

Japan

Introduction

In Japan, since employees traditionally tend to have strong ties with their respective companies due to the “lifetime employment practice,” approximately 90% of Japanese trade unions consist of “enterprise unions,” which are formed in a specific enterprise, company, establishment, or factory. Although many enterprise unions in Japan are affiliated with each other through their membership in higher level industrial unions¹, the role of these industrial unions is different from that of their counterparts in Europe and the United States, where industrial unions are the predominant form of labor union and have traditionally played an important role in protecting the interests of workers. The main reason for this difference is that the members of Japan’s industrial unions are enterprise unions rather than individual employees. As a result of this structure, it is generally considered that the influence of industrial unions is relatively weak preventing them from functioning efficiently to protect the interest of workers and meaning that industry-wide labor disputes such as strikes organized by industrial unions are unheard of in Japan. Workers are therefore forced to be dependent on the enterprise unions to which they belong. However, as enterprise unions in Japan are thought to be more inclined to focus on the growth and expansion of the companies within which they are formed rather than prioritizing the interests of their employee members, it is widely thought that Japan’s labor union movement as a whole falls short of adequately fulfilling its role of protecting the interest of workers.

Most enterprise unions are established in large-sized companies, but typically not in smaller-sized companies. Therefore, trade unions are rarely formed in smaller companies, and the interests of such workers are often not sufficiently protected, thereby resulting in a great disparity of working conditions between those in large companies and those in other companies.

1 Strictly speaking, “industrial unions” composed of individual workers within the same industry do exist in Japan. However, as such unions are now quite rare, “industrial unions” as used in this context means industrial affiliated unions the members of which are enterprise unions rather than individual workers.

In addition to enterprise unions and industrial unions, general unions that are not associated with a specific industry or enterprise also exist in Japan. Generally speaking, since many of the enterprise unions only accept regular full-time employees as their members, non-regular workers (e.g., part-time workers or workers with fixed term contracts) cannot join enterprise unions. As a result, general unions generally accept any workers and represent the interest of the workers who are not qualified to join enterprise or industry unions, or who have difficulty in joining enterprise or industry unions.

As indicated in the chart below, the number of trade unions and union members has been generally decreasing. On the other hand, with the recent trend of increase of non-regular workers, the number of non-regular workers who individually join general unions is increasing. Such a trend leads to acceleration of the activities of general unions, and they are increasingly playing an important role in civil case actions and collective bargaining.

Therefore, as a whole, the main activity of unions has gradually shifted to handling of individual labor disputes from that of collective labor disputes.

Further, in the past, managers traditionally did not join trade unions, but, beginning in the 1990s, there have been several cases in which managers – who had become the target of staff reductions due to business downturns – have organized trade unions within companies or joined unions beyond the framework of a single company. While, in many cases, employers tend not to recognize these entities as “true” trade unions under the Labor Union Law (Law No. 174 of 1949, the “Law”) and refuse to enter into negotiations with them, the Labor Relations Commissions and the courts tend to recognize many of these manager unions as true trade unions under the Law.

Number Of Trade Unions/Union Members

Year	Total Trade Unions	Total Members Of Trade Unions	Ratio Of Total Union Members To Total Workers
1970	60,954	11,604,770	35.4
1975	69,333	12,590,400	34.4
1980	72,693	12,369,262	30.8
1981	73,694	12,471,270	30.8
1982	74,091	12,525,529	30.5
1983	74,486	12,519,530	29.7
1984	74,579	12,463,755	29.1
1985	74,499	12,417,527	28.9
1986	74,183	12,342,853	28.2
1987	73,138	12,271,909	27.6
1988	72,792	12,227,223	26.8
1989	72,605	12,227,073	25.9
1990	72,202	12,264,509	25.2
1991	71,685	12,396,592	24.5
1992	71,881	12,540,691	24.4
1993	71,501	12,663,484	24.2
1994	71,674	12,698,847	24.1
1995	70,839	12,613,582	23.8
1996	70,699	12,451,149	23.2
1997	70,821	12,284,721	22.6
1998	70,084	12,092,879	22.4

Year	Total Trade Unions	Total Members Of Trade Unions	Ratio Of Total Union Members To Total Workers
1999	69,387	11,824,593	22.2
2000	68,737	11,538,557	21.5
2001	67,706	11,212,108	20.7
2002	65,642	10,800,608	20.2
2003	63,955	10,531,329	19.6
2004	62,805	10,309,413	19.2
2005	61,178	10,138,150	18.7
2006	59,019	10,040,580	18.2
2007	58,265	10,079,614	18.1
2008	57,197	10,064,823	18.1

Trade Unions

The General Role Of The Trade Union

As mentioned above, since industrial unions are no more than associated bodies of enterprise unions, wages and other labor condition standards are rarely decided on an industry-wide level and instead are mostly decided by individual companies as an internal matter. Accordingly, in many cases, unions do not have enough bargaining power to negotiate with the employers. As a result, unions tend to use hard-hitting actions such as picketing and the occupation of a workplace, which could lead to a conclusion within a relatively short period of time.

Further, every spring, trade unions, at the same time and en mass, go on strike in order to demand wage increases and the like (called “*shunto*,” meaning a “spring strike”). However, these “*shunto*” rarely meet expectations anymore and are therefore becoming more and more meaningless.

Constitution Of The Trade Union

In order for a particular union to receive the minimum protections granted to trade unions under the Law (e.g., exemption from criminal and civil liability and protection through civil litigation against unfair treatment), a trade union should be independently formed (mainly of workers) for the main purpose of maintaining and improving work conditions and otherwise improving the economic status of workers. In addition to the foregoing, in order for the union to be eligible to enter into collective agreements with employers, a union must not: (i) have any person representing the interests of the employer participate in the union; (ii) receive financial support from the employer; or (iii) have a political or social movement as its main objective.

Since the Law does not provide any specific regulations concerning the organizational constitution of trade unions, workers can freely determine the organization. Additionally, a worker's decision to join or leave a trade union, in principle, is at the complete discretion of each individual worker. Because of this, many unions in Japan enter into collective agreements that provide that an employer shall not hire (or fire) anyone who has not joined the union ("union shop agreement"), and, usually, the Japanese courts will find that such union shop agreements are enforceable to a certain extent. As a general rule, however, despite the requirement that non-members be dismissed, most union shop agreements are imperfect (or flexible) ones that allow wide-ranging exceptions, which often leads to a lack of enforceability.

The Scope Of Trade Union Rights In Businesses

Collective Bargaining

The Law provides trade unions with an exemption from criminal liability for rightful acts such as collective bargaining, and employers, without a justified reason, are prohibited, as an unfair labor practice, from refusing to enter into collective bargaining. In Japan, due to the fact that trade unions adopt a "per company" structure, it is common for collective bargaining to also be conducted between individual enterprise unions and their individual companies.

Further, under the Law, employers are required to enter into collective bargaining with every trade union that meets the legal requirements as mentioned above, and therefore, when there are multiple trade unions within a specific company, the company is required to collectively bargain with all such trade unions that seek to do so.

An employer bears the duty of carrying out good-faith negotiations through collective bargaining, but judicial precedents have held that employers may break off collective bargaining when (i) negotiations are deadlocked and (ii) it has therefore become difficult to expect further progress in such negotiations, despite the employer's continued pursuit of good-faith negotiations.

Collective Actions

In cases where a resolution of a problem cannot be reached through negotiations between an employer and a union, the employees may resort to a strike or other types of collective actions to force the employer to accept their assertions. Employers, on the other hand, are also legally permitted to take countermeasures, such as lockouts, to such actions. In Japanese labor disputes, most workers tend to participate in a strike or a work slowdown, during which it is common for workers to hold gatherings, demonstration marches, sit-ins, or pickets on the premises of the facility involved.

However, in recent years, the number of strikes initiated by trade unions has been decreasing, particularly those by trade unions in large companies.

Number Of Collective Labor Disputes

Year	Total Disputes	Accompanied With Dispute Acts					
		Total	Strikes For Half A Day Or More	Lockouts	Strikes For Less Than Half A Day	Slowdowns	Other
1965	3051	2359	1527	50	871	638	-
1970	4551	3783	2256	32	2356	101	1
1975	8435	7574	3385	25	5475	55	1
1980	4376	3737	1128	10	3038	37	5
1984	4480	3855	594	5	3475	13	2
1985	4826	4230	625	3	3834	7	4
1986	2002	1439	619	7	1031	17	4
1987	1839	1202	473	2	904	7	-
1988	1879	1347	496	5	1031	2	2
1989	1868	1433	359	8	1240	3	1
1990	2071	1698	283	2	1533	7	-

Year	Total Disputes	Accompanied With Dispute Acts					
		Total	Strikes For Half A Day Or More	Lockouts	Strikes For Less Than Half A Day	Slowdowns	Other
1991	1292	935	308	3	730	10	6
1992	1138	788	261	3	640	7	3
1993	1084	657	251	1	500	11	-
1994	1136	628	229	2	486	7	-
1995	1200	685	208	1	549	7	-
1996	1240	695	189	4	568	4	4
1997	1334	782	176	2	655	4	5
1998	1164	526	145	4	441	3	-
1999	1102	419	154	3	301	2	-
2000	958	305	118	1	216	2	-
2001	884	246	89	2	176	-	3
2002	1002	304	74	-	253	-	2
2003	872	174	47	-	145	-	-
2004	737	173	51	1	142	-	-
2005	708	129	50	-	99	-	-
2006	662	111	46	-	82	-	-
2007	636	156	54	-	118	-	1

Other Rights Of Trade Unions

Under the Labor Standards Law (Law No. 49 of 1947, the “LSL”), an employer that intends to set forth certain systems, including flex-time, overtime work, and a holiday work system, is required to enter into a written agreement with a trade union in which more than half of the employees of the facility premises participate or with an employee representative.

Further, the LSL requires an employer to provide the rules of employment and to submit them to the Labor Standards Inspection Office with an opinion from a trade union in which more than half of the employees of the facility premises participate or with an opinion from an employee representative.

Collective Agreements

As mentioned above, since most of the trade unions in Japan are enterprise unions, it is also common for separate collective agreements to be entered into with each individual company. At the present time, among the trade unions that are eligible to enter into a collective agreement, around 90% have actually entered into collective agreements with the companies to which they belong.

Work conditions determined by a collective agreement are, in principle, to take direct effect between the company and the individual union members. Additionally, when the provisions of a collective agreement conflict with provisions in the rules of employment or an employment agreement, the provisions of the collective agreement, in principle, take precedence.

Works Councils

There are no provisions in Japanese law for Works Councils.

Trade Union Employee Protection Rights – Unfair Labor Practices

To provide a remedy for the rights of workers as mentioned above, the Law prohibits employers from acts that constitute unfair labor practices. Employers are prohibited from:

- Dismissing an employee or engaging in other disadvantageous treatment of an employee because he or she is a member of a trade union or has engaged in the lawful activities of a trade union or the like;
- Refusing to bargain collectively with the representatives of its workers without a justified reason;
- Controlling or intervening in the organization or operation of a trade union, or providing financial support necessary to the operation of a trade union, thereby causing the loss of the independence of the trade union; and,
- Dismissing an employee or engaging in other disadvantageous treatment of an employee for the reason that such employee had petitioned the Labor Relations Commission for relief from an unfair labor practice, or submitted or forwarded evidence during a hearing on unfair labor practices or a labor dispute mediation by the Labor Relations Commission or the like.

When an employer has engaged in the above acts, an employee may seek an order of relief from the Labor Relations Commission or may demand compensation for damages, a declaratory order, or a preliminary injunction in court.

Other Types Of Employee Representation

While, in Japan, working conditions of employees tend to be decided through collective bargaining between each enterprise union and the company to which it belongs, the procedures to negotiate the resolution of complaints over employee treatment and other labor relations problems are not limited to collective bargaining. In Japanese labor practices, many companies set forth a labor-management consultation system and grievance procedure to resolve such labor problems more peacefully than through collective bargaining.

Labor-Management Consultation System

Since a labor-management consultation system is established in Japanese labor practice rather than by legislation and, therefore, is not defined under Japanese labor law, labor-management consultation systems vary. Types of labor-management consultation systems include:

- Pre-collective bargaining consultation sessions designed for a company and union each to obtain information and/or the intention of the other party before bargaining actually begins;
- Negotiation procedures that substitute for collective bargaining and are aimed at resolving issues;
- Procedures for employees to participate in decision making regarding the management of the company apart from the subject of the collective bargaining; and,
- Procedures that provide for pre-event consultation concerning personnel matters in accordance with the provisions set forth in a collective agreement between a company and the enterprise union.

Many companies in which enterprise unions are formed enter into a collective agreement that provides that labor disputes arising between the company and employees shall be settled through labor-management consultation systems; therefore labor-management consultation systems play a major role in labor disputes in Japan.

Grievance Procedure

Grievance procedures are designed to deal with problems concerning the interpretation and application of a collective agreement between a company and the union, and other day-to-day employee grievances, and many companies and unions enter into collective agreements that provide for grievance procedures. However, in many cases, since the rules of grievance procedures set forth in collective agreements are rather simple, such grievance procedures are rarely used to settle labor disputes.

Diversity In Dispute Resolution Procedures For Individual Labor Disputes

Despite the decrease of collective labor disputes, the number of civil cases filed with the district court regarding individual labor disputes (including provisional injunction cases) has dramatically increased from 1,054 cases in 1991 to 3,168 cases in 2004. Although these figures include collective labor disputes, it appears that most cases are related to individual labor disputes such as termination of employment and unpaid wages, which may reflect increasingly severe employment conditions and rapid changes in labor-related laws during the period.

In response to these changes, new settlement measures of individual labor disputes have been introduced in addition to the traditional civil action procedures. The major new systems recently enacted for individual labor disputes are: (a) consultation and mediation procedure by administration under the Law on Promoting the Resolution of Individual Labor Disputes (Law No.112 of 2001); and (b) labor judgment procedure under the Labor Judgment Law (Law No.45 of 2004).

Unions can represent workers in the labor judgment procedure, with the approval of court. Accordingly, unions are expected to increasingly advise their members to utilize such new dispute resolution systems.

Consultation And Mediation Procedure By Administration

As an extra-judicial procedure, the Law on Promoting the Resolution of Individual Labor Disputes provides consulting and information service by the Labor Office, advice and instruction by the Chief of the Labor Office, and mediation by “Dispute Coordinating Committee” for the purpose of fast and appropriate resolution of individual dispute by administrative office. The number of cases claimed by this system is as follows:

Year	Number of claims for advice and instruction.	Number of claims for mediation.
2001	714	764
2002	2,332	3,036
2003	4,337	5,352
2004	5,287	6,014
2005	6,369	6,888
2006	5,761	6,924
2007	6,652	7,146

Labor Judgment Procedure

As a special judicial procedure in connection with the normal civil procedure, the Labor Judgment System began on April 1, 2006. Due to the legislative intent of this system to provide fast, appropriate, and effective resolution based on each actual situation considering the relation of rights between employer and employee, the new system has the following characteristics: (a) the duration of trial is limited to within three trials, (b) trials are basically proceeded by oral arguments except for the documents submitted for the first trial, which consist of the written petition, answer, evidence, and description of evidence, and (c) the Labor Judgment Committee (consists of one judge and two members who have labor expertise) can render flexible judgment which is necessary to resolve the individual labor disputes. The number of motions to Labor Judgment is as follows:

Year	The number of motions to Labor Judgment
2006(April 1 to December 31)	877
2007	1,494

If a party raises an objection to the labor judgment, the case will be tried as a regular civil case. However, almost 80% of the cases under the Labor Judgment System have been resolved without proceeding to regular civil trial. It is expected that the number of motions to Labor Judgment will continue to increase due to the system's effectiveness.