WORKERS' DIRECTORS, WORKERS' REPRESENTATIVES AND WORK COUNCILS IN JAPAN

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I Introduction

Even though no statute concerning either workers' representation in corporate decision-making or work councils has been enacted in Japan, a few collective bargaining agreements permitting a high trade union official to attend a board of directors meeting or appointing him an auditor have been in force between right-wing trade unions and their employers since 1974. It is also a recent trend that some collective bargaining agreements have set up the joint partnership type of work councils with standing joint consultation committees established at both top level and shop-floor level.

The role and impact of workers' representatives in corporate decision-making are obviously indirect under the Japanese system. The effect and influence of trade unions' opinions presented at various joint consultation committees set up in enterprises for the purpose of corporate decision-making, are indirect, too, but to a lesser extent. Because Japanese industrial society is supported by the system of working life-long employment until early retirement, the automatic annual pay raise system, the workers' sense of attachment to their enterprise, the workers' loyalty to their employer, and so forth, it has made possible for employers to provide their workers with much information about the management's projects. This means a closer

relationship between an employer and his employees which has not necessiated direct workers' representation in the corporate decision-making process.

In the meantime, exchange of opinions on legal matters on workers' representatives in corporate decision-making and work councils are still in their early stages. Main issues discussed are the constitutional guarantee of workers' consultation rights, including that of trade unions as well as of groups of employees, the invalidity of agreements reached by a union representative party in a joint consultation committee without prior approval by a trade union, the employer's duty to attend and consult sincerely with a trade union at a joint consultation committee, the legal remedy for an employer's non-fulfillment of his duty agreed at a joint consultation committee, and the like. Most of these issues are not particularly relevant to the role and impact of these types of work councils in corporate decision-making. However, legal issues concerning workers' representatives in corporate decision-making have recently been raised, such as the legality of appointing a trade-union official as a company auditor under the present Japanese Commercial Act and the present Japanese Trade Union Act. As a result a proposal has been made to amend these provisions in order to clear the way for trade-union representatives of workers' group representatives appointed as members of boards of directors and as auditors to take up such positions. It is interesting to note that these arguments have arisen since the early 1970s, under the circumstances of economic depression, inflation, and unemployment.

II Worker's Director and Worker's Representatives

A Practices

The definition of workers' representation in corporate decision-making includes a workers' representative as a member of the corporate board of directors, and a workers' representative as an auditor or a member of a board of auditors. A board of directors has the authority to decide about the execution of managerial matters under Article 260 of the Japanese Commercial Act, while an auditor has the authority to inspect the illegal execution of directors' duty together with an auditting authority under Article 274 of the Commercial Act.

The role and impact of workers' representatives in corporate decision-making in the Japanese context are not significant, but symbolic. The function of a board of directors is generally mere formality in corporate decision-making because:

(1) Most important authorities or powers in corporate decision-making are delegated to managing directors or a representative director ;

(2) Corporate ownership and its management have deen separated decisively in most Japanese companies since the occupational forces prohibited individual shareholders to hold a large percentage of the shares of a company so that approximately seventy percent of shareholders in recent Japanese companies are not individuals, but corporations ;

(3) A typical Japanese company owns approximately twenty percent of its capital.

These factors make the approval of a board of directors in the typical Japanese company a mere formality.[1] Judging by these factors, it has been suggested by at least one authority that the position of workers' representatives on a board of directors is almost meaningless.[2] The other interesting factor in consideration of a future workers' representatives on boards of directors in Japanese enterprises is that at least one-third of the enterprises have executive directors who were once trade union officials of the same enterprises. The percentage amounts to two-thirds if nonexecutive directors of Japanese enterprises are included.[3] This fact indicates that these directors have ample knowledge and experience to understand the positions of trade unions, which usually are organized on an enterprise or company basis in Japan.

So far five types of workers' directors in the Japanese context have appeared on the scene :

Type 1 — A member of a board of directors. In 1974, the Sankei Newspaper Company and the Sankei Newspaper Trade Union reached a collective bargaining agreement which allowed the union president to attend meetings of the board of directors. This type of workers' representation on a board of directors was rarely found before now.

Type 2 — An auditor or a member of a board of auditors. In 1976, the President of the Sankei Newspaper Company proposed to the Sankei Newspaper Trade Union that they should nominate the union president as a company auditor. After the approval of the union, the shareholder's meeting elected him an auditor. The com-

pany's president mentioned that this system would provide the union with information about the realities of management which would strengthen the cooperation between the company and the union in the hope of getting through economic and social crises easily as a result.[4]

Type 3 — An appeal of the removal of a personnel management director. The Sankei Newspaper Company and the Sankei Newspaper Trade Union have a unique collective bargaining agreement provision which grants the union to request the removal of a personnel management director before the company president if he neglects the three basic principles of industrial relations : sincerity, generosity and mutual development.

Type 4 — Co-determination. There are a few companies which have agreed to trade-union leaders joining in other supreme committees for corporate decision-making in addition to the boards of directors. These companies are middle or small-scale enterprises which have great flexibility in establishing new sorts of committees other than formal boards of directors. The Tsurukai Marine and Overland Transportation Company has set up a managing committee in which company directors and the union president, the union vice-president, and the general-secretary meet and decide most important managerial issues. The board of directors, established under the Commercial Act, is set aside as an administrative committee attached to the managing committee.[5] A similar example is the case of the Kanki Taxi Company in which a managing committee, having the final authority to make corporate decisions, has been established. The unique quality of this committee is its composition in terms of committee members, consisting of five company representatives and five union leaders.[6]

Type 5 — Co-partnership. This type is similar to the co-determination type to the extent that an employer must fulfil duties decided upon in a top-level managerial committee. However, this is different from the co-determination type in that an employer has discretion to carry out unilaterally some important managerial matters in the case of no agreement being reached on the matter between the employer and the trade union in the top-level committee. A recent example of the co-partnership type of committees is provided by the collective bargaining agreement between the Hidachi Shipbuilding Company and the Hidachi Shipbuiiding Company Trade Union in 1974. Under this agreement the managerial committees exist at two levels. The supreme managerial committee is convened in the company's main office four times a year. In this body, representatives discuss the matters concern-

ing the company's basic policy, production plans, productivity policy, mergers, closures, personnel management policy, and workers' welfare issues. As the matters discussed are important to the company, executive directors and department heads from the company on the one hand and union executives and local union leaders on the other hand are qualitied to attend the committee. The lower level of the standing managerial committees are organized at each factory. Factory managers and factory department heads from the company and local union officers are qualified to attend the committees in which they discuss factory productivity, any important reorganization on the shop floor, and important personnel management policy.

The impact of these committees on corporate decision making is direct, so long as agreement is reached on the matters discussed.

B Legal Aspects

Three legal issues concerning workers' representation in corporate decision-making in the Japanese context have been discussed among management, trade unionists and scholars.

The first issue is whether a trade-union official who is an employee of a company can legally become an auditor of the same company. Article 276 of the Japanese Commercial Act stipulates that an auditor shall not be ***Shiyōnin*** (employee) which is interpreted as including directors, factory managers, and the like. The point is whether this article might possibly be interpreted as including the other employees of the company. If so, a trade-union official who is, as is usual in Japan, an employee of the company, is prohibited from becoming an auditor of the same company. The majority opinion on this issue suggests that any employee would be covered by Article 276 of the Act. Therefore, a union official appointed an auditor must terminate his contract of employment with the company.[7] However, the Sankei Newspaper Company and the Sankei Newspaper Trade Union agreed to interpret this article as dictating that a trade union official who is the employee of the company may not execute any managerial function whatsoever. Therefore, the appointment of the union president as an auditor of the same company in which he is employed does not violate Article 276 of the Act. This interpretation is supported by a leading authority expressing his personal opinion in an academic paper quite detached from his position as chairman of the National Labor Relations Board.[8]

The second issue is whether a union official can legally be ap-

pointed a member of a board of directors. The conditions detailed above, concerning the appointment of auditors, do not apply in the case of the appointment of a member of a board of directors. Therefore, a trade union official who is, at the same time, an employee of the same company can be legally appointed a member of a board of directors.

The third issue concerns the Japanese Trade Union Act. Article 2 of the Act provides that a labor organization which admits supervisory personnel to its membership shall not be regarded as a trade union under the definition provided in Article 2 of the Trade Union Act, which grants a trade union a right to file charges of unfair labor practices before the National Labor Relations Board. The point is whether a trade union, one of whose officials is appointed a member of the board of directors or an auditor of the same company, is interpreted as being a trade union according to the definition of Article 2 of the Trade Union Act. Again, majority opinion presented by scholars, and the employers, association refers to the possibility of this article if a trade union official is appointed an auditor. They have proposed that a tradeunion official appointed to such a position withdraw from membership of the union.[9] However, the Sankei Newspaper Company and the Sankei Newspaper Trade Union took the view that their appointment of the union president as an auditor of the company is legal because the legislative intent of Article 2 is to protect the autonomy and independence of the union, and these were not disturbed by this appointment. This interpretation is also supported by the same influential authority.[10]

The fourth issue deals with the auditor's or director's duty to keep company secrets discovered in the course of duty. The Sankei Newspaper Company's collective bargaining agreement imposes this duty upon workers' representatives who belong to the board of directors or who occupy positions as auditors. However, if this provision is stringently applied, a trade union might be deprived of some chances of access to company information which might be of importance for the union to determine its position on certain issues. These issues have developed in connection with the present law because it does not anticipate the emergence of a workers' director or auditor on the Japanese scence.

III Work Councils

A Practices

There are two types of a work council in the Japanese context. The first one is in the private sector in which workers have the right to bargain collectively and the right to strike ; the second one is in the public sector, in which workers have the limited right to negotiate prescribed subjects under the law with their public employer without the right to strike. These are mostly established by collective bargaining agreements.

Type 1 — Joint consultion committee. This type is one in which employers' representatives, such as factory managers and personnel management directors, consult either about factory managerial matters, such as winding-up or productivity, or about issues concerning working conditions, such as salaries and working hours. These joint-consultation committees are unique in the sense that they function like the collective bargaining processes, or rather they are closely connected with the collective bargaining processes. The research done in 1972 by the Japan Employers' Association (*Nikkeiren*) shows that forty-seven per cent of the employers studied understand joint-consultation committees as part of collective bargaining while 5.2 per cent of the employers studied understand them as a pre-stage of collective bargaining[11]. As an example of such a committee being regarded as a collective bargaining process, according to the former understanding, we may take the agreement between the Onoda Cement Company and the Onoda Cement Trade Union in 1974 which provides for the parties to establish a joint-consultation committee according to the Trade Union Act's legislative intent, guaranteeing trade unions the right to bargain collectively. The example of the latter understanding is the one agreed between the Toppan Printing Company and the Toppan Printing Union in 1974 which provides that the parties will bargain collectively about matters concerning working conditions on occasion when the parties have been unable to reach agreement in a joint-consultation committee. In any event, joint-consultation committees have come to prevail very widely among Japanese enterprises. The 1972 Labor Department statistics show that seventy per cent of the enterprises examined have them. The figure amounts to ninety-three per cent if enterprises surveyed are limited to the ones employing 1,000 or more employees.[12]

The point is whether joint-consultation committees have their

impact on corporate decision-making, directly or indirectly. There are no clear statistics on this issue ; however, it may be assumed that joint-consultation committees have indirect impact on corporate decision-making because :

(1) The 1972 Department of Labor statistics show that twenty-nine per cent of the joint-consultation committees in the enterprises examined had functioned to promote the exchange of opinions and information between the parties. One can presume that the employers might take into consideration some opinions presented by the union representatives in joint-consultation meetings, in the course of corporate decision-making ;

(2) These statistics show that another twenty-nine per cent of the joint-consultation committees of the enterprises examined had functioned to improve working conditions. Some of the working conditions might be improved as a result of a joint-consultation committee influencing decision-making at the top management level. For example, an employer's proposal to shut down part of a factory, involving mass redundancy of employees, could be amended to some extent at a top-level conference after serious consultation or collective bargaining in joint-consultation committees.

Type 2 — Prior consultation. This type of work council is one in which an employer has the duty to consult about some managerial subjects agreed with a trade union before putting them into practice. But the employer is not prevented from putting them into practice after the consultation is over, even in the event of non-agreement. The Japan Telecommunication and Telephone Company and the Japan Telecommunication and Telephone Trade Union have established the prior-consultation type of work councils under their collective bargaining agreement. The aim of these councils is to consult about matters concerning the installation of new automatic machines and the introduction of automatic telephone lines which required many telephone operators to change their places of work or to be dismissed. The result of this prior consultation in the corporate decision was to delay the introduction of new machines with the effect of decreasing the number of operators to be discharged.

B Legal Issues

The exchange of opinions about work councils have not seriously taken into consideration their direct or indirect impact on corporate decision-making. Rather, they focussed discussions on the expansion

of collective bargaining in joint-consultation committees.

The first issue is closely connected with the difference between collective bargaining and joint-consultation. The Osaka District Court adjudicated a case in which union representatives had accepted an employer's proposal to dismiss union members in a joint-consultation meeting, but this proposal was not approved at a union meeting held later. The court decided this dismissal was not valid because the joint consultation meeting did not have the same force as a collective bargaining meeting would have done, that is the union authority to approve the employer's proposal to discharge union members.[13] The implication of this case is that any resolution concerning working conditions made in the joint-consultation committee which affects corporate decision-making could be invalid if it is not approved by a union meeting.

The second issue relates to an employer's duty to consult in good faith with workers. The issue is related to the question whether the joint-consultation right is guaranteed by the Constitution, Article 28, which provides the right to organize trade unions to bargain collectively and to take collective action. The maiority of authorities on labor law insists that the joint-consultation right is not guaranteed by this Article because this right is different from the right to bargain collectively. Therefore, an employer who does not consut sincerely with a trade union may not be proceedcd against for unfair labor practices.[14] However, a recently publicized minority opinion concering Article 28 asserts that only trade unions, but also groups of workers who are not organized into unions should have the right to participate in corporate decision-making.[15] Whether employers will be charged with unfair labor practice if they do not consult sincerely with groups of workers is not discussed.

The third issue is concerned with the prior-consultation procedure in the public corporation sector. Majority opinion suggests that a public employer has the duty to consult sincerely with a trade union on the subject of working conditions. However, any subject connected with managerial matters can not be the subject of collective bargaining with trade unions under the Public Corporation Labor Relations Act, Article 8. When the union demands that the employer discuss certain managerial matters, the employer must consult about them sincerely with the trade union, even if he agreed to consult about these matters at a time before the permitted areas of negotiation had been defined clearly. This is because this provision is not intended to force the

employer to bargain collectively, but to consult with the union.[16] Once consultation has taken place, it is possible for it to have an indirect impact on corporate decision-making.

IV Legislative Proposals

The recent trend of opinions is moving toward the expansion of workers' participation in management. However, there is no consensus on a legislative proposal for worker representation in corporate decision-making. The positive opinion, that a legislative amendment to the present Commercial Act and the Labor Law is neccssary for workers' democratic participation in management, was presented by the right-wing trade-union confederacy, *Dōmei*, in 1974.[17] In the following year, an authority on labor economics insisted that the introduction of workers' representatives on the boards of directors is conceivable both in the public corporation sector because there is no right to strike, and in the banking sector because of its key position among industries.[18] However, maiority opinion is not yet in favor of the legislative proposal. In particular, the left-wing trade-union confederation, *Sōhyo*,[19] and the militant labor law authority[20] have put forward a legislative proposal for codetermination with the right to strike for groups of unorganized workers.

Notes

1. Shirai, "Trade Union and Workers' Participation in Management", in *Dantai Kōshō* (Hosei University), pp. 201–235.
2. Hanami, "A Reconsideration of the Japanese Way of Discussion on Workers' Participation in Management", in *Rōshi Kyōgi Shei : Ronri to Shyōrai* (Japan Labor Association, 1976), pp. 225–251.
3. *Nikkeiren Times*, (26 October 1978), Number 1518.
4. Shikauchi, *Struggle through Muddy Battlefields : Through Workers' Participct-ion in Management* (1976), p. 81.
5. Akita, "Legal Aspects of Workers, Participation", *Kikan Rōdōhō* (1976) Volume 102, pp. 7–18.
6. Id.
7. Id. See also *Nikkeiren Times*, supra n. 3, and Shirai, supra n. 1.

8. Hirata, "Recent Trends in Workers' Participation in Management", *Chuō Rōdō Jiho* (1979), Volume 627, pp. 1–4.
9. Akita, supra n. 1 ; *Nikkeiren Times*, supra n. 3 ; see also Dōmei, "For the Purpose of Establishment of Participatory Economy", in *supra* n. 2 pp. 312–317.
10. Hirata, supra n. 8.
11. *Nikkeiren Times*, supra n. 3.
12. Department of Labor, *Research on Communication in Labor relations in Japan* (1977).
13. Hanshin Electric Co. Case, 11–3 *Rō. Min.* 455 (Osaka D. Ct. 1970).
14. Ishii, *Dantai Kōshō to Rōshi Kyogi* (Tokyo, Sōgō Rōdō Kenkyū Sho, 1975), pp. 219, 220 ; Mitsuoka, "Scholarly Discussion and Case Law on the Collective Bargaining and Joint Consultation System", *Ki Ran Rōdōhō* (1976), Volume 102, pp. 49–60.
15. Kikuchi, "On Workers, Participation in Management ; For the Sake of Legal Discussion, pp. 7–20, 22–30, 33–43 (1977) ; Kubo, "Scope of Guarantee of Right to Bargain Collectively", in *Kenri No Ranyo*, (Kyoto : Yūhikaku, 1978), Suekawa Koki Ronshu Editors' Committee, editor, Volume 3, p. 157.
16. Ariizumi, "Right to Bargain Collectively", in *Rōdōho no Shomondai* (Tokyo, Keisō Syobō, 1974), Ishii Sensei Tsuitō Ronshu Editor's Committee, editior ; Fukayama, "Collective Bargaining and Workers" Participation in Management in the Public Sector", *Rōdōhō* (1978), Volume 51, pp. 71, 87.
17. Domei, supra n. 9.
18. Matsuoka, "Labor Law Issues on Workers' Participation in Management", *Kikan Rōdōhō* (1974), Volume 92, pp. 17–29.
19. Sohyo General Secretary, *Yomiuri Newspapcr* (23 October 1978).
20. Numata, "Comprehensive Consideration on Workers' Right to Work above the Minimum Standard", 903, 904, 905, *Rōdō Hōritsu Jun Pō* (1976), pp. 4–18.

Ariticles in this citation are all written in Japanese.