LABOR LEGISLATION IN JAPAN

by MITSUTOSHI AZUMA
Professor of Civil and Labor Law

I. *Establishment of the Factory System in Japan and Labor Problems*

It was only after the Meiji Restoration (1867) that factory production, as a system, came into being, and during the years 1885 through 1895 that such a system attained a dominant position in manufacturing industries. The "Workers' Conditions," a collection of reports issued by the Ministry of Agricultural and Commercial Affairs of those days, throws some light on how the workers then were situated. Some labor problems shown in the "Workers' Conditions" were as follows.

(1) Excessive Exploitation of Labor

The hours of work ranged from 15 to 16, in some cases exceeding 20 hours per day, night work being customary. To raise the work efficiency, a relentless system of wage checkoff was in force, and often those who did not come up to the standard of efficiency were liable to receive harsh treatment. Especially as the greater part of the workers comprised women and children, over-work produced all the more regrettable condition.

(2) Frequent Accidents in Factories

What with inadequacy of equipments, accidents occurred frequently in factories, and what with the diminishing degree of care taken by overworked laborers, occupational diseases spread as well. In the case of those accidents, which were more or less an inevitable concomitant of factory production, the employers used to pay as compensation only what amounted to a mere pittance.

(3) Rampancy of Disreputable Employment Brokers and Forced Labor

The source of supply of factory workers was the tenant farmers of agricultural communities which were impoverished under the pressure of the semi-feudal tenant system. Employment brokers acted as intermediaries to draw the supply of factory labor from this source. Through fraudulent propaganda, they often enticed farm children and took them away to factories in a manner akin to kidnapping. A labor contract was concluded between the employment broker and the head of the farming family concered,

who received advance wages from the former. These advanced wages were to be repaid gradually by the laborers (children of the family) out of the amount receivable in the factories. In a sense this advance may be likened to the price derived from a kind of human-traffic. To make the matter worse, part of the money advanced by the employers to the head of the family was pocketed by the employment brokers in the course of the transaction. The wages thus advanced also served as a deterrent for such laborers as were desirous of leaving the factories because of their inability to endure the hard work imposed on. Besides, the employers, in their efforts to forestall leaving and desertions of their laborers, housed them in dormitories and prohibited them from going out. One notorious instance of this kind was the so-called "prison cells."

(4) Subsistence Wage of Slave Standard

The remuneration paid for forced labor of a consuming nature was incredibly low.

II. *Early Labor Legislation*

1. Controlling Regulations

In view of the fact that the frequent accidents in factories were not only injuring the factory laborers themselves but also causing unforeseen damage to people outside, regulations to control manufacturing plants came into force one after another as early as about 1877. Intended to give police supervision over factory equipments in order to prevent the occurrences of disasters some of the regulations, introduced in each Prefecture separately, also aimed at controlling employment brokers, others, in rare cases, limited the hours of work for young people. However, as under those controlling regulation the handling of labor problems was entrusted to police officials as side-work to some extent, their effectiveness could not be expected from the first. Those regulations deserve attention only as a forerunner of the labor legislation in Japan.

2. Public Safety Police Act

Although walkouts of factory laborers were already recorded in the twenties of the Meiji Era (1887–1896), they were not orderly strikes of organized laborers, but rather in the nature of uprisings of workers who no longer could endure the imposed slavish labor. Therefore, several of the controlling regulations introduced in Prefecture-wide scope, as referred to before, prohibited strikes of this kind as an infringement on public peace and order.

Since the close of the second decade of the Meiji Era, however, the

collective resistance of laborers against oppressive employment gradually grew in frequency. In 1897 the formation of the *Rodo Kumiai Kisei Kai* (Labor Union Organizing Federation) maked an epoch in the history of the labor movement in Japan, under which the Iron Wokers Union, Printers Union, etc. were established. But the Public Safety Police Act of 1900 suppressed the union movement which was just budding. Under the provisions of this act, persons intending to organize the laborers were liable to corporal punishment or fines on the charge of "inducing or instigating strikes." Thus the union movement in Japan was blocked at its start and came to a standstill, and there followed, partly also due to internal troubles, a period of suspense which lasted until 1917.

3. The Factory Act

With the advent of the Factory system as the basis of production, the Meiji Government became aware of the possibility that the reckless and exhausting employment of labor might prove to be a heavy drain on the entire labor force, which was in the long run the mainstay of the factory system, and set to work to institute some legal provisions for the protection of labor. The first tentative draft of the Act of 1887 had to be re-written several times; a number of difficulties caused by the obstinate opposition of the capitalists had to be overcome and after a fight lasting many years, the Factory Act of 1911 was enacted, though not finally put into effect till 1916.

The salient points of the Act were as follows:

(1) Protection of female and young workers in factories.

(a) Limitation of hours of work (to 12 hours) and prohibition of mid-night work.

(b) Prohibition of employment in dangerous or deleterious works.

(2) Aids to relieve sufferers from accidents.

It was made mandatory for the employers to pay compensation for workers killed or injured in factory disasters, or taken ill by occupational diseases.

(3) Factory Supervision.

To ensure the intended protection of workers as mentioned, a specialized supervisory agency known as factory controllers was set up, charged with detecting violations of the Act, which were liable to penalty.

Although this Factory Act restricted the scope of factories to be covered by it, it was nonetheless worthy of the name of a labor legislation in that it adopted a comprehensive relief system in reference to factory disasters—though the prescribed amounts of aids were not large enough to give adequate relief to the workers—that it limited the hours of work for women and children who then accounted for a large proportion of the factory workers in Japan, and that it established a specialized supervisory agency

to ensure its enforcement on the basis of general provisions, to replace the haphazard control by police officials.

However, a legal measure for the protection of labor cannot be effective, unless it is consciously supported by the laborers who are aware of the legally protected conditions of work as their own rightful assets. As the labor union movement in Japan at the time the Factory Act came into effect was in a state of suspense, it could scarcely be expected that the law would function as prescribed.

III. *Development of Labor Legislation.*

During the early years of the Taisho Era, no labor problems of a new character came into prominence. In 1916 the Factory Act came into force, and soon thereafter the relief system under the Act found its extended application in mining labor and Government-operated enterprises. This was the enlarged extent of the legislation, with nothing new to be noted in particular.

However, World War I then being fought in Europe created a new situation in Japan toward the end of that conflict and in the post-war period, bringing with it new labor problems. The first repercussion was unemployment. Factories which had absorbed a large number of workers, riding the waves of the wartime boom, had to make large-scale readjustments of payrolls or to close down, when the post-war reaction of depression came, resulting in a tremendous number of discharged laborers flooding the streets of the towns all at once. The second was the revival of the labor union movement which had been regaining strength by degrees since about the end of the war.

1. Employment Agency Act

As an emergency measure to relieve unemployment, municipally-operated employment offices were established one after another in the principal cities after 1919, and in Tokyo the Central Employment Office came into being for coordinating the free services of the municipal agencies throughout the country and also for maintaining liaison among them. The result of codification of this system was the Employment Agency Act of 1921.

In the early years of the Meiji Era, there appeared in the first place the notorious agents as described before in the role of employment intermediaries. Soon privately-operated employment offices, run on a profit basis, gradually took part in the business, many of them, however, being of questionable character. The Employment Agency Act, therefore, embodied provisions not only for relieving the emergency unemployment situation but also for exercising administrative supervision over private employment offices.

2. Health Insurance Act

In view of the social unrest engendered by the presence of the unemployed population and the revival of the union movement, and particularly under the pressure of the Labor Constitution included in the Peace Treaty of Versailles as well as resolutions and recommendations of the International Labor Conference, the Government initiated various protective measures for the workers. It enacted the Act to Prohibit the Manufacture of Lucifer-matches (in 1921) and other acts of a similar nature, revised the Factory Act (in 1923) and also introduced the Factory Workers Minimum Age Act (1923) and the Health Insurance Act (1922). Among these, the introduction of the Health Insurance Act merits our particular attention as the first attempt at social insurance legislation in Japan, since the Act, unlike the aids under the Factory Act, intended to extend relief not only service-related injuries but also to other damage and injuries in general.

3. Labor Union Bill

The labor union movement in Japan, which had been crippled by the Public Safety Police Act, was given an impetus by the influx of socialistic thought toward the end of the war and particularly during the post-war years. With the increase in the number of labor disputes, progress was made in the organization of workers. In the face of the rising tide of the labor movement, backed by the growing international force of the working class, the Government had no alternative but to abandon the high-handed policy of control and prohibition such as was exemplified by the Public Safety Police Act. In the circumstances, with the object of establishing a legal control over the union movement in one form or another, rather than suppressing it altogether, the Labor Union Bill was presented to the Diet in 1926. It met with vigorous opposition from capitalist and military interests, and was shelved without being deliberated upon. However, by way of what may be likened to a recompense, Article 17 of the Public Safety Police Act was abolished, and the Labor Disputes Mediation Act came into existence for bringing labor disputes to an amicable settlement through mediation, instead of regarding such disputes as out-right violations of public peace.

IV. *Period of Inactivity in Labor Legislation*

Since the beginning of the Showa Era, the influence of the military group came to the front. The labor union movement in Japan, which had been more or less linked with socialistic thought, had somehow to be caught in the net of laws for controlling so-called dangerous thoughts, provided

by the Public Peace Maintenance Act (1925) and the Act for Punishing Violence and the Like (1926). On the other hand, it had to suffer its own trouble in the form of internal disruption, with the result that for the second time a period of stagnation set in, followed by the entire disintegration of the movement after 1935 when the Sino-Japanese conflict broke out. In consideration of the above-mentioned general tendency, it was no wonder that the Labor Union Bill, which was again submitted in 1931, was ignored and pigeon-holed.

There were almost no notable labor legislation during the period from the beginning of the Showa Era up to the out-break of the Sino-Japanese conflict. If at all, the various acts that had been introduced before or during the Taisho Era were grudgingly integrated and extended.

1. Workers' Accident Relief Act and Workers' Accident Relief Liability Insurance Act

The system of giving aid to workers, which had extended in scope of application from factories to mines and Government-operated enterprises, was further extended in 1930 by the Workers' Accident Relief Act to cover out-door workers. But as building work in Japan largely depended on an intricate and extensive system of sub-contracts, there arose a strong objection from the operators to the scheme on account of the expected burden of relief expenses. The Government, therefore, decided to enact the Workers' Accident Relief Liability Insurance Act, at the same time, in order to enable the operators to have their liability insured by the Government.

2. Retirement Reserve and Retirement Allowance Act

In view of the fact that the disputes caused by the personnel pruning during the severe depression period following the year 1928 often centered around the question of retirement allowance, the Retirement Reserve and Retirement Allowance Act was enacted in 1936. The act required employers to set aside a reserve for the specific purpose, for ensuring the payment of a discharge bonus or retirement allowance.

3. The Shop Act

As there had been no legal provision regulating work done by employes in merchants' shops, the conditions there remained uncontrolled, involving long hours and irregular work. The Shop Act of 1937 was aimed at protecting shop workers, mainly as to hours of work.

4. Regulations on Dormitories Attached to Factories

While measures to prevent accidents in factories had been left to the control regulations of each Prefecture, a series of coordinated measures were

taken, commencing with those on Dormitories Attached to Factories of 1929, followed by various safety and health regulations, which were introduced by Home Ministry Ordinance.

The Sino-Japanese conflict and then World War II interrupted the progress of labor legislation that had been made. Labor unions were reorganized compulsorily into the Association for Service to the State through Industry, and many of the legal provisions for the protection of workers were replaced by a system for facilitating the drafting of labor. The only gains during the period were in the field of social insurance. The Seamen's Insurance Act and the Welfare Annuity Insurance Act were new, although without doubt the intention of the law-makers was to give incentive to the will to work, instead of the protection of labor.

V. *General View of Pre-war Labor Legislation*

(1) The first of the characteristic features of pre-war labor legislation in Japan was the absence of any legal provisions on the labor union movement. That absence, however, was not an expression of a laissez-faire policy vis-a-vis the union movement on the part of the Government, as was the case in the U.S. and European countries, but rather a negative reflection of the suppressive measures as represented by the Public Peace Maintenance Act, the Acts for prohibiting Violence, the Police Offence Regulations and the like, which were as far removed from a laissez-fair policy as possible.

(2) As legislation for workers, the Factory Act was about the only protection. It is true that the act limited the hours of work and prohibited work in dangerous and harmful employment, but its protection was limited to women and children. In regard to wages the law went no further than to prohibit the so-called truck system. As compared with other nations of the world, which had adopted already after World War I the 8-hour-day and minimum wage system for all workers as laid down in the Labor Constitution of the Treaty of Versailles, legislation in Japan was far behind.

(3) This backwardness of labor legislation in Japan as described may be attributable, on the one hand, to the structure of capitalism in Japan which depended on the semi-feudal agricultural communities for the supply of cheap labor—notorious throughout the World—and, on the other, in the under-developed condition of the labor union movement, which was so closely related to the characteristic structure of capitalism in Japan.

VI. *Post-war Labor Legislation*

1. General

Since the end of the 2nd World War, labor legislation in Japan has

made unprecedented development, a review of which in relation to pre-war labor legislation follows.

(1) The Constitution, the supreme law of the land, prescribes the fundamental rights of workers, Article 27 laying down the idea of the right to work, and Article 28 guaranteeing the right to organize and to bargain and act collectively. Unique and new provisions as they are, no such equivalents can be found in the Meiji Constitution.

(2) Trade Union Act and Labor Relations Adjustment Act.

Before the war, the Labor Union Bill stood as chance of becoming a law, and the Labor Disputes Mediation Act was simply a dead letter. Soon after the termination of the war, however, the Trade Union Act was enacted, closely followed by the Labor Relations Adjustment Act, replacing the Labor Disputes Mediation Act.

(3) Labor Standards Act.

The act embodied epoch-making legislation for the protection of workers, coming up to the international standards. All acts and ordinances in same group, such as the Factory Act, the Shop Act, and the like that had been in force, were absorbed in the new Act.

(4) The Employment Agency Act has been replaced by the Employment Security Act, which is an improvement upon and a development of the former.

(5) As regards social insurance, the Health Insurance Act and the Welfare Annuity Insurance Act remain in force. However, the Workers' Accident Relief Liability Insurance Act was supplanted by the newly introduced Workers' Accident Compensation Insurance Act, as was the Workers' Accident Relief Act absorbed in the Labor Standards Act.

(6) With the enforcement of its Unemployment Insurance Act, the Retirement Reserve and Retirement Allowance Act (which functioned in the past more or less as a substitute for the new Act) was abolished; on the other hand, the Emergency Unemployment Counter-measures Act was also enacted at the same time.

2. Constitutional Guarantee of Fundamental Rights of Labor

Every modern Constitution established by the democratic nations of the world, with the U.S. heading the list, during the period from the end of the 18th century to the 19th, adheres to the principle of respect for the freedom and dignity of individuals, guarantees various fundamental human rights, and endeavors to protect the inherent freedom of individuals from undue encroachment by State authority. The Meiji Constitution of Japan had also provisions of this kind, though they were decidedly inadequate. The freedom guaranteed to every person to choose and change his residence and freedom from arrest, imprisonment and punishment, except by law, ought to have served to exclude the practice of compulsory labor which

ignored the individual will. The relevant provisions of the Meiji Constitution, along with the basic principle of freedom of contract underlying the Civil Code (enforced in 1896), amounted to nothing less than a declaration of the "freedom of labor" in the modern sense.

However, the mere elimination of feudalistic compulsory labor from the statue books of the State is not all that is required to bring about the economic and real freedom of workers. Because, even if the workers have the freedom to conclude a contract with any employer on such terms as they may find agreeable, the great disparity between the bargaining powers of the two parties compels the workers reluctantly to accept a contract on disadvantageous conditions of work for fear of losing employment. To minimize such disparity in the bargaining power and to win economic and substantial freedom for the workers, the labor union movement is developed and, with the progress of capitalistic economy, gains strength gradually to improve the working conditions of the workers. On the other hand, Government authorities, awakening to the fact that the exhausting exploitation of labor in the long run will surely destroy the foundation of the national economy, resort to various measures of social policy for the protection of labor. Organized workers, on their part, cooperate with the Government authorities in support of the latter's protective measures, knowing that no improvement in the conditions of labor in their occupation is possible unless those for the working class as a whole are generally improved, and that they are constantly menaced by the presence of unorganized workers, who submit to unfavorable standards of working conditions. Thus, with the growing social influence of the working class, there has developed a tendency, since the beginning of the 20th century, to recognize the right of labor to organize and such other rights as are indispensable for the maintenance of the life of the working class, and even to guarantee those rights constitutionally. The Weimar Constitution of 1919 was one of the pioneers and our Showa Constitution, which was partially patterned after it, eventually guaranteed the fundamental rights of labor.

(1) Right to Work.

The first part of Article 27 of the Constitution provides: "All people have the right and the obligation to work." What does the "right to work," as mentioned in the Article, signify? There are at present several different interpretations of it.

In the first place, it is interpreted to mean "freedom of labor." According to this school, all people are free to engage in any work as they may please, so that they are not to be prevented from choosing their place of occupation. But if such interpretation were to be upheld, the provision of this Article would become redundant, since the "freedom to choose and change residence and to choose occupation" is already provided for in Article 22. Therefore, this school is in a small minority.

Secondly, it is identified with the "rights of labor" as propounded by Anton Menger. It is argued by this school that under this provision all people have the right to seek occupation and to demand the State to give it, and, if the State is unable to do so, to demand the State to pay an equivalent of the wages that would have been receivable by them had they been given an occupation. Such an interpretation, identifying the "right to work" in Article 27 with the "rights of labor" of Anton Menger, has also little support.

The predominant majority of schools attempt to define the meaning of the "right to work" somewhere between the two schools mentioned above. But even among them, some argue that the State, in accordance with the provision of Article 27, is only responsible for a political—not legal—solution of the unemployment problem, while others assume a more positive attitude by maintaining that the employers and the employment security offices must be made answerable for such of their conduct as is clearly running counter to the spirit of this Article.

(2) Right to Organize.

Article 28 of the Constitution provides: "The right to workers to organize and to bargain and act collectively is guaranteed."

Hardly any school supports the interpretation that the "right to organize" as mentioned here is the freedom from interference by the State authority with the attempt of the workers to organize. Because, the principle of non-interference by the State with the workers' attempt to organize is already included in the "freedom of assembly and association" guaranteed by Article 21, and therefore if the "right to organize" in Article 27 were to be interpreted as a kind of freedom, the provision would be a useless repetition. Especially, in view of the fact that the Trade Union Act, which embodies the spirit of this Article, prohibits the employers to obstruct or interfere with the attempts of the workers to organize as unfair labor practices, the "right to organize" must be regarded not only as "freedom to organize" without interference by the State authority but also as a positive right to exclude the obstruction and interference that may be posed by the employer. Thus a large majority interpret the "right to organize" Article 27 as a positive right.

What is made an issue at present is the relationship between the closed-shop agreement and the "right to organize." While the organizing of the workers is not possible, unless obstruction and interference by the employers are excluded, they have to exercise a certain degree of pressure also on the individual workers to induce their participation when they organize themselves. For, without a certain amount of "coercion of organization," the solidarity of the organized workers' interests is exposed to the danger of being undermined by the employers. The closed-shop agreement is one of the most effective means of creating "coercion of organization"—though

in Japan the union-shop agreement is more prevalent. The closed-shop agreement restricts the "freedom of association" of the individual workers. Because, as long as a worker desires to stay in a place of occupation, he has to participate in a particular labor union. Here arises the question whether or not the closed-shop agreement interferes with the provision of Article 27 of the Constitution. A large majority of scholars answer the question in the negative. They argue that surely the idea of "freedom of association" for an individual worker includes not only the positive freedom to enter a union of his choice but also the negative freedom not to join a union which he does not like. However, the security of the workers' living can only be attained through forming an organization, and for that very reason the right of the workers to organize is recognized in the Constitution and the Trade Union Act. Therefore, the "freedom to stay away from unions" by those workers who do not belong to any union has to make a concession in favor of the "right to organize" of organized workers. (But, if, in case there are two unions pitted against each other, or in the process of formation in a place of occupation, one of them makes the attempt to expel the members of the other union under a closed-shop agreement with the employer, such attempt is regarded as an infringement on the right to organize by the members of the latter.) Thus it is argued that the guaranteed right to organize involves the recognition to a certain extent of "coercion of organization," and that therein lies the basic distinction between the right to organize and the freedom of association.

(3) Right to Bargain Collectively.

As stated in reference to the right to organize, the significance of the right to bargain collectively may also be brought into question in two ways, i.e. whether it amounts to nothing more than the "freedom to bargain collectively," or whether it has the positive nature to be able to demand exclusion of infringement by individuals, particularly by the employers concerned. The prevailing opinion takes the latter interpretation.

Up to the close of the war, when workers demanded an interview with their employers for the purpose of collective bargaining, they were often punished, under the Police Offence Regulations, on the charge of having made an extortionate demand to have an interview. While the Police Offence Regulations were abrogated after the war, the act of collective bargaining itself cannot properly be made subject to penal liability, since it is the exercise of the right to bargain collectively which has already beeen guaranteed. This point of view is provided for in Article 1, para. 2, of the Trade Union Act. But it is understood, according to the majority opinion, that even if the above-mentioned provision is not there, which is considered as a mere reminder, the same conclusion may automatically be drawn from the provision of Article 27 of the Constitution. As the objective of collective bargaining is usually attained only when the agreement

resulting from the bargaining between management and labor is embodied in a labor agreement, the guaranteed right to bargain collectively duly involves the recognition of the capacity to conclude a labor agreement—known as contracting capacity—of the union concerned.

In the above connection, a question is posed by the provisions of the Trade Union Act. On account of the fact that Article 2 defines a certain set of conditions which the unions must fulfil to be recognized as "trade unions" within the meaning of the law, and that the provisions concerning "labor agreement" are made applicable to such "trade unions" only, the other organizations of workers which do not satisfy the conditions prescribed in the Article are deprived of the contracting capacity, apparently running counter to the provision of Article 27 of the Constittution which guarantees the right to bargain collectively. On this question one school takes the stand that Article 2 of the Trade Union Act is unconstitutional, while the other school upholds the constitutionality of the legislation, on the ground that the provisions of the Act concerning the labor agreement merely provide it with a certain legal validity, enabling in particular the exercise of the rights under such agreement by instituting court proceedings, and that unions not coming under Article 2 of the Act are still in a position to conclude labor agreements in the form of gentlemen's agreements—agreements the terms of which cannot be enforced under the authority of the court by going to law. In any case almost all jurists are unanimous in pointing out that the provision of Article 2 of the Trade Union Act is inappropriate and inadequate.

(4) Right to Strike.

Here too is a difference of opinion as to whether the right simply means "freedom to engage in acts of dispute," or if it possesses the nature of a positive right. The latter interpretation is generally accepted. It is understood that, without making reference to the provisions of Article 1, para. 2, and Article 8 of the Trade Union Act, legitimate acts of dispute are duly exempt from either penal or civil liability, in accordance with Article 27 of the Constitution, which guarantees the right to act collectively (or the right to strike). The only crucial point of discussion is what exactly is a legitimate act of dispute.

(5) Unfair Labor Practices.

Since the Constitution guarantees the basic rights of the workers, such as the right to organize, to bargain collectively, etc., any encroachment on them by the employers is illegal. However, under the traditional legal system in this country, it may be of little avail merely to brand the interfering maneuvers of the employers as illegal acts, as the only practicable way to have the damage remedied would be to seek reparation under civil proceedings at the most. Besides, the economic value of the right of labor to organize and the like, and, accordingly, the amount of damages, if any,

cannot be determined unequivocally in the nature of things, so that reparation may not constitute an adequate protection. In the circumstances, the idea of "unfair labor practices" was imported from the U.S. and was embodied in Article 7 of the Trade Union Act, to check the interfering maneuvers of the employers themselves. However, the current provisions in regard to unfair labor practices in Japan are open to severe charges. For one thing, the Act, in accordance with Items 1 and 2 of the Proviso of Article 2, takes a strict attitude that any organization of workers, which includes a higher official of the management as its member, or which receives any fraction of its expenses from the employer, shall not be regarded as a "trade union" within the meaning of the Act; and, for another, the Act in Article 5 makes such far-reaching interference with the internal organization of the unions as is seldom found in any other country. The organizations of workers, which do not satisfy the conditions as defined in Articles 2 and 5, are not in a position to proceed against the employers for their unfair labor practices or to participate in the mediation procedure. Therefore, the Act, as it is at present—particularly the provision of Article 5—is being criticized on the ground that it restricts the right of the workers to organize, which is constitutionally guaranteed, and that it obstructs the aims of the mediation system, which has the end in view to settle the disputes between management and labor in an equitable manner to uphold the public interests.

3. Legislation Concerning Labor Agreement

While the legal treatment of the labor agreements varies from country to country, the practices may be roughly classified into two groups: the Anglo-American and the Continental law groups. In the Anglo-American law practices it is the general rule that no legal significance is attached to labor agreements. In other words, the court does not concern itself in the labor agreements and leaves the observance of the terms of the agreements to the autonomy of the management and labor. This principle is still persistently followed by British legislation. The U.S., however, has made an important deviation from the principle in enacting the Taft-Hartley Act. Conversely, in the Continental law, the questions concerning labor agreements are regulated by law and, accordingly, the court takes part in them. The Japanese legislation, following the tradition of the Continental law, has established provisions on the labor agreements in Chapter III (Article 14 to Article 19) of the Trade Union Act. At present a considerable number of disputes in connection with labor agreements are being handled at the court, and case after case of notable importance is appearing.

4. Legislation for the Protection of Labor

(1) Labor Standards Act.

The Labor Standards Act marked another epoch in labor legislation. It may be likened to a Labor Constitution in that it is applicable to quite an extensive scope, that the minimum standards for the working conditions protected by it are highly favorable for the workers, and that the organ to supervise the enforcement of the Act is completely equipped. The legal ground upon which this Act imposes a large measure of restrictions on the "freedom of contract" between individual employer and individual worker is found in the second part of Article 27 of the Constitution.

The Labor Standards Act is aimed at: 1) eliminating semi-feudal labor relations, which are still in existence, to be replaced by modern labor relations (*cf.* Article 3 to 6, Article 15, 17, 18, 69 and 94), and 2) rectifying the evils that may still arise even after modern labor relations have been established. The provisions belonging to the second objective include various subjects, such as the protection of wages, hours of work, off-days and leave, protection of women and children, prevention of accidents, accident compensation, restrictions on dismissal, etc.

(4) Employment Security Act and Unemployment Insurance Act.

In contrast to the Labor Standards Act which protects the workers already employed in a place of occupation, the Employment Security Act has the end in view to help the workers on their way to a place of occupation—eliminating the employment brokers who have been active since the Meiji Era—and to facilitate them through employment exchanges and vocational training to secure proper jobs; and the Unemployment Insurance Act takes care of those who have been dismissed from their occupations. The two acts are embodiments of the "right to work" as guaranteed in Article 27 of the Constitution.

5. Special Legislation for Public Service Personnel

Until July, 1948, public employes had been treated in the same manner as the workers employed in private business enterprises. Public employes in the so-called field operations had even been allowed the right to strike. The labor unions of public workers, such as the National Federation of Government Worker Union, the All Japan Government Communications Workers Union and the National Railway Workers Union, took the lead in developing an active union movement. But the MacArthur memorandum, and the resultant amendment of the National Public Service Act, under the "Potsdam" Imperial Ordinance No. 201, produced a change. All labor relations of public service employes are now regulated under the provisions of the National Public Service Act, and as a general rule the Trade Union Act, the Labor Relations Adjustment Act and the Labor Standards Act were made no longer applicable to them. Further in regard to the employes of the Japan National Railway Corporation and the Japan Monopoly Corporation, the Public Corporation Labor Relations Act was

introduced to make a drastic amendment in the applicability of the provisions of the Trade Union Act.

The important amendments to the National Public Service Act are as follows: 1) As a general rule, the right to organize is recognized, but closed-shop and union-shop systems are not approved. 2) The right to bargain collectively, which was supported by the right to strike, has been suspended, and the union of public service workers has been denied as an entity to conclude labor agreements. 3) Public service workers have been unconditionally deprived of the right to strike. 4) The working conditions for public service employes are to be determined exclusively by the National Personnel Authority. The Public Corporation Labor Relations Act has also banned acts of dispute, and introduced similar provisions in regard to the right to organize and to bargain collectively. It only differs from the amended National Public Service Act in that it recognizes the capacity of the union of public corporation employes to conclude labor agreements—though on the condition that any agreement involving a financial burden on the public corporation concerned, such as a wage agreement and the like, shall not be binding on the Government, in case the payment of the required amount is impracticable within the scope of the relative budget or for financial reasons—and that it has its own provisions for the adjustment of disputes, whereas in the case of national public service workers the determining of conditions of work as well as the settling of complaints regarding such conditions are made under the National Personnel Authority regulations.

It has been the subject of hot dabate whether or not the amended National Public Service Act is constitutional, which has unconditionally stripped the national public service workers of their right to strike, apparently in violation of the guarantee given in Article 27 of the Constitution. The court maintains that the idea of "public welfare," as mentioned in two or three Articles of the Constitution, underlies all fundamental human rights, giving them the basis and at the same time laying down their limits, and that therefore the legislation is not unconstitutional. However, a majority opinion condemns the provisions of the Public Corporation Labor Relations Act as unconstitutional, as they unconditionally deprive the public corporation employes of their right to strike, treating them on the same footing as the national public service workers. It is argued that even thogh strikes by the employes of public corporations may have far-reaching social effects on the people at large, there is no reason why they should be restricted more rigidly than the employes of public utilities in general (Article 37 of the Labor Relations Adjustment Act) and be entirely deprived of their right.