LABOUR RELATIONS AND THE LAW IN JAPAN

— A Comparative Study with the Canadian Situation —

by Teruhisa Kunitake

1. Introduction

Generally speaking, the structure of Japanese labour-management relations is different from that of the Canadian, and the regulatory system which is applied to them is just as complicated as in Canada. Consequently, it is not an easy task for me to illustrate the picture as a whole. Therefore, I will offer a simple sketch of Japanese labour relations and the law with some comparative view-points.[1]

The labour laws in both countries, Japan and Canada, had been deeply affected by legal systems in the United States, especially in the labour-management relations field. For example, both countries have similar collective bargaining systems based upon the National Labour

Relations Act of the United States. Nevertheless, both countries have developed their own legal systems in accordance with their own circumstances. So we can find a lot of differences as much as similarities, between these two legal systems and also in their actual relationships between union and management. I hope we can understand them better by comparing our experiences with each other's.

2. The Structure of Japanese Labour Law

First of all, I would like to explaine the Japanese legal system regulating the labour-management relations field. Article 28 of the Japanese Constitution provides that every worker in Japan has the

Table I

Number of employees and Organization Rate (1975)

(Unit: 1,000 persons)

Applicable Labour Acts	Total	Organized labour		Unorganized and noneligible employees
		No. of employees	Organization rate	
Total no. of employees	36,120	12,590	(34.9)%	23,530
Trade Union Act	31,280	9,180	(29.3)	22,100
PCNELR Act	1,150	1,020	(88.7)	130
LPELR Act	350	230	(71.9)	90
National Civil Service Act	830	290	(34.5)	540
Local Civil Service Act	2,830	1,870	(66.1)	960

Source: Prime Minister's Office, *Nihon Tokei Nenkan* (Year Book of Japanese Statistics): Ministry of Autonomous Governing Bodies, *Chiho Koei Kigyo Nenkan* (Year Book of Local Public Enterprises): Ministry of Labour, *Rodo Kumiai Kihon Chosa* (Basic Survey of Trade Unions)

right to organize, the right to bargain collectively and the right to engage in the concerted activities which includes the right to strike. Under the Constitution, these rights are treated as fundamental human rights which can not be curtailed by any other statutes[2]. Yet there are several exceptions, especially those relating to the right to strike in the public sector.

Japanese industrial relations and labour laws in the contemporary period can be classified into three categories in accodance with their statutory schemes. Table I shows the number of employees covered by the different statutes at 1975. The first line indicates the total number of employees in Japan. It shows more than 36 millions of employees are covered by the five statutes listed, and which is about five times to compare with the number of employees in Canada, and the union organization rate is 34.9 % which is slightly lower than the Canadian.

The first category of Japanese industrial relations consists of more than 31 millions employees in the private sector to whom the Trade Union Act[3], which is the general labour-management relations statute in Japan, can be applied. These employees are entitled to enjoy all the fundamental rights guaranteed to workers under the Constitution. It also covers some public utility workers employed by electric power and gas industries, private hospitals and private railway companies, and so on. Although their services may be considered essential, these employees are still entitled to engage in strike activities. But, the Labour Relations Adjustment Act[4] imposed some restrictions on these groups when their strikes endanger the public welfare.

The second category includes public employees to whom the Public Corporations and National Enterprises Labour Relations Act[5] and the Local Public Enterprises Labour Relations Act[6] are applied. Under the former Act, 1,150,000 workers are employed in the following three major public corporations, namely the National Railways, the Telephone and Telegram Corporation and the Tobacco Monopoly, and another five national enterprises, namely the Postal Service, the National Forestry, the Alcohol Monopoly, the Mint and the Government Printing Board. Another 350,000 workers are employed in various local public corporations such as transportation, water supplies, hospitals, harbors and so on. And they are covered by the latter Act. These two

groups of employees are entitled to bargain collectively, but strike activities are entirely forbidden, and their disputes must be settled through compulsory arbitration if voluntary negotiation fails.

The last category is composed of over 3,660,000 national and local public servants to whom the National Civil Service Act[7] and also the Local Civil Service Act[8] are applied. Under these Acts their wages and other working conditions are determined by the National Personnel Authority (Jinji-in) and similar local administrative bodies. Even if these workers have the right to organize their associations, their rights to collective activities are severely restricted, and strikes are entirely forbidden by those statutes. But, it is clear that these workers in the last two categories in the public sectors are highly organized compared to those in the private sector. In fact, like those in Canada, the organizations in the public sector are more militant than the counter-parts in the private sector. Consequently, these public sector workers have attempted to engage in strike activities, in spite of the fact that their strike activities are prohibited by those statutes. They insist that these statutes are unconstitutional and they should be entitled to enjoy all fundamental rights under the Constitution. However, the Japanese Supreme Court ruled out that these statutes were not unconstitutional, because the duties of workers in the public sector were essential to the public welfare and the interruption of their works might be endanger the normal course of public service.[9] Nevertheless, it is still on arguments whether these statutes prohibiting strike activities of the workers in the public sector should be maintained or not, and the Government is now examining the possibilities of amending these statutes in the future.[10]

In order to understand the Japanese labour laws and their background, a brief glimpse at the Japanese labour unions and their structure is important.

3. The Structure of Labour Unions

As I have already indicated, the union organization rate is about 35 %[11] in Japan, but this rate changes among the various industries. Table II shows that the organization rate in the public sector is the highest, and in the wholesale and retail trade it is the lowest. The reason is

quite simple. Table III reveals that the organization rate in larger enterprises with more than 500 employees is over 60 %, while in smaller enterprises with less than 30 employees it is only 3.3 %. Obviously the government is the largest employer in Japan, as in Canada. On the other hand, wholesale and retail trade shops are usually composed of smaller companies, and these are very difficult to organize.

Table II
Union Membership by Industry, 1979

Industry	Number of Trade Union Members (1,000 persons)	Percentage Change Compared to 1978 (%)	Estimated Organization Rate (%)
All Industries	12,308	△ 0.6	31.6
Agriculture, Forestry, Fisheries & Marine Products	97	△ 5.9	21.1
Mining	54	△ 7.3	45.5
Construction	689	1.6	16.8
Manufacturing	4,116	△ 2.7	36.0
Wholesaling & Retailing	762	2.4	9.6
Finance, Insurance & Real Estate	997	0.9	60.8
Transportation & Communication	2,050	△ 0.9	61.0
Electricity, Gas, Water, & Heat Supply	234	0.2	73.1
Service	1,634	0.8	21.5
Governmental Service	1,485	1.5	73.1
Other Industries	191	△ 2.2	—

Note : △ indicates a negative value
Source : Ministry of Labour, ***Basic Survey of Trade Unions, 1980***

Table III

Number of organized workers and estimated rate of organization by size of enterprise in the private sector (1979)

Size of Enterprise	Number of Unions	Number Organized in Thousands	Estimated Rate of Organization (%)
Total	52,947	8,572	25.2
500 or more employees	18,295	5,630	60.5
100-499 employees	13,598	1,583	30.0
30-99 employees	12,388	465	8.5
29 or less employees	5,820	69	3.3

Source: Japan Productivity Centre, *Practical Labour Statitics* (Tokyo, 1980)

In Japan, labour union organizations have a unique character among the industrialized countries in the world. It is a fact that most of the unions in Japan are organized on an enterprise or plant basis. Table IV shows that craft and industrial unions are minority organizations, yet, enterprise unions prevail. Within the labour organization structure from top to bottom, the role and function of the enterprise unions are the most important, because usually collective bargaining takes place at the enterprise level. Although, most of these enterprise unions within the same industry belong to the Industrial Federation, the power of the Federations is usually quite weak. The only significant exception is the Japan Seamen's Union (Kai-in Kumiai) which organizes the sailors at the industrial level beyond the enterprise base. As a result, Japanese industrial-relations are widely decentralized, and their collective agreements are quite individualistic at each enterprise or plant level.

Table IV

Number of Unions, excluding federations, and their membership by different organizational patterns (1975)

(unit : 1,000 persons)

	Number of unions	Number of members
Total	69,333	12,472
Enterprise Unions	65,337	11,361
Craft Unions	720	169
Industrial Unions	1,775	682
Others	4,501	259

Source : Ministry of Labour, *Basic Survey of Trade Unions*, 1975 (Tokyo, 1976)

I suppose that since the concept of the enterprise union is not well-known in Canada, it is difficult for Canadian people to understand their actual situation. An "enterprise union"[12] in Japan means a union which has organized the all employees in a particular enterprise. It includes not only the blue-collar but also the white-collar workers. Even the supervisory workers belong to the same union in so far as they are employed by the same employer. Nevertheless, it must be emphasized that enterprise unions are treated as legal entities of "trade unions" in Japan, even if they organize only the employees in particular enterprises.

Since 1955, however, when the spring offensive bargaining strategies (Shunto)[13] were introduced by the largest national labour center "Sohyo" (the Japanese Labour Congress), the situation has changed somewhat. Table V shows the distribution of membership in major national centers. This spring offensive strategy is difficult to define. Sohyo takes the initiative of setting up a committee, called "the Joint Committe for the Spring Offensive" and most of the major enterprise unions begin to negotiate at the same time, usually once a year at the beginning of spring, under the leadership of the Industrial

Federation. As a result of this successful strategy, the dimensions of collective bargaining have moved slightly toward a centralized or industrialized direction, and these unions can obtain certain agreements containing similar working conditions covering the majority of workers within certain industries.

Table V
Distribution of Membership in Major National Centres (1979)
(unit: 1,000 persons)

Major National Centres	Number of Affiliated Unions	Number of Members	%
Total	71,780	12,174	100
Sohyo	24,097	4,531	37.0
Domei	12,843	2,141	17.4
Shinsanbetsu	207	63	0.5
Churitsuroren	4,423	1,322	10.9
Others	31,513	4,533	37.3

Source: Ministry of Labour, *Basic Survey of Trade Unions*, 1980

In spite of these successes, it is still true that Japanese collective bargaining relationships are mostly based upon negotiations at the enterprise levels, and the extent of their success is largely dependent upon the bargaining power of the individual unions at the enterprise level. That is to say, the functions of the Industrial Federation are mainly restricted to the intercourse of the affiliates or to the exchange of information and these Federations have almost no power to control their affiliates.

Nowadays, 94.2 % of all the Japanese labour unions which cover 82.5% of organized labour force are enterprise unions. There are several reasons why the Japanese trade unions were organized at the enterprise or plant level.

First, there is a historical reason. The old traditional trade union organizations, mostly craft unions, were entirely dissolved by the military government during World War II. After the War, the trade unionists had to organize their unions almost from the beginning. And it was the easiest way for them to organize the unions at the enterprise or plant level in accordance with the policy of the Occupation Force which had been trying quickly to foster labour organizations in order to transfer the Japanese society toward modern and democratic one. Therefore, these trade unions could organize more than 6 million workers, which were 35 % of the entire work force at that time, within only a decade after the end of the War.

The second reason is socio-economic. I suppose that under the tradition of life-time employment, Japanese workers found that the enterprise unions were the most suitable type of organizations with which to protect themselves. In Japan, most of the workers remain throughout their working-life in the same enterprise. Moreover, wages and other working conditions are calculated mainly in the terms of employment basis. Thus, the main concerns of the workers are directed to how much they can get from their own employers, and the working conditions in other companies are not so important for their own individual livelihood.

It is clear that enterprise unions in Japan are not the same as company unions in Noth America, and it is equally clear that they have a number of defects or shortcomings. Undoubtedly, their bargaining power is limited to the extent of their employers' financial or economic situation, and they must take into account these factors as the major premise at the negotiation table. The enterprise unions are used to being more cooperative with the employers than the industrial or craft unions are. As a matter of fact, they can not negotiate general agreements with the employers' organizations, so that there are no set of standards of wages and other working conditions applicable to all workers in a particular industries. As a result, Japanese trade unionism can not develop a firm solidarity among workers except those where in a restricted enterprises. Some of the union leaders have become aware of these facts, hoping to develop or strengthen the industrial unionism in order to overcome the weakness of the enterprise

unionism. But, after all, these efforts have not yet achieved any significant successes in the Japanese union movement.

4. Collective Bargaining and Strikes

I must comment, finally, on some problems concerning the legal system or theory regulating collective bargaining in Japan.

As I have already mentioned, Japanese labour laws and their systems have been deeply affected by the labour laws in the United States, especially by the Taft-Hartley Act. But the Japanese legal systems and the theories are significantly different from their originals in the United States.

First of all, Japanese labour laws have adopted the legal concept of unfair labour practices. But their model did not come from the Taft-Hartley Act, but from the Wagner Act. Thus, the Japanese Trade Union Act section 7 provided for the employer's unfair labour practices, which is similar to section 8 subsection (a) in the Taft-Hartley Act. But there are no sections to regulate the union activities, such as in the U.S. and in most of the jurisdictions of Canada.

Secondly, while Japanese legislature introduced the unfair labour practices into the Trade Union Act as one of the most important concepts, it did not adopt the idea of appropriate bargaining representatives. As a result, employers can not refuse to bargain with any unions, even if the union is only a minority one. But fortunately, most of the enterprise unions are organized with only one in each enterprise. Consequently, from a practical viewpoint, it is unnecessary to decide whether the union is the bona fide representative of the employees or not.

Finally, some explanation is required about the legal situation of labour disputes in Japan. As I have already noted, the Japanese Constitution guarantees the right to engage in concerted activities to all workers except those in the public sector. Thus, in so far as their strike activities do not violate any statutory prohibitions and the means and the purposes are deemed legal, the immunities—both civil and criminal—from strike activities are recognized. But the Japanese legal theories relating to strike activities, picketing, or other union activities are so complicated that I can not explain these in detail in this short essay. I can emphasize here only one point.

Generally speaking, the Japanese labour-management relationship is based on mutual trust at the enterprise level, so that informal channels are broadly developed and their functions are very important. When problems or differences arise between labour and management, they will try to settle them by themselves through negotiation or consultation on the basis of personal understanding.[14] Although the Labour Relations Adjustment Act provides several dispute resolution procedures,[15] such as conciliation, mediation and even arbitration, both parties prefer to settle their dispute by themselves through voluntary negotiation.

The number of strikes in Japan is not small, but the strikes do not continue for a long time. Table VI provides the statistics concerning work stoppages in Japan as compared with those in Canada. It shows us that the number of disputes in Japan is more than three times than in Canada, whereas the number of working days lost per employee in Japan is only about one-sixth compared with those in Canada.

Table VI

Work stoppages in Japan and Canada (Annual average: 1971-1978)

	Number of disputes	Working days lost in thousands	Days lost per thousand employees
Japan	2,696	5,462	154
Canada	898	7,355	899

Source: W. D. Wood & others, *The Current Industrial Relations Scene in Canada, 1980*

As we know, Canada is now running one of the highest levels of work stoppages, next to Italy, among the industrialized countries.[16] I suppose there are many reasons why Canada has maintained such the

worst record in recent years. That is one of my purposes in studying labour-management relations laws in Canada.

5. Conclusion

The process of collective bargaining is now firmly established among the Western countries, including both Canada and Japan.

As I have already noted that both countries have developed their own legal systems to regulate the collective bargaining process in accordance with their own circumstances, despite the fact that both of those are influenced by the American labour laws.

In general, Canadian labour laws are characterized as a regulatory system of administrative or governmental intervention, such as conciliation, arbitration and even back-to-work legislation,[17] while these of the Japanese are mainly characterized as less restrictive, except in the public sector. Of course, it is useless and even unnecessary to decide which nation has better laws, because the historical and cultural backgrounds are so different and the laws must respond to the conflicts which need to be resolved in the context of each society. Even if these points are valid, comparative studies are still important for investigating how the differences come about and what kind of problems we must take into account in the rapidly changing societies in each country.

Endnotes

1. There are some, but not many, articles in English relating to industrial relations and labour laws in Japan. Some are as follows ;

T. Hanami, Labour Law and Industrial Relations in Japan, *International Encyclopaedia for Labour Law and Industrial Relations*, Vol. 3, 1979.

T. Hanami, *Labor Relations in Japan,* Kodansha International, 1979.

T. Hanami, "The Life-time Employment System in Japan", *Atlanta Economic Review*, Vol. 26 No. 3, 1976.

K. Koshiro, "Wage Determinatin in the National Public Service in Japan", in C. M. Rehmus, *Public Employment Labor Relations,* 1975.

M. K. Kuwahara, "Japanese Labour Relations Law in Comparison with the Canadian Act", *Ryukoku Hogaku*, Vol. 4 No. 2, 1971.

M. K. Kuwahara, "Observation on Japanese Labor Law", *U. S. National Committee Bulletin,* Vol. 8 No. 3, 1975.
M. K. Kuwahara, "Comparing Japanese and American Labor Law", *Comparative Labor Law,* Vol. 2 No. 4, 1977.
M. S. Farley, *Aspects of Japan's Labor Problems,* Institute of Pacific Relations and John Day, 1950.
S. B. Levine, *Industrial Relations in Postwar Japan,* University of Illinois Press, 1958.
J. Abegglen, *The Japanese Factory,* The Free Press, 1958.

2. Article 27 of Japanese Constitution also provides the governmental responsibilities to secure the minimum standards of wages, hours, and other working conditions for Japanese workers. And the Japanese Labour Standards Act provides some of the actual working conditions as minimum standards on the subject of this Article.

3. Trade Union Act, Law No. 174 of 1949.

4. Labour Relations Adjustment Act, Law No. 25 of 1946.

5. Public Corporations and National Enterprises Labour Relations Act, Law No. 257 of 1948.

6. Local Public Enterprise Labour Relations Act, Law No. 289 of 1952.

7. National Civil Service Act, Law No. 120 of 1947.

8. Local Civil Service Act Law No. 261 of 1950.

9. The Japanese Supreme Court decleared its position on the issues by the following cases : Zen-Norin Keishoku-ho, 27 : 4 Kei. Shu. 547 (S. Ct., Apr. 25, 1973) ; Nagoya Chu-yu, 31 : 3 Kei. Shu. 182 (S. Ct., May 25, 1977).

10. On September 3, 1973, the Advisory Committee on the Public Service Systems (Komuin Seido Shingikai), which was founded in 1965, submitted a final report to the government. However, it could not recommend any proposals on the issues whether the statutory prohibitions of strike activities in the public sector should still be maintained or not. Therefore, it is hardly possible to predict if new amendments on these issues will come out in the near future.

11. Recently, it was indicated that the organization rate has dropped to 31.6 %, Ministry of Labour, *Basic Survey of Trade Unions 1980,* p. 13.

12. In detail, see T. Hanami, *Labor Relations in Japan*, pp. 88–90.
13. See T. Hanami, *Labour Relations in Japan*, pp. 94–112.
14. T. Hanami, *Labour Law and Industrial Relations in Japan*, p. 103.
15. Labour Relations Adjustment Act provides those procedures, through section 10 to section 35, as voluntary application procedures. But section 35–2 provides the compulsory adjustment procedures which are only applicable to emergency disputes with some kind of governmental intervention, although the government, since the eractment of this Act, has never tried to recourse this procedure as a means of stopping the strike activities.
16. M. Gunderson, *Collective Bargaining in the Essential and Public Service Sectors*, University of Toronto Press, 1975, p. 1.
17. It must be noted that ad hoc legislation, which ordered the striking workers back to work, has been enacted fifteen times since 1951 in various jurisdictions in Canada.

あ と が き

本稿は、1980年2月から9月までの間、カナダ政府による Faculty Course on Canadian Enrichment Program の援助の下に、Queen's University に滞在中、K. P. Swan 教授の依頼により、日本の労使関係と法について報告した内容に、帰国後に加筆・補正したものである。それゆえ、元来、カナダ人学生を対象としたスピーチの形式を採ったものであり、また日本の労使関係法についてその実態的イメージをいかに彼等に伝達するか、という観点から叙述されていることを、ここにお断わりしておく必要がある。

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