Report on the Survey on Industrial Relations in East Asia

COLLECTIVE BARGAINING IN JAPAN

ILO- Japan Multi- Lateral Project, 2006

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Contents

A. Major Issues and Trends in Collective Bargaining

Changes in the spring labour offensive system
Consolidation of a system to settle individual disputes
Diversification of employment types and working patterns
Corporate management reform and labour-management relations
Impending labour law reforms

Part 1:
Legislative and Institutional Framework for Industrial Relations

A. Legislation on Labour Standards

The legal framework of industrial relations in Japan is governed by the Constitution of Japan, the *Trade Union Law* and the *Labour Relations Adjustment Law*. The right of workers to organise, and to bargain and act collectively is guaranteed under Article 28 of the Constitution.

The *Labour Relations Adjustment Law* in conjunction with the *Trade Union Law* have the purpose of achieving greater fairness in the reform of labour relations, and preventing and settling labour disputes through conciliation, meditation and arbitration, thereby contributing to the maintenance of industrial peace and economic development in Japan.

In addition, the *Labour Standards Law* and the *Minimum Wage Law* prescribe the minimum statutory standards for wages, working time, rest days, determination of working conditions among others. Supplementary laws include the *Law on Securing Equal Opportunity and Treatment between Men and Women in Employment*; and the *Law Concerning Stabilization of Employment of Older Persons* which provides for various measures for securing the stability of older persons' employment as well as regulating the increasing retirement age in Japan.

Basic Working conditions

The principal legislation which regulates basic working conditions and employment relations is the *Labour Standards Law*. Key provisions of this law are summarised below.

Wages

Wages must be paid in cash and in full directly to employees. However, methods of payment other than in cash may be permitted in cases provided for by law, ordinance or collective agreement. Wages must be paid at least once a month on a specified date. However, this does not apply to extraordinary wages, bonuses and other payments defined by ordinances of the Ministry of Health, Labour and Welfare (MHLW) (*Article 24 of the Labour Standards Law*).

Partial deduction from wages may be permitted in cases provided for by law, ordinance or where there exists a written agreement between the employer and a trade union organised by a majority of the workers at the workplace or a person representing a majority of the workers where no such union exists.

In the event of a suspension of business for reasons attributable to the employer, the employer shall pay an allowance equivalent to at least 60 percent of the employee's average wage during the period of business suspension (*Article 26 of the Labour Standards Law*).

Minimum wages

Minimum standards for wages shall be in accordance with the provisions of the *Minimum Wages Law* (*Article 27 of the Labour Standards Law*).

Minimum wages take two forms. The first is by region (prefecture), the second is by industry. The region with the highest minimum wage is Tokyo (714 yen an hour); the lowest are Aomori and Okinawa (608 yen an hour). Minimum wages based on industry are divided into six categories: the steel industry, general machinery, electrical industry, auto industry, printing industry and retail industry. The industry minimum wages are then subcategorised into regions. In the case of Tokyo, the highest minimum wage is in the steel industry (804 yen an

hour) and the lowest in the retail industry (765 yen). Minimum wages by industry are higher than those by region in each area.[1]

Working hours

An employer shall not require an employee to work more than 40 hours per week, excluding rest periods. Further, an employer shall not require an employee to work more than 8 hours per day, excluding rest periods (*Article 32 of Labour Standards Law*).

An employer shall provide rest periods of at least 45 minutes where an employee is required to work over 6 consecutive hours and at least one hour where an employee's is required to work over 8 hours. The rest periods shall be provided to all workers simultaneously, unless otherwise provided for in a written agreement between the employer and the trade union or employees' representative (*Article 34 of the Labour Standards Law*).

In the event that the employer has entered a written agreement either with a trade union organised by a majority of the workers at the workplace concerned or with a person representing a majority of the workers where no such trade union exists, and has filed such an agreement with the administrative office of the MHWL, the employer may extend the working hours or require work on rest days, in accordance with the provisions of such agreement. This is regardless of the requirements of Article 32 of the *Labour Standards Law* with respect to rest days; provided that the extension of working hours for 'underground work' and any other work specified by Ordinance of the Ministry of Health, Labour and Welfare as 'especially injurious to health' shall not exceed two hours per day (*Article 36 of the Labour Standards Law*).

Increased wages for overtime work, work on rest days and night work

In the event that an employer extends working hours or require an employee to work on rest days, the employer shall increase the wages for such work at a rate no lower than the rate stipulated by a Cabinet Order. The rate is within the range of 25 percent to 50 percent over the normal hourly wage (for extended working hours) or daily wage (for rest days).

In the event that an employer requires an employee to work during the period between 10pm and 5am, the employer shall increase the wages for such work at an hourly rate no lower than 25 percent over the normal hourly wage (*Article 37 of the Labour Standards Law*).

Annual leave with pay

An employer shall grant paid annual leave of 10 working days per year, either consecutive or divided into portions, to workers who have been employed continuously for six months and have a work attendance record of at least 80 percent. The employer is not required to grant paid leave to workers who do not satisfy the 80 percent work attendance requirement. The amount of accrued leave is calculated from the first day of employment.

With respect to workers who have been employed continuously for at least one and a half years, an employer shall grant the employee's accrued amount of paid annual leave as well additional days presented in the table below.

Table 1.1: Additional annual leave

Years of continuous service*	1 year	2 years	3 years	4 years	5 years	6 years or more
Number of additional paid leave	1 day	2 days	4 days	6 days	8 days	10 days

[1] Information obtained from the Ministry of Health, Labour and Welfare website, "Minimum Wage in Prefectures and Industries", http://www2.mhlw.go.jp/topics/seido/kijunkyoku/minimum/minimum-01.htm, accessed February 2007.

*Calculated from the completion day of six months of continuous service

The labour contract

A labour contract with provisions that do not meet the legal minima set by the *Labour Standards Law* shall be deemed as invalid with respect to such provisions. In such a case, the invalid provisions in the contract shall be governed by the standards set forth in the law.

Labour contracts with a specified term shall not be longer than 3 years, except in a few special cases where the maximum term is 5 years. This requirement excludes contracts that have an indefinite time period or a set period necessary for the completion of a specified project (*Article 14 of the Labour Standards Law*).

Labour contracts that are concluded with workers who have professional knowledge, skills and experience at an advanced level, fall under specific standards prescribed by the Minister of Health, Labour and Welfare.

Restrictions on dismissal of workers

An employer shall not dismiss a worker during a period of rest for medical treatment with respect to injuries or illnesses suffered in the course of employment or within 30 days thereafter. Further, Article 19 stipulates that an employer shall not dismiss a female employee during a period of rest before and after childbirth (in accordance with Article 65 which gives the employer the right not to employ a woman who is expected to give birth within six weeks or within eight weeks after childbirth), nor within 30 days thereafter.

Further, dismissal without a reasonable cause is unlawful as it constitutes an abuse of dismissal rights (*Article 18-2 of the Labour Standards Law*).

In the event that an employer wishes to dismiss a worker, the employer shall give at least 30 days of prior notice. An employer who fails to do so shall pay the average wages for a period of not less than 30 days. The number of days of prior notice may be reduced in the event that the employer pays the average wage for each day by which the period is reduced (*Article 20 of the Labour Standard Law*).

B. Freedom of Association

The legal framework governing the right of workers to form or join trade unions, engage in collective bargaining and collective action are based on the *Constitution of Japan* and the *Trade Union Law*.

The Constitution guarantees workers the rights to form trade unions, and engage in collective bargaining and collective action (*Article 28 of the Constitution of Japan*).

Enacted just after World War II in 1946, the purposes of the *Trade Union Law* were to:

- elevate the status of workers by promoting their equal standing with employers at the bargaining table,
- protect workers' exercise of the right to autonomous self-organisation and association with trade unions so that they may carry out collective action, including assigning representatives of their own choosing to negotiate their wages and working conditions, and
- encourage the practice of collective bargaining, and procedures therefore, for the purpose of concluding collective agreements governing relations between employers and workers (*Article 1 of Trade Union Law*).

The provisions of Article 35 of the Criminal Code (which stipulates that certain behaviour based on legal and justifiable duties shall not be punished) are applicable to collective bargaining and other acts of a trade union considered as proper and have been performed for

the purposes listed above. Acts of violence shall not be construed as proper acts of trade unions (*Article 2 of the Trade Union Law*).

Under the *Trade Union Law*, trade unions shall be organisations or federations thereof, formed autonomously and composed mainly of workers for the main purposes of maintaining and improving working conditions and raising the economic status of the workers. However, the *Trade Union Law* shall not apply to organisations:

- which permit the following employees to become union members- employees in supervisory positions whom have direct authority with respect to hiring, firing, and promotions or transfer of other employees; employees in supervisory positions whom have access to confidential information relating to the employer's labour relations plans and policies so that their official duties and responsibilities directly conflict with their loyalty and responsibilities as members of the trade union concerned; and other persons whom represent the interests of the employer,
- which receive the employer's financial support in defraying the organizations' operational expenditures,
- whose objects are confined to mutual aid work or other welfare work, or
- whose objects are principally political or social movements (*Article 2 of the Trade Union Law*).

Representatives of a trade union, or those to whom the authority has been delegated by the trade union, shall have the authority to negotiate with the employer or the employers' organization on behalf of the trade union or the members of the trade union with respect to the conclusion of a collective agreement and other matters (*Article 6 of the Trade Union Law*).

Formation and establishment of unions

Two or more members are needed for a union to be formed at the enterprise level, but it is permissible for one member to affiliate with a union external to the enterprise. It is not necessary for new unions to register, but registration is required if the union wants to participate in the procedures or be granted the remedies provided by the *Trade Union Law*. The criterion for registration with the Labour Relations Commission is set out in Article 5 of the *Trade Union Law*. Article 5 requires that the union's Constitution must provide the following items: the name and address, right of all union members to participate in all affairs of the union and to receive equal treatment, election of the union officers by direct secret ballot of the members, conduct of a general meeting every year and the production of a financial report among others.

Multiple unions

According to the Survey on Collective Agreement by the Ministry of Health, Labour and Welfare in 2001, 16% of companies have multiple unions at the enterprise level. There are various types of multiple unions. For example, multiple unions across different types of jobs are commonly found in companies in the airline industry and the public service. There are also multiple unions within the same types of occupations at the enterprise level.

Based on judicial precedents, the external union or minority union can still engage in collective bargaining and conclude agreements with the same rights as the majority union. While an employer cannot discriminate against members of a minority union due to the union's smaller membership, it is permissible for the company to supply the minority union with a smaller office than that provided to the majority union.

Unfair labour practices

Pursuant to Article 7 of the *Trade Union Law*, the employer shall not commit the following acts:

- discharge or otherwise treat in a disadvantageous manner a worker by reason of such worker's being a member of a trade union, having tried to join or organise a

trade union, or having performed proper acts of a trade union; or to make it a condition of employment that the worker must not join or must withdraw from a trade union. However, where a trade union represents a majority of workers employed at particular plant or workplace, this shall not prevent an employer from concluding a collective agreement which requires, as a condition of employment, that the workers be members of such trade union;

- refuse to bargain collectively with the representative of the workers employed by the employer without proper reason;
- control or interfere with the formation or management of a trade union by workers or provide financial support to defray the trade union's operational expenditures, provided, however, that this shall not prevent the employer from permitting workers to confer or negotiate with the employer during working hours without loss of time or pay and this shall not apply to the employer's contributions for public welfare funds or welfare and other funds which are actually used for payments to prevent or relieve economic misfortunes or accidents, nor to the furnishing of minimum office space; or
- discharge or otherwise treat in a disadvantageous manner a worker or workers that have filed a complaint with the Labour Relations Commission.

An employer shall not be permitted to claim indemnity from a trade union or a member of the same union for damages received through a strike or other acts of dispute which are proper acts (*Article 8 of the Trade Union Law*).

Public sector employees

Public servants are excluded from the *Trade Union Law*. The exclusion has been effective since 1948 when the *National Public Service Law* was revised. Not all public servants have had the right to collective bargaining or to act collectively. Only the 'blue collar workers' in the public sector have the right to conclude collective agreements. 'White collar workers' such as teachers do not have this right. However, all public servants have the right to form their own unions.

The Japanese Government has given the National Personnel Authority the role of surveying wages and working conditions in the public sector, and to make recommendations to the Cabinet and Congress. There have been some recent discussions on the reform of the public sector management system, including the provision of the right to collective bargaining and strike. However, nothing conclusive has been made to date.

Part 2:
Industrial Relations Actors

A. Government

The highest body in the government responsible for labour and industrial relations policy is the Ministry of Health, Labour and Welfare (MHLW). The Ministry was established by the amalgamation of the Ministry of Labour and the Ministry of Health and Welfare in 2001. Within the Ministry, the Labour Standards Bureau is responsible for employment relations and the Labour Politics Department is responsible for industrial relations.

Dispute settlement mechanisms provided by the government are divided into the Labour Relations Commissions and Corners for General Labour Counselling. The Labour Relations Commissions were established in March 1946 following the enactment of the *Trade Union Law*. The Central Labour Relations Commission (CLRC) is an additional agency of the Ministry of Health, Labour and Welfare. As an independent administrative agency, it is neither directed nor supervised by any other government agency.

The CLRC has the mandate to protect the workers' rights of association and promote beneficial reform of labour relations law. Its primary functions are to process allegations of unfair labour practices under the *Trade Union Law* and to promote the smooth and fair settlement of labour disputes under the *Labour Relations Adjustment Law*. It also investigates unfair labour practice cases that concern more than two prefectures or cases of national significance, reviews the initial examinations of the Prefectural Labour Relations Commissions and resolves labour disputes through such measures as mediation and arbitration.

The Prefectural Labour Relations Commissions were established in each prefecture in order to make the initial examination of unfair labour practices and address labour disputes within their geographical area.

The Corners for General Labour Counselling were established in 2001 at the Prefectural Labour Bureau to offer employers and employees information, counselling and conciliation regarding individual employment disputes. There are labour standards departments in each Prefectural Labour Bureau, which exercise the function of labour inspections.

B. Employers

The main employers' organisation in Japan is the Nippon Keidanren (Japan Business Federation). It is a broad economic organisation founded in May 2002 by an amalgamation of the Keidanren (Japan Federation of Economic Organizations) and Nikkeiren (Japan Federation of Employers' Associations). The purposes of the amalgamation were to effectively address increasingly interconnected economic and labour problems, to avoid the overlapping roles of the two organisations and to increase their political influence. Prior to amalgamation, Keidanren was responsible for economic issues and Nikkeiren labour issues. Nippon Keidanren's membership stands at 1,662, comprising of 1,351 companies, 130 industrial associations and 47 regional economic organisations (as of 20 June 2006). It does not engage in collective bargaining directly, but issues reports of the Management-Labour Committee every year which includes management's perspectives on collective bargaining (Shunto). The report in 2006 expressed five views on collective bargaining:

1. A company should decide the wages of the employees based on its payment ability.
2. A company should attach importance to the management of total personnel cost.
3. It is important for a company to make wage decisions with reference to the medium-long term.
4. A company should reflect recent employee performance in its decision to provide bonuses.

5. It is important for a company to actively consult with its employees about internal and external problems concerning the company (Nippon Keidanren, 2006: 51- 56).

However, Nippon Keidanren does not provide recommendations on wage levels in their reports. Each company decides an appropriate wage independently.

C. Employees:

Structure of Labour Unions

Japanese labour unions generally have a 'three-level structure' - with:

1. Enterprise-based labour unions organised within each business,
2. Industrial trade unions organised as loose federations of enterprise union members based on industry, and
3. National centres made up of the industry trade unions grouped at the national level (e.g. the Japanese Trade Union Confederation).

The organisational structure of Japan's labour unions is overwhelmingly dominated by enterprise-based unions. Craft unions and industry trade unions also exist, though in small numbers.

Enterprise-based Unions

Enterprise-based labour unions are Japan's dominant form of labour organisation because each enterprise-based union exercises the three primary rights of labour: the rights to organize, bargain collectively and engage in strikes. In 1991 enterprise-based unions accounted for 99.4% percent of all unions and claimed 91.3% percent of union members. Each enterprise-based union has sufficient staff, funding and other resources necessary to exercise their three primary rights. Labour unions play a key role in maintaining and improving workers' quality of life and working conditions. In order to do so, they engage in three primary activities: activities with management, activities within the union, and activities outside the organization.

As individual unions, enterprise-based unions maintain and improve working conditions by engaging in collective bargaining and consultation with management. Internally, enterprise-based unions deal not only with organisational operations but also provide their members with services through various forms of mutual aid activities.

Externally, enterprise-based unions seek to provide benefits to their members by influencing policies at the regional, industrial and national levels concerning employment, working conditions and the quality of life of their members. In addition, labour unions are increasingly becoming involved in community and volunteer activities in order to improve their public relations profile.

Enterprise-based unions are generally only intended for a company's permanent staff, with non-permanent employees excluded. However, recently some enterprise and general unions have started to unionise non-permanent employees, particularly in service sectors such as supermarkets, department stores and restaurants. The enterprise-based union is generally a mixed union organised for all permanent employees, without making a distinction between white-collar and blue-collar employees.

Industrial Trade Unions

In Japan, most industrial trade unions do not have the three primary rights which enterprise-based unions exercise. In a strict sense, they are industrial federations of enterprise-based trade unions. Enterprise-based unions' capacity to engage in their three primary activities is often limited by their own resources. In order to enhance their effectiveness, they establish industrial trade unions. Industrial trade unions support their member unions' activities by

- consolidating requests concerning key working conditions such as wages and working hours at the industry level,
- collecting and providing information and basic materials on employment and industrial relations issues, and
- coordinating negotiation strategies on issues such as level of wage or bonus and the timing of the bargaining process.

In terms of internal activities, industrial trade unions provide their members with a variety of services through mutual aid activities, including life insurance, pensions and medical insurance to supplement public welfare programs. These services are extended to all members. Industrial trade unions also participate in the formation and decision-making processes of national industrial policies, consult with economic organizations and develop international cooperation among labour unions.

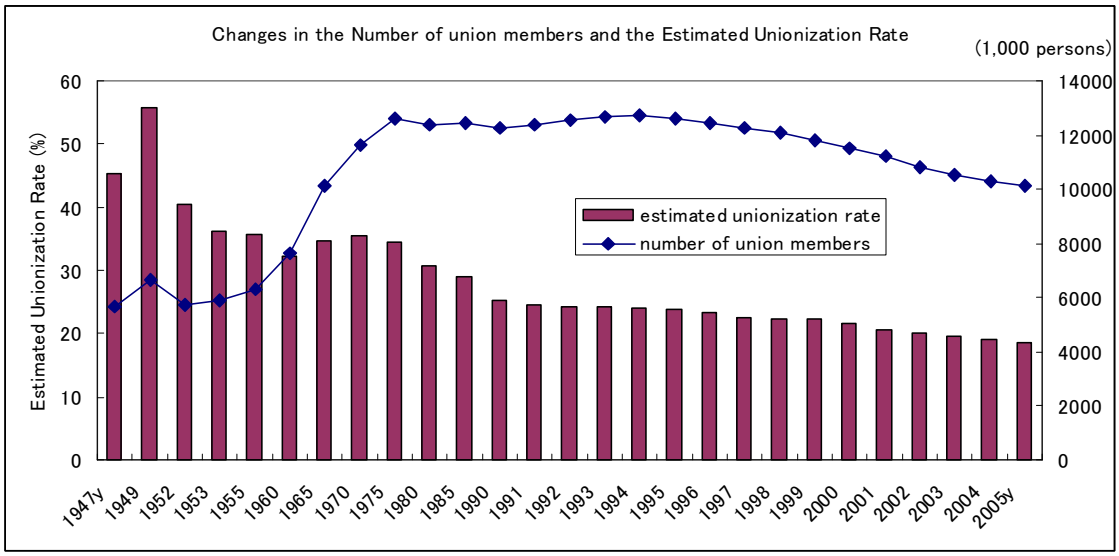
National Centres

National labour centres provide affiliated members with support for their activities through consolidating requests and determining comprehensive standards for issues such as wages, working hours and other working conditions. However, the more important role is their participation in national politics. Rengo (the Japanese Trade Union Confederation), established in 1989 and the largest national labour centre, advocates the rights of workers by sending representatives to various advisory bodies in the government. It participates in the decision making processes of government policy making and maintains cooperative relations with all political parties. In 2006, there were 6,543,000 Rengo members, which covered 65.0% of all trade union members in Japan.

There are two national centres in addition to Rengo. Zenroren (the National Confederation of Trade Unions) has 723,000 members and accounts for 7.0% of all union members in Japan. Zerokyo (the National United Federation of Trade Unions) has 150,000 members and represents just 1.4% of all union members. Zenroren consists mainly of public sector trade unions, with policies that have been compared to that of the Japanese Communist Party. Meanwhile, Zerokyo is mainly composed of the three trade unions representing Tokyo metropolitan public servants and members of the former Japan National Railway Trade Unions.

Current Situation

According to the *Survey of Labour Unions* issued by the Ministry of Health, Labour and Welfare as of 30 June 2005, there were 61,178 labour unions in Japan. The unionisation rate is estimated at 18.7%, with about 10.138 million out of a total of 54.16 million employed workers belonging to unions. Since its peak in 1949, the estimated unionisation rate has continuously declined as a result of the number of employees growing at faster rate than the number of union members. In 1994, the number of union members peaked at around 12.70 million, before going into steady decline.



Source: The Ministry of Health, Labour and Welfare (2006), *Survey of Labour Unions*

Industry-specific unionisation (density) rates are highest in the public service (50.7%); electricity, gas, heat supply and water (58.6%); and finance and insurance (48.6%). In contrast, unionisation rates are lower in real estate (3.2%); food, beverage and hotel industry (3.2%); agriculture, forestry and fisheries (3.5%); service industries (6.0%), and wholesale and retail trade sector (10.1%). The industry with the largest actual number of union members is the manufacturing industry (25.7% density).

Unionisation rates also differ according to the number of employees in a company. In 2006, the rate in companies with more than 1000 employees was 46.7%, that of 100-999 employees was 14.8%, and in small companies with less than 99 employees the rate was 1.1%.

Primary Reasons for the Falling Unionization Rate

1. The burgeoning of development in the service economy has increased the proportion of commerce and services industries in which the unionisation rate has historically been low.
2. The diversification of employment has resulted in increasing numbers of part-time workers who are difficult to organise.
3. There has been an attrition of unions' membership base, due to the retirement of older members who are not being replaced by new members.

Part 3:
Legal and Institutional Framework and Practice of Collective Bargaining

A. Rights of Bargaining

The right of workers and unions to bargain collectively is guaranteed, irrespective of size and unionisation rate, under Article 28 of the Constitution of Japan and Article 7 of the *Trade Union Law*.

B. Definition and legal status of a collective agreement

Matters agreed upon at the bargaining table are put in writing and either signed or names affixed with seals by both labour and management representatives. The document consequently becomes a legally binding collective agreement (*Trade Union Law, Articles 14*).

Any portion of an individual labour contract contravening the standards concerning conditions of work and other matters relating to the treatment of workers provided in the collective agreement shall be void. In such a case, the invalidated part of the individual labour contract shall be governed by the provisions of the standards. With respect to matters as to which the individual labour contract certain no provisions, the same rule shall apply (*Trade Union Law, Articles 16*).

C. Processes of bargaining

In Japan, collective bargaining predominantly takes the form of enterprise-based bargaining, namely the bargaining between an enterprise-based union that has organised employees in a single enterprise and their employers. The distinctive feature of enterprise-based bargaining is that the employer and enterprise-based union have almost complete autonomy over the process. Thereby, exclusive negotiations are common where there are no participants from outside the enterprise (Shirai, 1999: 79). According to a survey by MLHW in 1997, 88% of labour unions responded that they alone undertook collective bargaining with their employer.

In 1999, as shown below in Table 3.1, 91.5% of labour unions successfully concluded collective agreements with employers. This percentage was higher than the 1996 figure of 89.2%, and the 1991 figure of 91.3%. Every industry, with the exception of the service industry, had over 90% concluded collective agreements. The larger the size of enterprise, size of union membership or unionisation rate, the higher the percentage of concluded collective agreements. The earlier the year of union formation, the higher the percentage of concluded collective agreements.

In terms of the key players in concluding collective agreements, 58.2% of unions indicated that a low-level union concluded the collective agreement alone; 25.4% for indicated that a higher-level organisation concluded collective agreement alone; and 15.9% indicated combined involvement of a low-level union and higher-level organisation. The larger the size of the enterprise, the higher the percentage of collective agreements concluded by a higher-level organisation.

Several conclusions can be drawn from the above statistics:

- The practice of concluding collective agreements by enterprise-based unions has become imbedded in the collective bargaining framework.
- This practice has particularly acquired a solid foundation at large enterprises and enterprise with large unions.

- The practice of concluding collective agreements is relatively infrequent in the services industry, smaller enterprises and enterprises with small unions or low unionisation rate.

Table 3.1: Collective agreements concluded (by Industry, Size of enterprise, Size of Union membership, Year of Union's formation, Unionization rate) and percentage (%) of key players involved, 1999

	Agreement concluded by low-level union alone	Agreement concluded by a higher-level union organisation alone	Agreement concluded by both	Unclear	All agreements concluded	Agreements not concluded
Total	**58.2**	**25.4**	**15.9**	**0.5**	**91.5**	**8.5**
Industry						
Construction	57.4	27.4	15.1	0.1	95.7	4.3
Manufacturing	66.2	16.2	16.8	0.8	93.3	6.7
Public utilities	34.6	34.6	58.8	6.2	99.0	1.0
Transport and communication	46.1	36.0	27.5	0.5	93.50	6.5
Wholesale, retail etc	66.7	14.4	18.7	0.1	92.6	7.4
Finance, real estate	40.5	46.8	12.3	0.4	92.5	7.5
Services	63.6	22.6	13.7	0.1	81.7	18.3
Size of enterprise						
5,000 and more workers	26.9	52.7	20.4	0.0	97.3	2.7
1,000- 4,999 workers	48.2	36.6	15.0	0.2	95.3	4.7
500- 999 workers	58.8	19.0	22.1	0.1	93.8	6.2
300- 499 workers	75.7	10.5	13.8	-	91.3	8.7
100-299 workers	84.8	1.2	12.1	1.9	87.3	12.7
30-99 workers	82.8	5.9	11.3	-	81.4	18.6
Size of union membership						
5,000 and more members	72.7	1.7	23.0	2.6	98.3	1.7
1,000- 4,999 members	60.9	21.1	17.7	0.2	98.4	1.6
500- 999 members	58.5	25.6	15.2	0.6	98.0	2.0
300- 499 members	55.9	28.0	16.1	-	96.6	3.4
100-299 members	59.1	24.9	16.0	0.0	91.7	8.3
30-99 members	57.7	25.7	15.8	0.8	89.3	10.7
Year of labour unions formation						
1950 and	53.0	28.1	18.9	-	99.0	1.0

before						
1951-1960	66.7	21.2	11.8	0.2	93.8	6.2
1961-1970	64.7	18.6	16.3	0.4	92.6	7.4
1971-1980	60.6	20.9	18.3	0.2	87.1	12.9
1981-1990	56.7	30.8	12.4	0.1	86.3	13.7
Since 1991	39.7	42.0	15.9	2.3	87.9	12.1
Unionization rate						
Less than 10%	35.3	17.0	47.7	-	78.7	21.3
30-50% (not inclusive)	65.0	15.6	19.2	0.1	86.9	13.1
90% and more	43.8	35.7	20.2	0.4	93.7	6.3

Source: the Ministry of Health, Labour and Welfare (2001), *Survey on Collective Agreements*

D. Subjects included in collective agreements

As shown below in Table 3.2, there are various subjects covered in the provisions of collective agreements between the employer and union at the enterprise level, such as wages, working hours, welfare, health and safety.

Subjects relating to wages are stipulated in 20-40% of comprehensive and separate collective agreements. However, over 20% of agreements concluded did not contain provisions for a separate allowance for away-from-home workers, minimum wages or a pension system.

Table 3.2; Subjects, Provisions, Collective Agreements (C.As) concluded and Percentage of Unions by Type (%)

Subjects	**Provisions exist**					**No Provisions**
	Comprehensive C.A	Separate C.A	Company Regulations	Others	Total	
Wage						
Basic pay	36.3	24.3	70.7	7.4	94.6	4.1
Allowances	28.0	30.5	56.7	10.4	91.2	7.5
Separate allowance for away-from-home workers	21.7	18.6	47.9	6.6	67.5	31.2
Other allowances	32.4	26.0	70.3	7.7	96.0	2.7
Amount of allowance	28.5	26.0	66.0	8.9	93.5	5.1
Rate for overtime work	32.6	23.4	70.6	7.1	95.3	3.3
Bonus	30.1	34.6	54.1	10.4	93.1	5.4
Minimum wages	21.7	23.4	40.3	11.1	74.2	24.3
Starting salary	24.0	25.9	47.9	11.9	84.2	14.4
Retirement allowance	31.7	26.8	66.3	9.4	95.0	3.6
Pension system	24.7	21.1	51.2	10.5	77.8	20.6
Wage increase	29.8	28.3	57.6	9.9	90.6	7.9
Working hours, holidays vacations						
Scheduled daily working hours	41.0	17.1	84.1	1.6	97.6	1.1
Scheduled weekly or annual working hours	38.4	20.0	72.3	4.3	93.5	5.2
Overtime work	37.9	22.6	69.6	5.0	92.3	6.4
Flexible working time system	29.3	18.8	57.4	4.0	75.6	22.9
5-day work week	29.9	12.6	58.3	4.2	73.2	25.4
Consecutive holidays	26.4	14.3	48.3	6.8	69.0	29.7

Annual holidays (excluding weekly holidays)	36.1	19.7	68.3	4.9	89.8	8.9
Annual paid leave	41.2	13.9	85.1	2.0	97.9	0.8
Leave for education or training	9.4	4.4	23.9	4.0	31.8	66.6
Child care leave	32.4	19.2	69.6	6.1	88.7	10.0
Family health care leave	30.5	18.5	64.1	6.0	82.7	15.8
Personnel matters						
Promotion	25.8	12.2	59.0	9.5	80.3	18.4
Dismissal	39.2	9.4	82.7	2.5	94.7	4.1
Disciplinary action	37.1	8.2	83.4	2.3	95.3	3.4
Relocation	32.4	10.6	63.9	4.4	79.7	18.9
Transfer and 'farming-out'	29.2	16.6	56.9	5.4	75.5	23.2
Compulsory age limit system	39.5	11.8	82.5	2.4	97.3	1.4
Reemployment and extended employment	21.9	12.1	48.6	8.8	70.2	28.2
Welfare						
Non-statutory compensation for industrial injuries	32.2	17.9	56.4	7.8	81.9	16.7
Contributions to private insurance scheme	8.3	5.9	17.2	10.9	35.3	63.2
Loans to housing funds	14.4	11.5	31.4	15.1	57.1	41.6
Housing management system	12.1	7.9	25.1	12.9	46.8	51.8
Health and Safety						
Physical check-ups	33.0	8.8	71.4	8.4	93.4	5.2
Health and safety education	27.2	7.7	58.4	10.2	79.8	18.8
Other kinds of safety and health provisions	27.3	7.7	54.1	11.5	76.6	21.9
Union organization						
Scope of non-union members	53.4	15.3	-	7.9	73.3	25.1
Union shop	52.1	9.0	-	5.6	65.1	33.5
Sole negotiation union	49.1	8.2	-	5.5	61.0	37.5
Collective bargaining (CB)						
CB related matters	60.9	13.0	-	6.3	78.1	20.6
Procedures and operation of CB	60.0	13.0	-	6.7	77.4	21.2
Prohibition of commission of negotiations	33.6	5.9	-	5.3	43.3	55.2
Disputes						
Coordination of disputes	49.9	8.3	-	5.0	61.5	37.1
Prior notice of dispute actions	55.0	9.5	-	5.6	68.2	30.5
Non-participants in dispute actions	44.4	9.1	-	5.5	56.9	41.8
Observance matter for dispute actions	41.8	8.6	-	5.5	54.0	44.6
Union activities						
Union activities of members on duty	58.7	15.0	-	7.8	79.1	19.6
Utilization by union of company facilities	58.3	14.2	-	8.0	78.2	20.5
Full-time union official as employee	45.7	10.9	-	5.2	59.2	39.4
Check-off	56.9	20.4	-	17.6	91.7	5.9
Scope of collective agreement	61.0	13.1	-	-	72.3	25.9
Term of validity for CA	63.0	12.8	-	-	72.7	25.8
Grievance system	39.0	7.9	9.3	6.3	54.4	44.3
Prior consultations related to management						
Prior consultation related to introduction of new technology	21.4	6.7	4.1	7.5	36.2	62.4
Prior consultation related to starting new business	22.8	6.3	4.1	7.4	36.9	61.8
Prior consultation related to	32.0	9.4	5.4	7.8	49.5	49.1

downsizing or scrapping business						
Prior consultation related to domestic transfer of business	24.9	7.1	4.9	6.6	39.5	59.1
Prior consultation related to overseas transfer of business	19.5	5.4	4.0	5.9	31.6	66.9
Overseas service	15.5	8.8	4.9	7.5	39.5	59.0

Source: The Ministry of Health, Labour and Welfare (2001), *Survey on Collective Agreements*

E. Scope and duration of collective agreements

Article 17 of the *Trade Union Law* regulates the general binding power of a collective agreement. It stipulates, that when three-fourths or more of the workers of the same kind regularly employed in a particular factory or workplace come under application of a particular collective agreement, the agreement concerned shall be regarded as also applying to the remaining workers of the same kind employed in the factory concerned or workplace. However an exception exists in cases where the remaining workers conclude their own collective agreement. The general binding power is effective unless the majority agreement has a negative impact on the existing conditions of the minority.

In relation to the term of a collective agreement, Article 15 of the *Trade Union Law* stipulates that:

> *"A term of validity exceeding three years shall not be provided for in a collective agreement. Any collective agreement providing for a term of validity exceeding three years shall be regarded as providing for a term of validity of three years. A collective agreement which does not provide for a term of validity may be terminated by either party by giving notice to the other party in writing either signed by or with name affixed with seal by the party giving notice. A collective agreement which provides for a definite term, and which includes a provision to the effect that the agreement shall continue in effect after expiration of said term without specifying any time limit for such continuation, shall be treated in the same way after the expiration of said term. The notice provided for in the preceding paragraph shall be given at least ninety days prior to the date on which termination is to be made*".

While the Law provides that the longest possible term of validity is three years, most agreements stipulate a shorter term than this. 84.6% comprehensive collective agreements include provisions for a term of validity. Out of those, 58.4% provide for a term of one year or less; 34.0% have a term of over a year but less than three years; and 7.7% have a term of three years (MHLW, 2001). Finally, 41.4% of labour unions with a comprehensive collective agreement have a provision for automatic extension of the agreement and 46.1% for automatic renewal.

In many cases, revision of an agreement is discussed at the time of the annual spring labour offensive which culminates in wage negotiations. As a tendency, long-term agreements are avoided (Suwa, 1992).

F. Conclusion of agreement

Notifying union members of the concluded agreement

Only 2% of the unions surveyed did not take any measures to make the agreement known to members (19% in the case of unions with a unionisation rate of under 10%). Out of the 91% which took some kind of measure, 56% distributed the agreement to union members. The percentage is relatively low in the services industry (45%), in unions with 30-99 members (50%), in enterprises with 30-99 regular employees (41%), in unions established after 1981 (43%) and in unions which organise 10-30% of enterprise employees (27%).

G. Other forms of employee representation

The role and function of labour-management consultation systems have become increasingly important to allow unions and worker representatives to obtain necessary information from and convey their views to management. In doing so, unions have an avenue of influencing management's decision-making as much as possible. The trend of labour-management consultation systems can be observed in industrialised countries in general, but it is particularly so for Japanese industrial society and its industrial relations system.

Both collective bargaining and labour-management consultations are widely practiced in Japan. Of all the unions surveyed in Japan in 2002, 64.6% undertook collective bargaining from the period of 1999 to 2002. However, only 9% of unions that concluded a collective agreement did so solely through collective bargaining without utilising labour-management consultations. In addition, 22% of labour unions concluded an agreement directly through labour-management consultations without a collective bargaining process. The majority of unions (62%) first conducted labour-management consultations and then proceeded to collective bargaining. There are not many cases where labour-management consultations are not held or where labour-management consultations and collective bargaining are completely separate processes. In most cases, both processes are integrated.

In actual fact, the majority of labour unions regard labour-management consultation as more important than collective bargaining in resolving problems between management and unions. 56.4% of the unions surveyed by MHLW considered labour-management consultation as the preferred method, while 39.2% favoured collective bargaining (MHLW, 2003). Unions are more likely to discuss the subjects listed in Table 3.2 above during labour-management consultation than during collective bargaining (with the exception of wages).

Part 4:
Trends, Issues and debates: social partners' and political actors' views and proposals for future development of national bargaining systems

A. Major Issues and Trends in Collective Bargaining

Changes in the spring labour offensive system

To overcome the limitations of enterprise-based unions, the spring labour offensive ('Shunto') began in 1956 as an annual unified struggle by labour unions in all industries, with the central demand of across-the-board, simultaneous wage increases. This system has had a significant impact on the Japanese economy and society over the last fifty years, and shaped Japan's unique system of industrial relations.

However, under a prolonged national depression since the 1990s, the spring labour offensive experienced significant changes over the last decade. At the beginning of the 1990s, Rengo and its member unions decided to re-examine the policy of focusing on wage increases, partly because the rate of increase had remained low under the protracted depression. After the 1994 spring labour offensive, Rengo established a study group to consider a new strategy for the spring labour offensive. The resulting recommendation was to negotiate other issues such as shorter working hours, improvement of policies and systems, stabilization of the job market and creation of new jobs, along with the traditional issue of wage increases. Subsequently, Rengo re-branded the spring labour offensive as 'The Spring Struggle for a Better Life' campaign, an effort for the comprehensive improvement of workers' living standards. With the specific goal of raising working conditions, Rengo decided to pursue three objectives in one package:

1. wage increases,
2. shorter working hours, and
3. an improvement in management policies and systems.

The spring labour offensive, which previously had only struggled for wage increases, had changed in its character after the shift towards a diversification of demands. There were an increasing number of unions, such as the Japanese Federation of Iron and Steel Workers Union, which began to negotiate packages combining wage increases and a diversity of other demands such as the shorter working hours, lump sum payments and welfare benefits.

As the Japanese economy reached a zero growth rate and even descended into negative growth, employers also began to demand the re-examination of the spring labour offensive with the aim of curbing wage hikes and attaching greater importance to employment stability and company performance. In the second half of the 1990s, the Japan Federation of Employers Associations (Nikkeiren) proposed "a structural reform-oriented spring labour offensive" which emphasised:

1. the need to determine wage levels based on the performance of each company,
2. total personnel management cost and
3. the need to drive home the policy of determining wages based on ability and performance.

Management applied this strategy during spring labour offensive negotiations, and from there, the labour unions' across-the-board, unified negotiations began to unravel. At the General Federation of Private Railway and Bus Workers Unions of Japan, the practice of centralised collective bargaining collapsed in 1995, triggered by the Great Hanshin-Awaji Earthquake at the time. In the shipbuilding and steel industries, there were widening differences among employers in their responses to the unions' demand for lump sum payments.

Entering the 21st century, Shunto-style collective bargaining found it difficult even to maintain the so-called mandatory wage-hike (equivalent to 2%), impacted by the long recession, permeation of performance-oriented pay, persistent deflationary economy, and the 'hollowing-out' of industry, among other factors. In the 2002 spring labour offensive, the labour unions at the five major integrated steel companies (which have traditionally boasted their monolithic unity) were given separate responses from their companies' management in relation to demands for basic wage increases. It was the first time in the history of spring labour offensives that the steel unions had encountered this situation.

Also for the first time in its history, Rengo demanded job security as its top priority in the 2002 spring labour offensive and did not mention concrete figures for unified wage increase. One after another, industry-based unions gave up their demands for a base wage increase, including the large and influential Japan Council of Metalworkers' Union (IMF-JC). The wage hike rate at large companies was around 1% for the first time in history. In the spring labour offensive of 2003, the number of industry-based labour unions that refrained from demanding a wage increase was even higher than that in the preceding year. The unions placed its defense line at securing a regular pay raise.

On the other hand, the Nikkeiren argued that Japanese industry must bolster its international competitiveness and it was difficult to raise the nominal wage level. It further claimed that the target for negotiations in 2003 was to stabilize the broader employment picture by improving labour efficiency and overall productivity. It maintained that an overall reform of the personnel administration and wage systems must be carried out in order to motivate and 'bring out the best' in employees. Performance-based bonus systems have been introduced at some companies recently, and unions have found it difficult to use the spring offensive to adjust and equalise the widening differences in monthly pay across companies and industries. In that respect, the function of Shunto has weakened. Management has thus declared that 'Shunto is dead' in that industry-wide settlements for base pay hikes have come to an end. However, with regard to issues such as work and life balance and extension of retirement age, the relevance of Shunto-style negotiations remains.

In recent years, the outcomes of spring offensives have become increasingly company-specific and individualised, rather than unified and across-the-board. Further, Shunto have also receded from its use of dispute measures such as strikes and union action. However, its role will continue as a forum for negotiations and consultation on labour conditions, including the issue of wage increase. It would be worthwhile to observe future developments in the role and framework of Shunto in Japan.

Consolidation of a system to settle individual disputes

It has already been noted that the need to handle individual disputes will become stronger with the spread of a performance-based personnel system. In fact, in recent years, several tens of thousands of individual labour dispute cases have been brought before the grievance body established by the Labour Standards Inspection Office as well as other institutions. Due to this unprecedented amount of disputes, there has been a strong demand for countermeasures. In September 2000, the then Ministry of Labour planned to introduce a set of laws with the object of ensuring the efficient resolution of individual labour disputes.

The *Law on Promoting the Resolution of Individual Labour Disputes* was enacted in 2001 with the primary aim of speeding up the dispute resolution process. This legislation covered all types of labour-related disputes that have arisen between employers and individual employees. In its opening chapter, the law requires companies to try to settle such disputes by themselves first. If they fail, they can then use the institutions and services as stipulated in the law. The first institution that the parties can resort to is the general labour consultation offices with 300 locations throughout the country, including the Prefectural Labour Bureaus and Labour Standards Inspection Offices. Here, all kinds of requests for advice about labour affairs are considered. The second step is to seek advice and guidance from the Directors of the Prefectural Labour Bureaus. When a request for assistance in settling a labour dispute has been received from either one or both of the parties, the Director of the Prefectural Labour Bureau investigates into the dispute and provides advice to the parties based on

judicial precedents or other examples. The third step is conciliation by a Dispute Adjustment Commission consisting of three to twelve members set up under a Prefectural Labour Bureau. The members of the Commission are dispute resolution professionals and experts such as lawyers and university professors. The Commission can propose peacemaking plans necessary to settle the dispute.

During the period of April 2002 - March 2003, around 100,000 requests for advice were brought to the general labour consultation offices throughout Japan. In 2,332 of these cases, the parties to the disputes requested advice and guidance from the Directors of Prefectural Labour Bureaus; and advice was given in 1,731 cases. Applications for conciliation by a Dispute Adjustment Commission were filed in 3,036 cases, and agreement was reached in 1,086 cases. In 394 cases, the applications were withdrawn because the parties settled the dispute themselves before the conciliation or for other reasons. The combined number of requests for advice or guidance and applications for conciliation during that period was around 5,000. This is comparable to the number of labour disputes handled by the judiciary. Out of the 100,000 requests for advice, grievances from dismissed workers were the most common, representing 28.6% of the total; followed by disputes relating to deterioration of working conditions such as wage cuts (16.5%) and “pressure to retire early” (6.3%).

Diversification of employment types and working patterns

Diversification of types of employment and working patterns has greatly affected labour-management relations. In Japan, enterprise-based unions represent over 90 percent of local unions, and many of them only admit regular employees. The increase in the number of non-regular employees such as part-timers has furthered the decline in the unionization rate over the last few years.

The unionization rate dropped below 30% in 1983 and hit 20.2% in 2002. Until 1994, the actual number of union members showed very little fluctuation from year to year. However, the unionization or density rate continued to decline because the total number of employees in the Japanese workforce increased at a faster rate than the number of union members. From 1995 onwards, the actual number of union members began to decline sharply. The rate of decline accelerated with each passing year. In 2002, there was a decrease of 650,000 members from the total in the preceding year. The unionization rate of part-timers who work less than 35 hours a week was only 2.7 percent. This rate increased to around 3.3% in 2005.

After the collapse of the bubble economy, as personnel cutbacks proceeded at unionised companies, non-regular workers such as part-timers increased in number. However, unions did not pursue the organization of such workers at the time. This changed with the spring labour offensive of 2001, when Rengo demanded an increase in part-timers’ wages as part of its unified demands. In its action policy, Rengo placed the unionization of non-regular workers at the top of its priorities and accordingly appropriated 20% of its budget for such activities. Rengo also urged its industry-based member unions to appropriate 10% of their budget to organize non-regular workers. The diversification in the types of employment has compelled labour unions to re-examine their organizational form.

On the employer side, management has also faced problems resulting from the diversification of hiring different types of employees. One of the key questions for management is how to consult with and ascertain the views of non-unionized, non-regular workers, and reflect their views in the running of the business. At some chain stores that employ many part-timers, there have been attempts to promote part-timers to supervisory posts for the possible promotion to store managers.

Concerns have been raised about whether or not conventional labour unions are still functioning effectively, and that a new framework of labour-management relations should be considered. One possible alternative is for the legal framework to establish and develop an employee representation system, similar to the systems in Europe. Some scholars and labour union leaders are pushing for such a system, but the debate has not yet resolved.

Corporate management reform and labour-management relations

It has already been mentioned that comprehensive management reforms and review of corporate governance have occurred at many Japanese companies. The accompanying organizational changes and related laws and regulations have affected the nature of collective bargaining and labour-management negotiations within each company.

In terms of corporate organizational changes, the introduction of the holding company system and laws regarding corporate division has resulted in many companies further dividing or consolidating their businesses. However, these structural changes have produced some worrying developments, such as the disbanding of labour unions in a company and the growing unfeasibility of conducting collective bargaining and labour-management talks. In addition, labour-management problems which transcend individual companies have increased due to corporate restructures. These problems include the calculation of pension and retirement allowances at the time an employee is transferred to the new consolidated company, and how welfare benefits are handled.

In terms of the review of corporate governance, some people fear that the policies of re-examining indirect financing and attaching importance to investor relations may result in the breakdown of labour-management communications systems within a company. For example, they fear that a strict application of the rule banning insider-trading under the *Securities and Exchange Law* may hamper the exchange of information between labour and management in collective bargaining and labour-management consultations.

Moreover, in 2000, corporate accounting standards were drastically revised with the introduction of severance benefit accounting, consolidated accounting and other changes. The reaction from labour unions was mixed. On one hand, the unions welcomed the change because the new accounting standards would enhance the system's transparency. However, there were concerns that the regulations relating to severance benefits may have changed for the worse, that allowances would be reduced and personnel cut through reorganization and restructuring of group companies.

The above issues raise some important questions currently faced by both labour and management in Japan- how to adjust and improve labour-management communications in the new context of management reforms and corporate restructuring.

Impending labour law reforms

At present there are two notable pieces of legislation under deliberation in Congress. The first is the enactment of the *Labour Contract Law* and the second is the revision of the *Law Concerning the Improvement of Employment Management of Part-Time Work* (the so-called '*Part-Time Work Law*'). The impending *Labour Contract Law* has the objective of creating basic rules governing the application of a labour contract between employees and employer, including rules on the conclusion of and modifications to labour contracts, and changes to working conditions. The purpose of the *Part-time Work Law* is to promote the conversion of part-time workers into regular workers and more equal treatment between them.

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