overall collective bargaining agreement, many companies have labor practices of joint consultation which have helped avoid labor disputes which otherwise might have arisen. When our research tour including professor Joseph Weiler of the Faculty of Law, the University of British Columbia, Canada, visited a middle size of metal manufacturing company located in San-jo City, Niigata Prefecture in Northwest Japan, I had the opportunity at a pleasant luncheon to meet both management and union leaders and discuss their successful example of introducing industrial robots into their workplaces while avoiding labor disputes over them under their joint consultation practices.¹¹ In any event, joint consultation in Japan has promoted mutual understanding concerning the introduction of high tech, and thus prevented irrational discharges of employees which might otherwise have happened.

2 COLLECTIVE BARGAINING

Collective bargaining would be another measure permitting a trade union's collective action including a strike against the employer when no agreement has been reached. Professor Saburo Matsuoka of Meiji University, one of the leading labor law professors in Japan insists that it should be a rule that any transfer policy caused by the introduction of high tech should be bargainable on the ground that such transfers change the terms and conditions of employment.¹²

3 LABOR STANDARDS ACT

As far as the individual rights of employees which would be affected by the introduction of high tech, they will be protected to some extent, by the L S Act of 1947 and the court doctrine against abuse of

the employer's right to discharge his employees or the court doctrine requiring the employer to discharge his employees with just or reasonable cause. These are applicable to transfer cases.

The L S Act Article 15 provides that employees are entitled to be informed of the details of the terms and conditions of employment at the time of hiring the employee. The Ministry of Labor Regulation says under the Article 15 that employees be told such employment conditions of details as the place of work, nature of work, working hours, work breaks, holidays, paid vacations, shifts, and wages and salaries (Reg.5 (1)). In a highly criticized case, the Tokyo District Court decided that that these details stated by the employer in recruiting are nothing more than the employer's initial proposal to the job applicants, so that the initially stated details need not later necessarily be those finally determined by the employer.¹³ However, this case decision did not deny to bargain with the union on the resulting differences between the stated details and the actual payment made once employment had begun. Anyhow, the introduction of high tech can affect or even change terms and conditions of employment, such as the nature of work, workplaces, and sometimes the amount of salaries or wages. Therefore, the employer should at least be required to implement the initially stated conditions, in my opinion.

4 JUDGE MADE LAW

(1) Discharge Without Just Cause

A court doctrine called "discharge for just cause" or the "abuse of employer's right to discharge his employees" has been gradually established by a number of case of case decisions after 1945.

Under Japanese law, as a principle, employers have the right or discretion to discharge their employees because there is no general provision which prohibits employers to discharge their employees. But L S Act and the Trade Union Act (T U Act) have specific provisions which prohibit employers from using certain unfair reasons to discharge. In addition to the court interpretation of these statutory provisions, the Japanese courts have developed a special doctrine restricting employers's right to discharge their employees.

(2) Discriminating Discharge Cases

The T U Act Article 7 provides that employers shall not discriminate against their employees because of their belonging to a trade union or because of their trade union activities. Such discrimination constitutes an unfair labor practice. Both discharges and transfers are included in such discrimination. Therefore, discharges of employees because of their trade union activities, for example, a union leader's organizing activities demanding the employer to bargain collectively with the union prior to the introduction of high tech, will be considered an unfair labor practice. A Labor Relations Board or the court concerned will order the employer to reinstate the union leader with back pay.

The L S Act Article 3 provides that employers shall not treat their employees discriminatorily based on their race, creed and social status. Therefore employers who discharge their employees at the time of the introduction of high tech using these criteria will violate this provision. The Civil Code Article 90 provides any legal action against the public policy and good moral as interpreted by the courts is void. Therefore sex discrimination is illegal in the violation of this provision¹⁴, in stead of the violation of the L S Act Article 3 because this provision does not count sex discrimination as one of explicit criteria.

The L S Act Article 19 provides that employers shall not discharge women workers on maternity leave or employees on sick leave as a result of job-related accidents or occupational diseases for a period extending thirty days after these leaves. Therefore, discharges of this sort are illegal even at the time of the introduction of high tech.

(3) Discharges for Business Necessity

Japanese courts have established a famous doctrine called the prohibition of "abuse of employer's right to discharge" which only permits discharge employees for "just cause". According to the court doctrine on the business necessity resulting a number of employees discharged at one time, five criteria must be fulfilled for justifiable discharges.¹⁵ They are (1) discharges are not justified unless management has a significantly strong reasonable business necessity to discharge the employees¹⁶, such as financial difficulty resulting in partial closure of his operating factory or office. (2) Even in such a case where the employer has legitimate reasons to discharge his employees, the standard for discharging employees should be rational and

reasonable. (3) The application of this rational and reasonable standard to individual employees should be fair. (4) Before the application of the standard, the employer should try to find out other positions or jobs to which the employees can be transferred. The Supreme Court of Japan referred to this point by deciding that the employer is required to prove his substantial efforts not to discharge his employees before the employer tried to discharge the employees for business necessity.¹⁷ (5) The court at the district level have set up other important subtest, for example, the employer should first exhaust any joint consultation procedure provided in the collective bargaining agreement.¹⁸

Although the above mentioned criteria were set up by the courts on different facts situations from the introduction of high tech, these criteria will also no doubt be applied to discharge cases resulting from the introduction of high tech in future in Japan.

5 Transfer within the Same Company

Japanese law also have not general provisions to prohibit or restrict employers from transferring their employees within the same company.

(1) T U Act, however, as well as L S Act are applicable to discriminatory transfers.

(2) Also the doctrine of contract of employment has been used to nullify transfers on the ground that a contract of employment can be changed by the mutual consent of the parties to do so. In a case, an employer ordered an employee to be transferred to a new job unilaterally. A district court decided that this transfer order was illegal because the employer had not received the employee's consent to be transferred even though this transfer order would completely changed the terms and conditions of his employment which had been mutually agreed upon between the parties at the time of employment.¹⁹

(3) Transfer to Affiliated Company

Some large scale companies in Japan have avoided discharges of their employees by ordering them to transfer or move to affiliated companies, such as sister companies, subcontracting companies and like in the past. Therefore, at the time of the introduction of high tech, they might take similar measures when they need to decrease the number of the employees as a result of such introduction.

The Japanese court have set up the rule that employers should receive the employee's consent to be moved to the affiliated companies before the transfer order are issued.²⁰ On the other hand, the employer is not required to get such consent from his employees if terms and conditions for transfer to affiliated companies are provided in either in the company's working rules or collective bargaining agreements.²¹ Therefore, in such cases, an employee who refused to move from his original company to an affiliated one could be legally discharged.²² Even if the above-mentioned court rules have nothing specifically to do with cases concerning transfers resulting from the introduction of high tech, these rules will be applied to discharge cases caused by such introduction of high tech in the future in Japan.

V CONCLUSION

Until today, the introduction of high tech, such as office automation, industrial robots, microelectronics and so on, into workplaces has not caused serious unemployment. This is partly because of Japanese industrial relations. In other words, this is because of the easy transferability of employees from one job to another, the employer's on the job training plans to help employees adjust to new jobs, the positive attitude of employees reinforced almost every day through Quality Circle meetings organized by foremen, and the cooperative policy of company-wide trade unions, etc.

However, no one in Japan is sure that so far weak effects on employment caused by the introduction high tech will continue in the future. There are several factors which might cause substantial unemployment due to the introduction of high tech. They are possible weakening of the internal market in Japan or the international markets. To date, often workers whose jobs have been decreased in number by automation have been absorbed by expanding the amount of products and services supplied to the Japanese domestic market. So that if stagflation or depression severely hits this market and dries up purchasing power in Japan, companies which have introduced high tech may reach the point that they cannot avoid discharging such employees. Trade frictions between Japan and other countries cause

decreases in the amount of Japanese products exported to such foreign countries which might not be able to buy sufficiently Japanese products which would be produced by the Japanese economic expansion resulted from the introduction of high tech.²³

At such a time, the Labor Law, the Civil Code and there court doctrines will perform an important function. Employers will be required to restrict discharges or transferred to recognized business necessities. Employers cannot discriminate employees and must try to find out other substitute positions or jobs before they discharge their employees. Even in the case of legitimate discharges, employers have to set up reasonable and rational standards to do so and then put them into practice reasonably. Employers will have to consult with trade unions if such procedures are provided in their collective bargaining agreements. Also employers will not be able to order their employees to move to affiliated companies without the prior to consent the employee unless the terms and conditions of such transfers are provided in the companies's working rules or collective bargaining agreements. When these criteria are imposed on employers in an economic crisis, they might become unworkable. Then, new court doctrines will have to be developed to protect employees in the future in Japan.

Outside the court rooms, trade unions and employers under certain governmental guidelines will have to find out new ways to prevent serious unemployment which will be caused by the stagflation or depression. The Confederation of Electric Home Product Manufacturing Trade Unions, has recently adopted a strong policy guideline that affiliated unions may refuse the introduction of high tech if such intoduction will surely discharge employees concerned for business necessity, and that affiliated unions will demand employers to have prior consultation on transfers caused by the introduction of high tech in order to check the necessity of such transfers and to make it sure if the employee sincerely accepts the transfer order.²⁴ The Department of Labor also recently published the statement that the work-sharing device should be promoted by Japanese companies.²⁵ This is nothing more than a guideline, however, it suggests several concrete measures, such as the increase of shift work, shortening working hours, the increase of holidays and the financial support to companies which cannot help to decrease production activities because of economic

depression. This sort of the guideline means that the Department of Labor advises to these companies to apply for the governmental financial support which will be supplied to these companies special benefits which substitute certain amount of wages paid to the employees laid off. Anyhow, the government, employers and trade unions will have to tackle serious unemployment issues which might be arisen in the future in Japan, and they seems to be ready to do so.

CITATION

- 1 Shō Takanashi, *The Thirdsectorization and Industrial Relations : In Special Reference to New Industrial Revolution and Change of Industrial Structure*, 697 NIHON RŌDŌ KYŌKAI ZATUSHI 4 (1983).
- 2 Ministry of International Trade and Industry, *The Survey on Industrial Robots and Its Effect on Employment*, June 1983.
- 3 Cf. Tadashi Hanami, *Speech at the Seminar on Viability of Japanese Industrial Relations at Kyoto Conference of International Industrial Relations Association*, March 29, 1983.
- 4 Toru Ariizumi, *Technological Innovation and Industrial Relations*, 82 KIKAN RŌDŌHŌ 3 (1983) ; Mikio Sumiya, *Technology will be crucial*, ASAHI EVENING NEWS, March 30, 1983, *Opening Address by the President. The Sixth World Congress of IRRA*.
- 5 Yasuo Kuwahara, *The Japanese Way of Robot Life*, EMPLOYMENT GAZETTE, August 1982, at 350.
- 6 *Id.*, at 360.
- 7 Takanashi, *supra* note 1, at 8.
- 8 Ariizumi, *supra* note 4, at 3.
- 9 Wakin Kōshiro, *The Effect on Employment by Microelectronics Technology*, 123 KIKAN RODOHŌ 22 (1982).
- 10 Masahiro Ken Kuwahara, *Worker's Participation in Management : Japan*, COMPARATIVE LAW YEARBOOK, Vol.4, at 133 (1980).
- 11 Ken kuwahara and Professor Joseph Weiler, *Research Tour to Uchida Metal Manufacturing Co. at Sanjo, Niigata Prefecture*, on May 23, 1983.
- 12 Saburō Matsuoka, *Microelectronics Revolution and Labor Law*, 123 KIKAN RŌDŌHŌ 4 (1983).
- 13 *Yaesu Sokuryō case*, Tokyo District (D.) Court (Ct.), October (Oct.) 29, 1979, RŌDŌ HANREI (RŌ. HAN.) Vol.330, at 27.
- 14 *Sumitomo Cement Co. Case*, Tokyo District Court, December (Dec.) 20, 1966, HANREI JIHŌ (HAN. JI.) Vol.467 ; *Kida Kogyo case*, Tokyo D. Ct., July 1, 1969 RŌDŌ MINJI SAIBAN REI Vol.20, No.4; *Nissan Auto Manufacturing (Mfg.) Co., Sup. Ct., March 24, 1981 RŌ. HAN. ; Vol.360, at 23.*

- 15 Sumitomo Heavy Industry Co. case, Okayama D. Ct., July 31, 1979 RŌ. HAN. Vol.326, at 44. ; Kawasaki Kasei Kōgyō case, Tokyo D. Ct., March (Mar.) 25, 1975, RŌ. HAN. Vol.222 ; Tōyō Sanso (Oxgyn) case, Tokyo High Ct. Dec. 29, 1979, RŌ. HAN. 330, *aff'd* Supreme (S.) Ct., April 3, 1980, RŌDŌ KEIZAI SOKUHŌ, Vol.255 ; Takada Seisakusho (Machine Mfg.) Co. case, Osaka. D. Ct., Septmber 29, 1980, RŌ. HAN. Vol.351, at 37 ; Hokuriku Kinzoku Kōgyō (Metal Industry) case, Toyama D. Ct, Kaiba Branch (Bran.), March, 1981.
- 16 Suntop Japan Co. case, Sapporo D. Ct, March 1, 1982, RŌ. HAN. Vol.383.
- 17 Tōyō Sanso case, supra note 15.
- 18 Daisho Kinzoku (Metal Mfg.) Co. case, November 7, 1980, Osaka D. Ct., RŌ. HAN. Vol.352, at 36 ; Maruo Printing Co. case, Fukuoka D. Ct., January 22, 1981, RŌ. HAN. 358, at 40.
- 19 Suntopic Japan Co. case, supra note 16., Iwasa Electric Instrument Co. case, Urawa D. Ct., Kumagaya Bran, Feb. 17, 1981, RŌ. HAN. Vol.361, at 54.
- 20 Mikuro Seisakusho case, Kochi D. Ct. April 20, 1978, RŌ. HAN. Vol.306, at 48.
- 21 Nittsuto Tire Co. case, S. Ct. Oct. 19, 1948, RŌ. HAN. 189.
- 22 Morijitsu Unyu (Transportation) case, Matsuyama D. Ct., April 21, 1975, no citation.
- 23 Koshiro, supra note 9.
- 24 YOMIURI SHINBUN, July 8, 1983.
- 25 Department of Labor, Report on Work-sharing, YOMIURI SHINBUN, July 12, 1983.