THE CODIFICATION OF LABOR LAW

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I CODIFIED LAW OR COMMON LAW

The important feature of the Japanese labor law is, in comparison with the common law system, that labor law, under the Japanese idea of codification, is contemplated as it could cover the fields and the scope of labor relations as broad as possible with the assistance of interpretative court decisions on the provision of existing labor law. If existing labor law could not regulate the case or the field concerned, civil law or other appropriate law will be applied. Court cases can not become authorities without referring to any provision in existing law. This means Japanese labor law does not belong to the category of the common law system, but does to that of the codification system.

As above-stated, the field of coverage and the scope of the labor law expand over most of collective and individual part of labor relations, however, some of unprovided areas or cases by existing labor legislation have appeared and will appear on the scene, such as a court's jurisdiction over an employer's duty to bargain collectively, or an employer's duty not to discharge his employee without just cause. In such cases, courts have supplemented lack of provisions by their decisions expanding the

meaning of words or phrases stipulated in existing law. These revisions of labor law are not easy because of its rigid nature of codified labor law.

However, social, economic and political changes require new labor legislation. Labor legislation proposed recently by labor law authorities, practitioners and trade union confederacies can be classified into two groups. The first will be attained by the revision of Labor Standard Law, such as the provisions of working hour restriction and woman workers' protection. The second will be achieved by the revision of a Trade Union Law and Company Law, such as the provisions of workers' participation in management and public employee's right to strike. These revisions of labor law are not easy because of its rigid nature of codified labor law.

Labor law as a group of legislation is basic source of law in Japan because it is promulgated after its passage through the Diet which is the supreme organ of Japanese Goverament under Constitution Art. 41. However, labor law decided as violating Constitutional provision by the Supreme Court become invalid under the Japanese Constitutional system. Regulations issued under labor law are effective so long as they are grounded by provisions prescribed in individual acts. Collective bargaining agreements are also sources of law because Japanese labor law grants them legal binding force to the parties agreed on them. Legal writings by labor lawyers and authorities, can prove their explicit influence when court decisions cited them. So, existing labor code, its regislations, collective bargaining agreements, and legal writings cited are sources of Japanese labor law.

II THE CODIFICATION OF JAPANESE LABOR LAW

Even though Japanese labor law is characterized as a sort of codified law as a part of whole Japanese law based on the philosophy of codification, labor law has been built up by various labor legislations which are not complied in the form of a single, complete labor code. Therefore labor law in Japan is partially codified

It is partially codified, but important parts of labor law, which consist of two parts ; collective labor relations law covering union-management relationship and individual labor relations law regulating individual workers-employer relationship, are codified in the form of various acts.

1 Collective Labor Relations Law

A CODIFICATION

In the field of collective labor relations law, Trade Union Act (TUA) of 1945 (1) and Labor Relations Adjustment Act (LRAA) of 1946 (2) have been promulgated by the Japanese Government under the Occupational Forces with the purpose of the democratization of the Japanese industrial society at that time. The former contains chapters of general provisions, trade unions, collective agreements, Labour Relations Commissions, penalties and miscelleneous provisions, while the latter consists of chapters of general provisions, conciliation, mediation arbitration, emergency procedures, prohibition and restriction on acts of disputes.

It was on October 1, 1945 when the Japanese Government Cabinet decided to set up Labor Legislation Committee for the purpose of proposing a bill concerning trade unions to the Diet. It is interesting to note that this action had been taken before the General Head Quarter of the Occupational Forces (GHQ) issued the order to the Japanese Government to promote organizing trade unions a month later. The Labor Legislation Committee, the members of which were composed of the representatives from the public, unions and employers, conferred eight times before it submitted Trade Union Bill to the Cabinet on November 24, 1945. A month later, the Diet passed the bill. (3)

Judging from this legislative history, the Japanese Diet was responsible, but under the authority of GHQ, for the codification of TUA. The codifying process was that the Cabinet took the first step to organize a specific committee under it, and then this committee drafted a bill which was lately sent each to the Cabinet. After approving the bill, the Cabinet proposed it to the Diet which finally passed it. The Emperor consent next to it was considered as necessary as a formality.

B AMENDMENT

The 1949 amendment of TUA (4) was significant in terms that the criminal penalties on unfair labor practices were abolished, the explicit periods of collective bargaining agreements' term have been limited to three years or less and so forth. The reasons for this amendment were to weaken the militant labor movement which had upsurged during the

times of poorest social and economic situation just after the end of the Second World War. (5) As for LRRA, no significant amendment have been taken place

Labor law above mentioned covers both collective and individual labor relations in the private sector, however, only collective labor relations in the public sector are regulated by National Government Civil Service Act (NGCSA) of 1947, (6) Local Government Civil Service Act (LGCSA) of 1950, (7) Public Corporation Labor Relations Act (PCLRA) of 1948 (8) and Local Public Corporation Labor Relations Act (LPCLRA) of 1957. (9)

The philosophy is that collective labor relations between public employee trade unions aud public employers are understood as different in nature from those in the private sector by GHQ whose leader was General McArther. He publicized this philosophy of the public employee labor relations in his order, by citing the 1937 President Rosevelt's statement to an American union. He did it right after his action ordering to halt the General Strike headed by militant public employee unions in 1958. Under this order, which recommended the Japanese Government to issue a decree prohibiting any public employee strike including that taken by the Japan National Railway Trade Union, All Post Ministry Department Union or other public employees. Under the GHQ recommendation which had the absolute authority at that time, the Japanese Diet passed LGCSA, PCLRA and LPCLRA in addition to amend NGCSA one after another from 1948 to 1957. These Acts prohibit flatly public employee strikes.

Another important amendment to public employee labor relations law took place after Japanese independence in 1965. The origin of the affair was the 1954 Spring Offensive in which public corporation employee trade unions jointly took sick-in and work to rule tactics with pay-raise demands. As a result of these strategies taken by unions, All Post Department Trade Union leaders were discharged and the union was refused to bargain collectively by the employer with the ground that PCLRA permitted employers to do so with unions whose leaders were discharged. The union filed a complaint before the International Labor Organization (ILO) with the contention that PCLRA infringed Convention 87 concerning workers' freedom of association because the act permitted employers to interfere with workers' freedom to elect their leader of their own will. ILO supported the union's contention by its official document in 1964. Finally the Japanese Diet, even if majority of Congressmen

belonged to a conservative party, passed the amendment bill to delet the provision concerned under the strong pressure of labor movement and ILO.

2 *Individual Labor Relations Law*

A CODIFICATION

In the field of individual labor relations law, Labor Standard Act (LSA) of 1947 (10) was promulgated under the Occupational Forces. The content of LSA is composed of chapters of general provisions, contracts of labor, wages, working hours, recesses, holidays with pay, women and minor workers, vocational training, safety and health, workers' compensation, shopflor rules, dormitories, inspection organizations, penalties and miscellaneous provisions. LSA is also instituted by the Japanese Government under the Occupational Forces in the situation of a militant labor movement demanding the minimum standard of labor and of a legislative process setting up the Constitution which was to provide workers' right to work under a labor law.

Individual labor relations are concerned, LSA and OSHA in the private sector are applied to those in the public sector because these acts set up minimum labor standards for employees or workers in both the public sector and the private sector. For national government public employees, almost the same labor standards are promulgated in the form of regulations issued by the Civil Service Commission.

B AMENDMENT AND CODIFICATION

In 1959 when Japanese economy has started to develop rapidly after its independence, LSA was amended to divide one of the provisions in the chapter of wages into Minimum Wage Act of 1959. (10) The second separating chapter from LSA happened to that of safety and health with the result of enacting Occupational Safety and Health Act (OSHA) of 1972. (12) Before then, rapid development of Japanese economy had increased labor accidents and occupational diseases in number. The enactment of OSHA means an amendment of LSA because OSHA was given birth to by being divided from LSA, however, it means a

codification of OSHA because OSHA is a comprehensive act. The LSA Research Committee set up by the Department of Labor (DOL) took an initiative for OSHA enactment by submitting a recommendation report to the Ministry of DOL suggesting that a new act is necessary. A month later, DOL publicized DOL's intent to propose a OSHA bill. Another month later, DOL submitted a rough draft of a OSHA bill to the National Labor Standard Committee, the members of which are composed of tri-party representatives. It took approximately five months before the Committee submitted its OSHA draft to the Cabinet which proposed it to the Diet later. Four month discussion in the Diet ended up with the passage of OSHA. Judging by this legislative process, the Diet is finally responsible for codification, however, DOL is responsible for draft proposal to the Diet under the technical assistance of a departmental committee. In the course of legislative process, both unions and employers could affect the draft through both National Labor Standard Committee and the Diet discussion.

III THE RELATION OF LABOR LAW WITH SOCIAL SECURITY LAW AND CIVIL LAW

Labor law is not codified together with social security law in Japan. In this field not a single codified act but several acts are covering workers' insurance, social insurance and the public assistance. Confining to the workers' insurance field relevant to labor law from social security law as a whole, Health Insurance Act of 1921, [13] Workers' Compensantion Insurance Act of 1947 [14] and Workers' Pension Act of 1954 [15] have predecesors set up before the Second World War, while Employment Insurance Act of 1974 [16] enacted by replacing Unemployment Act of 1947.

Social security law and labor law are regarded as special laws in relation to civil law consisting of Civil Code of 1897 [17] and Criminal Code of 1915 [18] which are considered general law. The special law relationship to general law implies that, when no appropriate provision applied to the case concerned is found in special law, general law is applied to resolve the issue. Therefore, for example, transaction of union's property is regulated by Civil Code because no appropriate provision applied is prescribed in any labor law or social security law.

And also social security law and labor law are treated as special law to administrative law and civil procedure law conprising of Administrative Procedure Act (APA) of 1952 (19) , Administrative Appeal Procedure Act (AAPA) of 1952 (20) and Civil Procedure Law of 1891. (21) Therefore, for instance, illegal inspection by a labor standard inspector is contested under APA on account of no applicable provision exists in labor law.

IV THE EVALUATION OF CODIFICATION

It is really difficult to judge the evaluation of codification of Japanese labor law. One thing which is clear is that one can forsee settlements of right disputes and procedures to carry out them if one reads codified labor law and relevant court cases. This provides stability of law.

footnote

(1) Law No. 51, 1 June 1945.
(2) Law No. 25, 27 September 1946.
(3) Kazuaki Tezuka, Formation and Development of ex Trade Union Act, Tōdaishaken, ed., *Sengo Kaikaku* vol. 5, (Tokyo : Tōkyodaigaku Shuppan, 1975) p. 250 ; Dep. of Labor, *Shiryō Rōdō Shi* 1945–46, p. 690 ; Eizi Takema, *Amerika No Tainichi Rōdō Seisaku No Kenkyu* (Tokyo : Nipponhyōron Sha, 1970) p. 93 ff.
(4) Law No. 174, 1 June 1949.
(5) Masao Nakamura *Kaisei Rōdō Hō* : *Shingi Keika To Kaisetsu* (Tokyo : Shinnihon Hōki, 1952) p. 1 ff.
(6) Law No. 120, 21 October 1947.
(7) Law No. 261, 27 December 1952.
(8) Law No. 257, 20 December 1948.
(9) Law No. 31, 31 July 1957.
(10) Law No. 49, 7 April 1947.
(11) Law No. 137, 15 April 1959.
(12) Law No. 57, 8 June 1947.
(13) Law No. 70, 11 April 1921.
(14) Law No. 50, 7 April 1947.
(15) Law No. 115, 19 May 1954.
(16) Law No. 116, 28 December 1974.

(17) Law No. 89, 27 April 1897.
(18) Law No. 45, 24 April 1908.
(19) Law No. 139, 16 May 1952.
(20) Law No. 29, 21 April 1891.
(21) Law No. 29, 16 May 1952.
(22) Achnowledgemert to Professor Sanford Goldstein at Departnert of Letters, Niigata University. This paper was prepared to the First Asian Conference of the World Corgress of Labour Law and Social Security held at Manila, Phillippine, December 1980.