

8.1.1.1.1.1

8.1.1.1.1.2 *Social Dialogue in Relations to Labour Law and Employment Law involving the Government in Japan*

8.1.1.1.1.3

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I The definition of “Social Dialogue”.

Social partnership between the Employer and the Labour will be realized through social dialogue involving the Government. In this paper the recent practices of social dialogue in Japan are explained, but they are limited to social dialogue involving the Government. The definition of “social dialogue” in this paper ranges from the “tri-party-ism” to the “two-party-ism. The “tri-party-ism” is composed of (1) workers’ representatives (the Labour), employers’ representatives the Employer) and government representatives (Suzuki & Rengou at 1), and (2) the “quasi-tri-party-ism”, is composed of scholars and lawyers and like as the members of social dialogue. The ”two-party-ism is composed of (1) social dialogue between the Labour and the Employer. Some of documents published by the ILO refer the terminology of “social dialogue” as containing dialogue between workers representatives and employers’ representatives, excluding government representatives (e.g. ILO: 2006, at p. 1). However, there are other types of social dialogue. Based on the “two-party-ism” (1) The first type is composed of the parties of the Government representing public employers and Trade Unions in the public sector representing public employees. (2) The second type is the “quasi-two-party-ism” In this type, in addition to the representatives of the Labour and the Employer, the Public Members like Labour Law and Employment Law professors and labour lawyers are appointed as the members of the official committees administered by the Ministry of Health, Labour and Welfare (MHLW), but in reality the Ministry of MHLW acts as the other party that prepares raise the issues and agenda from general perspectives, and sometimes leads the framework of discussions.

It has not been common to make use of this terminology or word: ”social dialogue” in documents distributed to Japanese concerned, including government officials, trade unions, employers associations, researchers and professors and the Government.

II The Practices of Social Dialogue in the Tri-party-ism involving the Government

Roughly speaking, there are two types of “social dialogues” under the “tri-party-ism” in Japan. The first type is held on an ad hoc basis. The second one is an institutionalized basis, which means that they set up committees under the jurisdiction of the Ministry of Health, Labour and Welfare, though they are to be held on regular basis or irregularly whenever called.

8.1.1.2. 1 Ad hoc Type

8.1.1.3.

The first type is occasional social dialogues where the Government, Rengou: the national centre of trade unions (the Labour) and the Japan Employers’ Association (the Employer) in Japan join in discussion and consultation at officially set up meetings or conferences. This is called “sei-rou-shi Kaigi”(the Government, the Labour, the Employer: GLE) in Japanese. The merits of this type of social dialogue are found in signing agreements in writing at the end of social dialogues at the highest national level on labour issues. They include cooperation between the Employer and the Labour, and also the promises by the Government expressed in agreements that it would appropriate certain budget on the programs agreed and its effort to promulgate law and regulations concerned. The conferences or meetings based on this sort of social dialogues have not been institutionalized because they have been held occasionally, depending upon the agreements between the Government, the Japan Employers’ Association and the Rengou: the national centre of trade unions in Japan. These conferences have adopted the general agenda at large in the past that referred to productivity issues and workers benefits, sometimes to the unemployed and the pensioners.

8.1.1.3.1

8.1.1.3.2 The recent Case: the GLE Conference in 2002 on the Employment Policy

One of the recent social dialogues of this kind was held at one of the government buildings on December 4, 2002 (The GLE Conference: 2002, at p.1). The Tri-party Agreement on Employment was signed between the Japanese Government, the Japanese Trade Union Rengo and the Japan Employers Association.

This agreement included as the agenda: No. (1) on the maintenance and promotion of employment that required some actions to the Employers, the Labour, and the Government.

They agreed on maintaining and securing employment as a general policy. The management would try their best efforts to secure and maintain employment on one hand, the labour would cooperate with management for maintaining employment by taking cooperative actions on introducing flexibility in regulating labour conditions on the other. This policy stated to allow the Employer side to take labour cost in consideration and the Labour side to cooperate with employers' proposals on work-sharing systems at worksites if introduced, and on working hours if extended.

As the agenda No. (2), the government role on the promotion of employment opportunities was agreed. The Government would increase the efficiency of and put stress on the labour insurance systems, as well as it would give support for maintaining and securing employment opportunities. This second agenda was related to the promotion of employment. The Government promised that it would build systems to create the opportunities of re-employment and new employment, as well as to reform the employment insurance system. In this connection, the Government would increase staffs in number at its public job agencies for helping workers to find out job opportunities, career consulting, trial employment, order-made occupational training, etc.

The third agenda No. (3) was related to the reformation of the labour market. The Government, the Employer and the Labour agreed on the deregulations of labour policies and on the amendment of Labour Law for advancing the diversification of types of employment.

8.1.1.4. 2 Institutionalized Type

The second type of social dialogue under the quasi-tri-party-ism has been practiced in Japan. The terminology of "the quasi-tri-party-ism" is used in this paper because the Public Members are appointed in stead of the Government representatives, in addition to the representatives of the Employer and the Labour are asked to attend the meetings or committees dealing with labour issues by the Government: MHLW. The Public Members are scholars specialized in industrial relations and Labour Law and Employment Law, practicing labour lawyers, and other specialists, who are appointed by the Government: MHLW, The Government: MHLW plays the important or vital roles in these social dialogues by designing, supporting these committees and discussions. They are to set up the framework of agenda to be discussed or on dialogue, to appoint members of meetings or committees, to lead discussions or dialogue there, to take notes of discussion or dialogue there, to publish minutes of each meetings or dialogue and others. This type of social dialogue is undertaken in the style of official meetings or committees that are prepared and set up the Government: MHLW, the objects of which are designated by the regulations promulgated by the Government. The names of this institutionalized social dialogue are the Advisory Councils to the Government: the Minister of Social Welfare and Labour or "Shingi-kais" in Japanese, which are placed at

the highest position in bureaucracy in terms of proposing law and regulation to the Cabinet. Under each Advisory Committees, such as the Advisory Committee on Labour Policy (Roudou Seisaku Shingi-kai), special sub-committees, such as the Working Conditions Committee (Rou-dou-jouken bunka-kai) are placed. And each special sub-committee has its own the Study Meetings (Kenkyu-kais) in where mostly representatives of the Labour, the Employer and the Public attend. These members are qualified to attend and to express their opinion on the matters, which were already set up by the Government: MHLW.

There are three Advisory Committees now in action. (1) The Advisory Committee on Labour Policy, (2) the Advisory Committee on Minimum Wage, and (3) the Advisory Committee on Labour Insurance. The first one above mentioned is composed of eight Study Sub-committees. These main sub-committees are on Working Conditions, on Labour Accidents Compensation Insurance, on Safety & Health, and on Working Life (MHLW, Shingikai September 2006).

(1) The Recent Case: The Study Committee on Labour Contracts and Working Hours

As one of quasi-tri-party social dialogue in Japan, the Advisory Committee on Labour Policy above mentioned can show a good example. It has set up its own the Sub-committee on Working Conditions (Roudou Jouken Bunka Kai in Japanese) in January 2001. Twenty-one members, who were composed of seven members each from the Labour, the Employer and the Public, had been appointed in advance of the first meeting by the Government: MHLW. The Public members are Labour Law professors and labour lawyers. At the first meeting, the administrative staffs of the Government: MHLW explained the rules of the Sub-Committee and the range of discussions at the Sub-Committee.

Since then this Sub-Committee has been held in fifty-nine occasions in the past more than five years. The Sub-Committee has dealt with many basic issues in the field of individual employment law and labour law, such as the Labour Standards Act, but nothing about collective labour law such as Trade Union Act. The important points in relations to quasi-tri-party social dialogue is that the framework for consultation at this Sub-Committee was announced at the first meeting by the staffs of the Ministry of Health, Labour and Welfare because it was the Government that asked to have social dialogue between the Labour, the Employer and the Public at the Sub-Committee. This means that the Government set up the framework of the discussion at the Sub-Committee.

The latest report published, that is the proceedings or minutes of the meeting held on 26 June, 2006, is the interim report of the discussion at this Sub-Committee. The issues ranged very widely in the employment law and labour law fields. The issues were labour contracts, employment notices, working hours, unilateral changes by employers on working rules, dismissals, paid holidays, and others. Then, this proceeding or minutes of discussion shows us that the discussions at the Sub-Committee went so far as suggesting the amendment of the Labour Standards Act. It refers to Article 15 Sub-section 1 prescribing that employers shall clearly show the working conditions to employees to be hired at the time of hiring. And it also refers to the amendment of the Chapter Four of the Labour Standards Act dealing with working hours, overtime and holidays (MHLW, June 2006).

This interim report is now under public debate (e.g. Japan Labour Lawyers Association, 2006), so that it has not been submitted to the Advisory Committee on Labour Policy yet, which has the authority to submit the final report and bill to the Minister of Health, Labour and Welfare.

(2) The Recent Case: The Recent Advisory Committee's Decision on New Legislation

After exhausting such a procedure mentioned above, the four bills related to Labour Law and Employment Law passed through the Diet on 26 October, 2005, and they were enacted. These laws are the Amendment of the Safety and Health Act, the Amendment of the Workers Compensation Insurance Act, the Amendment of the Collection of Labour Insurance Premium Act, and the Amendment of the Shortening Working Hours Act. .

III The Practices of Social Dialogue in Two-party-ism involving the Government

Apart from the tri-party-ism, there is no doubt about the practices prevailing among Japanese industrial relations that the “two-party-ism” of social dialogue has been working, such as in Spring Offensive (Shun-tou). Among them the first type is working in labour-management joint consultation systems and collective bargaining practices between the Labour and the Employer in Japan. In these cases, it will be noticed the fact that trade unions in Japan are mostly organized within establishments with loose affiliation to the national centre: Rengou and the Zenroutou. However, nothing more will be referred to the reality of this type in this paper because this paper focuses on social dialogue that the Government is involved.

Interesting enough there are two types of social dialogue based on the “two-party-ism” involving the Government in Japan. These types are related to the processes of legislating labour policies, labour law and employment law. The parties in these types of social dialogue are (1) the Government on one side and the Public Employees Unions as parties on the other side, which is normal labour-management consultation on labour relations, laws and regulations between the Labour and the Employer. The law and regulations in this context includes special legislation providing wages, and other basic rules of working conditions of public employees because they are appropriated to government budgets that are funded by tax revenue.

The second type (2) is based on the “quasi-two-party-ism where the Government does not appear as a party itself in this sort of social dialogue, but as a party for setting meetings and the Public Members, in addition to the Labour and the Employer, as an official party.

Almost all cases of social dialogue types based on “the two-party-ism” in practices are carried in the ad-hoc style by dealing with the amendment of law and regulations.

The Recent Case: The Research Committee on Fundamental Labour Rights of Public Employees

The most recent case of the first type is concerned with legislation dealing with the Fundamental Labour Rights of public employees. It was reported in June this year of 2006 that the Ministries of the Government and Rengou of the Japan national centre of trade unions agreed to set up the Research Committee (chousa-kai in Japanese) on the Fundamental Labour Rights of Public Employees under the Government Employment Adjustment Council. The members of the meeting were from the Government as an employer and the Rengou as representing the Labour. This was based on the “two-party-ism”. At the meeting the same three numbers of the representatives attended from each side. They were, on one side, the Ministers of the Ministry of Health, Labour and Welfare, the Ministry of Administrative Reform, and the Ministry of Public Management and Home Affairs. On the other side, three representatives from the General Secretary of the Rengou, the Local Government Employees Union, and the National Government Employees Union attended. They agreed to set up a special Research Committee composed of scholars from ten to fifteen members. The agenda at this Committee would be (1) the scope of “public service” that should be reexamined in order to make public service more efficient, (2) the categorization of public employees that should be reconsidered for cutting the number of public employees, and (3) the industrial relations including Fundamental Labour Rights of public employees that have been restricted under the laws and regulations (Business Labour Trend, July 2006, at 46).

Originally in June 9, 2004, the Head Office of Administrative Reform Promotion of the ruling Liberal Democratic Party submitted the report to the Government that demanded to

amend the Public Employees Act for decreasing the number of public employees, but at the same time the report drew attention to the Government to have the “sufficient exchange of opinions with Shokuin Dantai (registered public employees’ associations or trade unions of public employees) on designing and introducing systems dealing with public employees and also to have the broad range exchange of opinions on the Fundamental Labour Rights of Public Employees”(LDP, 2004, at p.2). Then in October 28, 2005, the Head Office announced by putting stress on cutting the number of public employees in number, that was later in June 30, 2006 announced as 5% cut out of all public employees in five years, but at the same time the Head Office, in its report, drew attention, by saying “to append disciplinary discharge, Fundamental Labour Right of public employees, and job security as possible points at the table for discussions in the future” (LDP, 2005 at 1). This special Research Committee is based on the Government Order concerning the Promotion of Administrative Reform. .

8.1.1.4.1.1.1 III Some Comments

In many cases of social dialogues involving the Government mentioned above, the Government had positive roles to formulate labour policy, labour law and employment law, even though the present Government has taken the deregulation policy in general under the neo-liberal economic theory. When the results of social dialogues between the Labour and the Employer and the Government demanded or required the Government to take its positive role in consideration of present working conditions, employment situations, industrial relations, and so forth, the government has been requested to play its role. This role of the Government has been not only that of drafting the law and issuing regulations, but also that of taking advantage of the opportunities of participating in social dialogue.

The roles of the Government: MHLW are fussy in both the “quasi-tri-party-ism” and the “quasi-two-party-ism” because the Japanese Government has its tradition of “administrative guiding to the people”. This concept includes many administrative techniques to bring the people concerned to the conclusion that the Government officials wanted to reach (M. Young: 1984, at 120-152; M Dean: 1997, at 194-221; etc.). The Japanese Government has acted as the guardian taking superior positions to the people, though this role has been diluted in the process of democratization of the Japanese society. In the cases of social dialogue involving the Government, it is the Government to decide the framework of discussion or agenda, and even to guide the direction of the discussion in some cases. No one can tell whether or not the government officials concerned would have met the members of committees unofficially just before the committees would be held. They would have suggested the direction of discussion or dialogue behind the scene, even suggested the direction of the conclusion of the final reports under the table. The government officials or staffs would have drafted in advance for

the final reports referring to the discussion taken place in the committees or sub-committees. . If these would have happened, they are their works under the table of social dialogues or meetings. The positions as committees and sub-committees are very honourable and prestigious with payment to these jobs paid by the government, so that it is presumed that the committee and sub-committee members placed generally in the weaker position implicitly in comparison to the Government. These situations are understandable because these members of meetings or committees has been selected by the Government in advance, although the representatives of the Employer and the Labour are appointed under the prior consultation with the Japan Employers Association and the Rengou in advance, or authoritative professors of Tokyo University, Keio University or others would be asked to introduce academics to the government (some of government officials and staffs would be the graduates from such Universities). Therefore, the Government could play important roles in managing committees or discussions and drawing the conclusion, even though it is not the party of social dialogue involving the Government. This is the reason for this type of social dialogue is categorized in this paper as the “quasi-tri-party-ism” and the “quasi-two-party-ism”.

Other problem is how to distinguish the meaning of the concepts between the “social dialogue” which is new to Japanese and “joint consultation” that has been used for Japanese. The tri-party-ism between the Government, the Labour and the Employer was called “joint consultation at the Government level” in the past. If the contents are similar each other, then the terminology of “social dialogue” is nothing but repainting the words.

The important issue is, however, if and whether the concept of social dialogue would require including the voices and opinions from the employers of small and medium size enterprises, and from rank and file workers at shop floor. The problem is how to gather these voices and opinions. It will be useful to introduce the new concept of “Social Dialogue” to Japan, if the parties of social dialogue at the Government involvement could pick up their opinions and agenda systematically about social problems they face. Social issues in this sense will include opinions and agenda about the underpaid organized workers, unorganized short-term working poor, unorganized part-time workers, unorganized dispatched workers, unpaid workers, youth with no, employment, education and no training (NEET), and even the people who need “social protection” under public assistance. Some of policies to pick up their voices and opinions on these issues have been taken in Japan recently, such as by the publication of proceedings or minutes of the Government Committees through website, but they do not necessarily guarantee opportunities for these people to response to the Government concerned. Social partnership among the people will be realized through social dialogue involving the Government.

Footnote

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