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# Labor Relations In The United States And Japan: The Role Of The Enterprise In Labor-Management Relations

DEREK H. WILSON\*

## I. INTRODUCTION

The image of Japanese labor relations is one of harmony and cooperation between management and labor. American business managers, among others, have looked enviously at the ability of their Japanese counterparts to avoid the degree of industrial unrest so often encountered in this country's industrial relations. Indeed, many commentators have argued that only by studying and applying Japanese management principles may the United States maintain its dominant position in the world economy. Uncritical endorsement of this approach, however, could prove both difficult and ultimately damaging to American labor relations. This paper proposes to examine those features which most distinguish Japan's system of industrial relations and evaluate its legal and normative compatibility to the United States' labor environment. Its focus is on the attitudes and laws which structure the employment relationship at the enterprise, or company, level in Japan.

The three basic elements of Japanese industrial relations — lifetime (or permanent) employment, seniority-based wage and promotion, and enterprise unionism — combine to make the corporate enterprise the organizing principle of its labor-management relations.<sup>1</sup> Indeed, union organization, collective bargaining, and dispute settlement are all concentrated at the enterprise level in Japan. No compa-

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1. Kazuo Koike argues that none of these features is particularly unique to Japan. For instance, he contends that "even in the largest firms with 1,000 or more employees, where 'lifetime commitment' is said to prevail, the separation rate in a year exceeds 20 percent until workers reach their mid-twenties." Koike, *Internal Labor Markets: Workers in Large Firms*, in *CONTEMPORARY INDUSTRIAL RELATIONS IN JAPAN* 29, 40 (T. Shirai ed. 1983). Nevertheless, whether or not each of the three "pillars" is as pure or as unique as is commonly believed, the three together are indeed a special feature of Japanese industrial relations.

nable pattern exists in the United States where unions are generally organized and contracts are negotiated at the craft — or industrial— level; little authority is vested in the employees of the enterprise for which they work.

One important consequence of Japanese enterprise unionism has been the reduction of status differentiation within the corporate structure, particularly between blue- and white-collar workers.<sup>2</sup> Although Japanese labor law excludes certain supervisory personnel from union membership, unions do represent what would in the United States be considered supervisors, such as foremen and lower level section chiefs.<sup>3</sup> Moreover, the significant number of such supervisory ranks included in the union membership has blurred the distinction between supervisors and employees.<sup>4</sup> The relevance of this extends even to company directors as “[o]ne out of six Japanese company directors was once a union leader.”<sup>5</sup> Naturally, the number of company directors who were part of the union rank and file is still higher.<sup>6</sup> Thus, labor and management possess an enterprise orientation that is evident throughout their employment relationship. A leading Japanese labor scholar has noted:

Those with higher positions continue to dress like others, often in company uniforms, and peers retain informal terms of address and joking relationships. Top officials reserve less salary and fewer stock options than American top executives, and they live more modestly. It is easier to maintain lower pay for Japanese top executives, because with loyalty so highly valued, they will not be lured to another company. This self-denial by top executives was designed to keep the devotion of the worker, and it undoubtedly succeeds.<sup>7</sup>

The contrast between this background and that existing in the United States is striking. Under the National Labor Relations Act

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2. H. Shimada, *Japanese Industrial Relations: Postwar Evolution and Contemporary Challenges* 5 (Aug. 1985) (unpublished manuscript available in the Loyola of Los Angeles International & Comparative Law Journal Office).

3. *Id.*

4. W. GOULD, *JAPAN'S RESHAPING OF AMERICAN LABOR LAW* 4 (1984).

5. *Id.*

6. *Id.* at 5. As Gould states, “[A]lmost anyone who has worked for a Japanese company has been a member of a union at some point.” *Id.*

7. *Id.* (quoting E. VOGEL, *JAPAN AS NUMBER ONE: LESSONS FOR AMERICA* 141 (1979)).

(NLRA),<sup>8</sup> supervisors are excluded from union membership. The operative assumption is that the supervisor-employee relationship is necessarily adversarial because supervisors represent management.<sup>9</sup> Moreover, American unions have had enormous difficulty organizing nonsupervisory white-collar employees in the major industrial unions which have an overwhelmingly blue-collar membership.<sup>10</sup> This paper explores the implications of these basic differences on the relative stability of Japanese and American employment relationships.

## II. UNION ORGANIZATION IN JAPAN AND THE UNITED STATES

Enterprise unionism is one of the "three pillars" which characterizes Japanese industrial relations. It is the dominant form of union organization, with more than ninety percent of all unions organized at that level.<sup>11</sup>

The special characteristics of enterprise unions shape, in many ways, the conduct of the employment relationship in Japan. First, membership is limited to the permanent, full-time employees of a particular enterprise. Temporary and part-time workers not regularly employed in the same plant or firm are not eligible for membership.<sup>12</sup> Second, both blue- and white-collar workers are typically organized in a single union. Union officers are elected from among the permanent (regular) employees of the enterprise, and throughout their tenure in office, they usually retain their employee status but are paid by the union.<sup>13</sup> Finally, although approximately seventy-two percent of the enterprise unions are affiliated with some type of labor federation outside the enterprise, sovereignty is retained almost exclusively at the enterprise level.<sup>14</sup> Table 1 illustrates the union forms for selected years and the preeminence of the enterprise type of union

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8. National Labor Relations Act, ch. 372, 49 Stat. 449 (1935) (current version at 29 U.S.C. §§ 151-169 (1982)).

9. A. COX, D. BOK & R. GORMAN, *CASES AND MATERIALS ON LABOR LAW* 92-93, 187 (9th ed. 1981); W. GOULD, *supra* note 4, at 5.

10. W. GOULD, *supra* note 4, at 5-6.

11. Shirai, *A Theory of Enterprise Unionism*, in *CONTEMPORARY INDUSTRIAL RELATIONS IN JAPAN* 117, 121 (T. Shirai ed. 1983).

12. A disproportionate number of these temporary workers are women. According to the Japanese Ministry of Labor, in 1976 there were four times as many permanent employees as temporary workers. Among newly hired employees the ratio was even higher. However, among female workers there are 1.5 times as many temporary as there are permanent workers. W. GOULD, *supra* note 4, at 2.

13. *Id.*; Shirai, *supra* note 11, at 119.

14. Shirai, *supra* note 11, at 119.

organization.<sup>15</sup>

TABLE 1  
DISTRIBUTION OF UNIONS AND THEIR  
MEMBERSHIP AMONG DIFFERENT  
FORMS OF ORGANIZATION, 1964  
AND 1975<sup>a</sup>

Forms of Organization	1964		1975	
	No. of Unions	No. of Members	No. of Unions	No. of Members
All Forms	27,138 (100.0)	9,799,653 (100.0)	33,424 (100.0)	12,590,400 (100.0)
Enterprise Unions	25,414 (93.6)	8,320,665 (84.9)	31,294 (93.6)	10,382,225 (82.5)
Craft Unions	424 (1.6)	63,976 (0.7)	451 (1.6)	140,563 (1.1)
Industrial Unions	836 (3.1)	1,004,547 (13.1)	1,107 (3.1)	1,663,856 (13.2)
Others <sup>b</sup>	464 (1.7)	410,465 (1.7)	571 (1.7)	403,756 (3.2)

Note: Percentages of unions in parentheses. Unionized workers represent approximately 35% of total employed workers in 1964, and approximately 32% in 1975.

<sup>a</sup> This survey is conducted every year, but the distribution of unions and their membership among different forms of organization was covered by the survey only for selected years.

<sup>b</sup> "Others" include "general unions" which in Japan are unions of workers in small firms or establishments organized irrespective of the trade, industry, and enterprise to which they belong.

In operation, the enterprise union has been compared to that of a local of an American industrial union:

In appearance, the enterprise union resembles the local of an industrial union, or an "intermediate" organization like the Ford or General Motors departments of the United Automobile Workers. . . However, the similarity ends about there. The essential distinction between the enterprise union and the local industrial union is that the former is a unit in and of itself; it is not merely an administrative component of a national union nor is it simply an

15. *Id.* at 122. The table was developed from information compiled by the Japan Ministry of Labor in its Basic Survey of Trade Unions (Rōdō Kumiai Kihon Chōsa) in 1964 and 1975.

“inside” independent company-wide union.<sup>16</sup>

Unlike the locals of American industrial unions, the authority of the federation to control constituent enterprise unions in Japan is limited.<sup>17</sup> For instance, enterprise unions generally have complete autonomy to make decisions: they may change their constitution, elect their own officers, determine the amount of union dues, and call or terminate acts of dispute. Moreover, nationally negotiated agreements at the union federation level are the exception. A Japanese Ministry of Labor study revealed that labor officials above the enterprise level participate in the collective bargaining of only five percent of the 1,362 unions surveyed. The percentage declines as the size of the enterprise union increases; the larger the union, the greater the control it exercises in all its activities, including collective bargaining.<sup>18</sup>

American unions, by contrast, are organized on a craft or industrial basis, not on an enterprise basis.<sup>19</sup> A single union, therefore, typically represents employees of a large number of companies which often compete in the same product market. Naturally, this has an effect on the free exchange of ideas in the collective bargaining process since employers do not wish to divulge proprietary information about expansion plans and technological innovation to employees of rival companies. More importantly, the union's appeals for solidarity are often interpreted by employers as appeals to discourage workers from placing their primary loyalty to the enterprise. Indeed, the union seeks to instill in workers a feeling that their loyalty is to the union.<sup>20</sup> This results in a reduced sense of common interest between the union and the employer and, similarly, leads both parties to treat the other as adversaries rather than as partners.<sup>21</sup>

Historically, however, craft or industrial level union organization has been necessary in the United States in order to prevent employer manipulation and interference in union affairs. The most effective device for discouraging unionization was the employee representation

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16. *Id.* at 119 (quoting S. LEVINE, *INDUSTRIAL RELATIONS IN POSTWAR JAPAN* 90-91 (1958)).

17. *Id.*

18. *Id.* at 120 (noting a Japan Ministry of Labor Survey in 1974, *Chūō Rōdō Inkai, Jimukyoku*).

19. W. GOULD, *supra* note 4, at 7.

20. *Id.*; K. Sugeno, *The Adversarial Character of American Labor Relations*, Lecture given to the Japan Institute of Labor 9 (Dec. 1984) (material was used by Professor K. Sugeno in a Harvard Law School class, Spring 1986).

21. K. Sugeno, *supra* note 20, at 9.

plan or so-called "company union" which gave workers the appearance of representation but without its substance. Typically, a union constitution would provide that the workers would elect officers or representatives whose function was to discuss with management any problems of the workers.<sup>22</sup> On occasion, collective agreements or plant rules were negotiated. These unions, however, lacked any genuine independence from the employer. As has been noted:

The constitution was often written by the employer; foremen and supervisors were often members, if not officers, and represented the interests of management rather than the interests of members; the employer often influenced the election of officers and representatives; and any officer who took a too aggressive position risked being discharged.<sup>23</sup>

The parallel between early company unions in the United States and enterprise unions in Japan today (in form if not in function) is striking. In fact, related to the promotion of company unions was the employer's insistence that it would negotiate only with representatives drawn from its own workforce.<sup>24</sup> Representatives of national unions or federations were described as "outsiders" who did not represent the interests of workers in the plant.<sup>25</sup> Thus the American "company union" operated by employer manipulation in much the same way Japanese enterprise unions operate by mutual consensus.<sup>26</sup> The enterprise union is inevitably dependent on the company, and the white-collar employees, particularly the leaders, are more apt to support the company than the workers in several areas of dispute.<sup>27</sup>

In practice, however, enterprise unions share few of the weaknesses associated with American company unions. As Table 2 below indicates, Japanese unions are just as effective as their Western counterparts in negotiating wages and other terms and conditions of employment.<sup>28</sup>

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22. *Id.* at 4.

23. *Id.*

24. *Id.* at 5.

25. *Id.*

26. Walter Galenson denies that enterprise unions are independent and autonomous in representing their members. He emphasizes "their submissiveness to management or the employer, particularly because there are no professional union leaders at the local level." Shirai, *supra* note 11, at 129 (discussing Galenson, *The Japanese Labor Market*, in *ASIA'S NEW GIANT: HOW THE JAPANESE ECONOMY WORKS* (H. Patrick & H. Rosovsky eds. 1976)).

27. R. COLE, *JAPANESE BLUE COLLAR: THE CHANGING TRADITION* 227-28 (1971).

28. Shirai, *supra* note 11, at 131. The table was developed from information compiled by the following agencies: for Japan, from the Japan Ministry of Labor's Monthly Labor Statistics

TABLE 2  
 COMPARISON OF NOMINAL WAGES: BLUE-  
 COLLAR HOURLY RATE IN  
 MANUFACTURING INDUSTRIES,  
 1960-75

<u>Wage Rate<sup>a</sup></u>	<u>Japan</u>	<u>U.S.</u>	<u>U.K.</u>	<u>West Germany</u>	<u>France</u>
1960					
Wage rate	0.26	2.26	0.79	0.63	0.43
Differential	100	869	304	242	165
1965					
Wage rate	0.45	2.61	1.01	1.03	0.61
Differential	100	580	224	229	136
1970					
Wage rate	0.94	3.36	1.30	1.63	0.84
Differential	100	357	138	173	89
1975					
Wage rate	2.84	4.80	2.57	3.70	2.19
<u>Differential</u>	100	169	90	130	77

Note: The exchange rate to the U.S. dollar is that at the end of every year. The wage rate in the United Kingdom is for October in 1960, 1965, and 1970, but for April 1975.

<sup>a</sup> Rate is in U.S. dollar equivalent.

Moreover, the presence of strikes, slowdowns and other forms of work stoppages (discussed below) belie the argument that enterprise unions are merely subservient company dominated organizations. The reasons for the legitimacy and effectiveness of enterprise unions, however, lies not in their structure, but in what that structure reflects about the mutual attitudes and expectations of Japanese employees and employers. Indeed, labor relations in Japan possess a degree of industrial democracy which is simply foreign to the American context.

#### A. *The Origin of Enterprise Unionism*

The system of enterprise unionism has been traced to various historical roots. One theory argues that enterprise unions are a product of the American Occupation which, among other things, encouraged a free trade union movement in Japan.<sup>29</sup> This view suggests that the

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Survey (*Maigetsu Kinrō Tōkei Chōsa*); for the United Kingdom, from the Department of Employment *Gazette*; and for the United States, West Germany and France, from the International Labor Organization (ILO) Yearbook.

29. Shirai, *supra* note 11, at 122.

Japanese responded in the most expedient way possible in organizing at the enterprise-level; the workplace is where employees can share their interests most naturally under the Japanese employment system. Another theory is that enterprise unionism developed because it was the form most favored by the Communists.<sup>30</sup> Two factors support this contention. First, enterprise unionism conformed to the principle of union organization advocated by the World Federation of Trade Unions, namely, "one single union in one plant."<sup>31</sup> Second, enterprise unionism promised to counter the power of prewar right-wing union leaders whose strength was in unions external to the enterprise.<sup>32</sup> The weakness of this theory, however, is its failure to address the waning Communist influence in the Japanese union movement beginning as early as 1948.<sup>33</sup> Still another explanation is that enterprise unionism may have evolved out of *Sangyō Hōkokukai* (*Sampō*), a wartime patriotic labor organization conceived by the Japanese government to promote industrial peace and worker dedication to the war effort.<sup>34</sup>

Although each of these rationales may help to explain the original impulse behind enterprise unionism, none can adequately account for the continued strength of this form of union organization. Rather, it is those basic conditions of Japanese employment implemented at the company level which best explains the enduring vibrancy of enterprise unionism. Because of the enterprise orientation of employers and employees alike, each large firm is able to create its own internal labor market which tends to virtually all incidents of employment. It is a relationship built of strong mutual dependence and trust.

### B. *The Role of Internal Labor Markets in the Formation of Enterprise Unions*

The character of Japanese union organization is "largely a product of the structure of industry and the structure of labor markets."<sup>35</sup> In Japan's primary sector economy, consisting most prominently of large enterprises of 500 or more employees, enterprise unionism has

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30. *Id.* at 123. Hisashi Kawada is a prominent Japanese scholar who adheres to the belief that enterprise unionism developed because it was favored by Communists. See Kawada, *Workers and Their Organization*, in *WORKERS AND EMPLOYERS IN JAPAN: THE JAPANESE EMPLOYMENT RELATIONS SYSTEM* 227-28 (K. Okochi, B. Karsh & S. Levine eds. 1973).

31. Shirai, *supra* note 11, at 123.

32. *Id.*

33. *Id.*

34. *Id.*

35. The Development of Industrial Relations Systems, OECD Study Group Report 11-13 (1975).

flourished. These companies are able to develop and support their own internal labor market, providing such benefits as long-term employment, in-plant training, seniority-based wages, fringe benefits, and employee welfare schemes. Only permanent employees, however, enjoy these employee entitlements, generally at the expense of employees in the secondary labor and industrial market, consisting of multilayered subcontractors and temporary workers, who are the first to be cut back in recessionary periods. Thus, the dual nature of the Japanese economy is a substantial contributor to many of the labor practices attributed to its industrial stability.<sup>36</sup> This might help to explain Ronald Dore's observation that it is "enterprise consciousness" that is the cultural impetus behind Japanese workers organizing themselves into enterprise unions. He suggests that "for most Japanese workers employed in large enterprises, the firm to which they belong is not simply a place where they work for money, but is a community with which they strongly identify."<sup>37</sup> In this sense, the feeling of exclusivity which flows from being employed by a selective enterprise may directly translate into a spirit of worker loyalty toward his company.

But this explanation still fails to address the reasons that workers in small and medium-sized enterprises also tend to organize themselves primarily into enterprise unions. One answer is that the enterprises often strive to emulate the same type of internalized labor environment as is found in the larger enterprises.<sup>38</sup> As the economic leaders, the large enterprises thereby set the pattern for union organization throughout Japanese industry. In addition, as is true for the large enterprises, "the workplace is where [workers] feel the need for solidarity to protect their common interests as employees; the enterprise union appears to them as the easiest and most workable form of worker organization."<sup>39</sup> A final factor which perhaps best accounts for the presence of enterprise unions in small and medium-sized firms is the lack of an acceptable alternative form of union organization for Japanese workers. Market oriented unions, such as craft and industrial unions, exist for only a small minority of occupations and industries. Moreover, most industrial unions, in contrast to enterprise unions, are strongly ideological. The majority of workers "prefer not

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36. W. GOULD, *supra* note 4, at 2.

37. R. DORE, *BRITISH FACTORY - JAPANESE FACTORY: THE ORIGINS OF NATIONAL DIVERSITY IN INDUSTRIAL RELATIONS* (1973), noted in Shirai, *supra* note 11, at 127.

38. Shirai, *supra* note 11, at 127.

39. *Id.*

to have their unions involved in ideological movements which may well lead to organizational strife and divisiveness; instead, they choose to form an enterprise union."<sup>40</sup>

*C. The Relationship of Internal Labor Markets to Employment Adjustment in Japan and the United States*

Employment adjustment has been broadly defined as the continuing process of "allocating and reallocating workers among jobs in response to changing market conditions."<sup>41</sup> The relative flexibility that a society in general, or a firm in particular, has in adjusting its labor force is intimately related to the structure of its internal labor market. A variety of background factors determine the shape and efficiency of internal labor markets. Variables such as the historical pattern of industrial development and union evolution, the rate of economic growth, and the relative heterogeneity and dispersed structure of industries, population and labor markets have all influenced the characteristics of Japanese and American employment adjustment.<sup>42</sup>

Because these historical patterns have developed so differently in the two countries, little is meaningfully gained by speaking of transplanting one system of labor market institution to the other. This does not imply, however, that nothing is to be profited from examining each other's experiences. Indeed, both countries share the common goal of maximizing economic efficiency while maintaining employment stability.

Job creation and employment adjustment have proceeded relatively efficiently in both Japan and the United States. Both countries experienced large increases in total employment between 1960 and 1980.<sup>43</sup> Table 3 illustrates the aggregate economic and labor market performances of the United States and Japan during those years.<sup>44</sup> In the United States, fluctuations in the annual rates of economic growth

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40. *Id.*

41. J. Orr, H. Shimada & A. Seide, *United States-Japan Comparative Study of Employment Adjustment* 6 (Mar. 1985) (unpublished U.S. Department of Labor study which is available in the Loyola of Los Angeles International & Comparative Law Journal Office).

42. *Id.* at 13-16.

43. *Id.* at 20.

44. *Id.* at 21. The table was developed from information compiled by the following agencies: for U.S. economic growth rates, from the Bureau of Economic Analysis, a branch of the U.S. Department of Commerce; for U.S. employment and unemployment statistics, from the Bureau of Labor Statistics, a branch of the U.S. Department of Labor; for Japan, all statistics were compiled from the Japanese Statistical Yearbook.

have affected the employment rate relatively rapidly. Additionally, unemployment in the United States, regardless of the economic conditions, is markedly higher than in Japan. Changes in economic activity in Japan, by comparison, have not been directly reflected in the unemployment rate. The differences in the aggregate growth in Japan and the United States suggest variances in the process by which companies and industries adjust to changing economic conditions.<sup>45</sup>

TABLE 3  
COMPARISON OF AGGREGATE ECONOMIC  
ACTIVITY IN JAPAN AND THE UNITED  
STATES, 1960-1980

Year	Economic Growth		Employment				Unemployment			
	Real (%)	GNP (%)	Total Non-Agricultural		Manufacturing		Number (000,000)		Rate	
	U.S.	Japan	U.S.	Japan	U.S.	Japan	U.S.	Japan	U.S.	Japan
1960	2.3	13.3	54.2	30.7	16.7	9.5	3.93	0.75	5.6	1.7
1961	2.5	14.5	53.9	31.6	16.3	10.2	4.81	0.66	6.7	1.4
1962	5.8	7.0	55.5	32.6	16.9	10.7	4.01	0.59	5.6	1.3
1963	4.0	10.5	56.6	33.7	17.0	11.1	4.17	0.59	5.7	1.3
1964	5.3	13.1	58.3	34.7	17.3	11.4	3.88	0.54	5.2	1.1
1965	5.9	—	60.8	35.9	18.1	11.6	3.36	0.57	4.5	1.2
1966	5.9	10.6	63.9	37.3	19.2	11.9	2.87	0.65	3.8	1.3
1967	2.7	10.8	65.9	39.5	19.5	12.5	2.98	0.63	3.8	1.3
1968	4.4	12.7	67.9	40.7	19.8	13.1	2.82	0.59	3.6	1.2
1969	2.6	12.3	70.1	41.4	20.1	13.5	2.83	0.57	3.5	1.1
1970	-.3	9.9	70.8	42.5	19.3	13.7	4.08	0.59	4.9	1.1
1971	3.0	4.7	71.2	43.0	18.6	13.8	4.99	0.64	5.9	1.2
1972	5.7	9.0	73.6	44.0	19.1	13.7	4.84	0.73	5.6	1.4
1973	5.5	8.8	76.8	45.7	20.2	14.4	4.30	0.68	4.9	4.3
1974	-1.4	-1.2	78.3	46.0	20.1	14.3	5.08	0.73	5.6	1.4
1975	-1.3	2.4	80.1	46.1	18.3	13.5	7.83	1.00	8.5	1.9
1976	5.4	5.3	79.3	46.7	19.0	13.5	7.29	1.08	7.7	2.0
1977	5.5	5.1	82.5	47.5	19.7	13.4	6.86	1.10	7.0	2.0
1978	4.8	5.6	86.7	48.2	20.5	13.3	6.05	1.24	6.0	2.2
1979	3.2	3.7	89.8	49.1	21.0	13.3	5.96	1.17	5.8	2.1
1980	-.2	—	90.6	50.0	20.3	13.7	7.45	1.14	7.1	2.0

In the United States, companies respond relatively quickly to

45. *Id.* at 20-23.

changes in demand with parallel changes in employment levels and labor input. "Plant closings and mass layoffs dominate the employment adjustment processes of firms faced with major reductions in production."<sup>46</sup> Moreover, management typically gives little advance notice of plant shutdowns or restructuring which will result in serious employment adjustments.<sup>47</sup> Japanese firms, on the other hand, rely upon a greater combination of labor adjustment schemes in responding to changes in production. These include:

1. restricting overtime hours,
2. making more use of the existing workforce at the workshop,
3. reducing or stopping recruitment,
4. transferring idle labor from slack sections to busier sections of the firm,
5. transferring idle labor from a plant with a lower level of activity to one with a higher level of activity,
6. transferring idle labor to subsidiaries or other companies,
7. temporarily laying-off regular workers, usually with nearly full-payment of regular wages,
8. dismissing temporary workers,
9. soliciting early retirement, and
10. conducting selected designated dismissals.<sup>48</sup>

As a result of the extensive use of these various methods to reduce labor costs, Japanese firms have been able to maintain the number of employees in the short-run, even when confronted with steep declines in production.<sup>49</sup> The reasons for these distinctly different employment adjustment patterns are best explained by the attitudes and mutual expectations of employers and employees in the two countries.<sup>50</sup>

This issue is a delicate one because it has been the source of so many distortions for both countries. The common perception is that most blue-collar employees of large companies in Japan enter the firm directly after high school and remain with that firm until they retire.<sup>51</sup> In fact, however, even in the largest enterprises employing 1,000 or more workers where "lifetime commitment" is said to prevail, the separation rate within one year exceeds twenty percent until workers

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46. *Id.* at 26.

47. *Id.* at 103.

48. *Id.* at 26.

49. A comparison of recent patterns of employment adjustment in several major American and Japanese industries is provided in the Appendix.

50. See W. GOULD, *supra* note 4, at 15.

51. Koike, *supra* note 1, at 40.

reach their mid-twenties.<sup>52</sup> Moreover, employing a worker for life is not required by law or contract. “[M]ost large Japanese companies hire numerous classes of workers, including full-time, part-time, and temporary workers plus sub-contractors, each expecting different degrees of attachment to the firm.”<sup>53</sup>

Similar misconceptions prevail about the United States. For instance, many foreign observers believe that in the typical American employment relationship, an employee may be summarily dismissed at the employer’s will. In recent years, however, an increasing number of state courts have considerably limited the scope of the at-will doctrine.<sup>54</sup> One example of this is the California Supreme Court’s landmark decision in *Tameny v. Atlantic Richfield Co.*<sup>55</sup> where the Court held:

In the last half century the rights of employees have not only been proclaimed by a mass of legislation touching upon almost every aspect of the employer-employee relationship, but the courts have likewise evolved certain additional protections at common law. The courts have been sensitive to the need to protect the individual employee from discriminatory exclusion from the opportunity of employment whether it be by the all-powerful union or employer. . . . This development at common law shows that the employer is not so absolute a sovereign of the job that there are not limits to his prerogative.<sup>56</sup>

In addition, some state courts in the United States have imposed a covenant of good faith and fair dealing upon the employer. The rationale for this doctrine is that the employment contract does not reflect the unfettered operation of contract law, but rather is one of adhesion between unequal parties.<sup>57</sup> Finally, the courts have attacked the “terminable at will” doctrine by implying contracts between an employer and an employee under circumstances not previously recog-

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52. *Id.* The separation rate does stabilize, however, for regular employees above the age of 25. *Id.* at 42.

53. J. Orr, H. Shimada & A. Seike, *supra* note 41, at 73. The authors’ note: “The different classes of workers are trained and exposed to training ladders. The regular workers are trained and exposed to all phases of [a] company’s operations throughout their careers while temporary workers or part-time workers receive far less intensive training programs.” *Id.* at 74.

54. W. GOULD, *supra* note 4, at 110.

55. *Tameny v. Atlantic Richfield Co.*, 27 Cal. 3d 167, 610 P.2d 1330, 164 Cal. Rptr. 839 (1980).

56. *Id.* at 178, 610 P.2d at 1336, 164 Cal. Rptr. at 845.

57. W. GOULD, *supra* note 4, at 110-11.

nized.<sup>58</sup> Indeed, one California court pronounced the following standard:

In determining whether there exists an implied-in-fact promise for some form of continued employment courts have considered a variety of factors in addition to the existence of independent consideration. These have included, for example, the personnel policies or practices of the employer, the employee's longevity of service, actions or communications by the employer reflecting assurances of continued employment, and the practices of the industry in which the employee is engaged.<sup>59</sup>

Although both of these cases only dealt with employer-employee relationships in nonunion settings, collective bargaining (discussed below) has also produced agreements which encourage longer-term employment.<sup>60</sup> This is an era of concession bargaining where a union relinquishes its contractual right to cost-of-living increases during the term of the collective bargaining agreement so that the employer may become more competitive. "Part of the *quid pro quo* has been union representation on committees in which future management decisions affecting jobs are to be discussed."<sup>61</sup> For instance, in six General Motors and Ford plants, the 1982 collective bargaining agreements provide for permanent employment for eighty percent of the workers.<sup>62</sup>

Despite these factors augmenting the stability of employment relationships in Japan and the United States, Japanese on-the-job training and wage and compensation programs continue to demonstrate a greater anticipation of employment longevity than the programs in the United States. In recruiting workers, Japanese companies focus upon the general quality and flexibility of a prospective employee rather than that applicant's previous specialized training.<sup>63</sup> The initial training period for permanent, full-time employees includes an intensive introduction to the company's organization, product lines, and production technology.<sup>64</sup> The rationale for this rigorous orientation is to enable workers to fully understand the total production process

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58. *Id.* at 111.

59. *Pugh v. See's Candies, Inc.*, 116 Cal. App. 3d 311, 327, 171 Cal. Rptr. 917, 925-26 (1981).

60. W. GOULD, *supra* note 4, at 103.

61. *Id.* (emphasis in original).

62. *Id.* Gould states that although of limited scope, this is the first major collective bargaining agreement that appears to emulate elements of the Japanese system. *Id.*

63. J. Orr, H. Shimada & A. Seike, *supra* note 41, at 73.

64. *Id.*

and the mutual responsibilities of employers and employees.<sup>65</sup> At the shop floor level: "this emphasis is supported by the systematic rotation of workers among a wide variety of jobs within the company. Promotions are based on improvements in skill levels and on experience and ability in performing a variety of jobs at each level."<sup>66</sup>

This approach allows for the temporary transfer of workers between related workshops in order to facilitate employment adjustment. Koike observes that "[l]arge firms are apt to have both temporarily growing and declining workshops, between which temporary transfers are made. Thus the number of layoffs is remarkably reduced."<sup>67</sup> This pattern may also clarify the rationale for enterprise unionism. It has been noted that Japanese workers are:

most concerned about their careers or the mobility through which they acquire their skills. . . . [T]heir careers tend to develop on the shop floor of a firm so that some specificity is inevitable. Therefore, no workers' organization can regulate these issues more effectively than one at the enterprise level or on the shop floor. Thus, it is reasonable that Japanese workers have chosen enterprise unions to protect their interests.<sup>68</sup>

In American companies, on-the-job training is also an important part of the process of skill advancement. However, in contrast to Japanese companies, minimal efforts are made to systematically acquaint the worker with a comprehensive knowledge of the enterprise either during the initial training or at any subsequent point in an employee's career.<sup>69</sup> Moreover, the routine rotation of workers through different jobs for the purpose of preparing them to perform a variety of skills is explicitly discouraged by the presence of rigid job classifications.<sup>70</sup> The more narrowly tailored training programs found in the United States are designed to promote rapid skill acquisition and immediate contribution to production.<sup>71</sup> Since the training is slight, it is economically efficient to layoff or terminate workers in a time of adjustment. In Japanese enterprises, meanwhile, where the costs of adjustment have been internalized, termination of regular employees is the least economically desirable alternative. Layoffs or terminations are to be

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65. *Id.* at 76.

66. *Id.*

67. Koike, *supra* note 1, at 47.

68. *Id.* at 51-52.

69. J. Orr, H. Shimada & A. Seike, *supra* note 41, at 75.

70. *Id.*

71. *Id.* at 76.

utilized only after other adjustment possibilities have been exhausted.<sup>72</sup>

The structure of training programs in Japanese firms is supported by a unique scheme of wages and compensation. "Wages are not specifically related to particular jobs. Rather, they are determined by several factors, primarily the workers' [sic] age and tenure with the company."<sup>73</sup> In addition, wages, which are negotiated annually, are unusually sensitive to the current business conditions of the individual enterprise.<sup>74</sup> Finally, a considerable amount of compensation in the form of a semi-annual bonus is typically paid on the basis of the company's profitability. Japanese wage and compensation systems, therefore, give firms an additional source of flexibility in relating labor costs to changing market conditions.<sup>75</sup>

Wage rates in the United States, by comparison, are closely identified to specific jobs and locked into fixed promotional schemes. Employment contract provisions contain highly detailed terms to cover such events as layoffs, recalls, transfers, and bumping rights.<sup>76</sup> Moreover, wages are determined by collective bargaining agreements that are usually in force for a three year period. Wage and employment adjustment flexibility is further limited because "workers in one company may be represented by different unions and covered under different collective bargaining agreements, often extending beyond the domain of any one company."<sup>77</sup> In this respect, the comparatively adversarial quality of the collective bargaining relationship in the United States impedes the ability of management and labor to cooperatively adapt to unanticipated changing market conditions.

The discussion which follows compares the character of collective bargaining and dispute settlement practices in Japan with those in the United States in order to evaluate the extent to which "enterprise

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72. *Id.*

73. *Id.* at 76-77.

74. *Id.* at 77.

75. *See id.* at 77-78.

76. *Id.*

77. *Id.* at 80. The authors observe that

Higher initial wages reflect a higher return to the initial training and experience possessed by the worker at the time of his entry into the firm and relatively lower levels of investment by the firm in the workers. The relatively lower rate of increases in wages with experience indicates a relatively lower investment in training and skills by the firm in experienced U.S. workers.

*Id.* at 79.

consciousness" may have affected the bargaining attitudes and legal environment governing labor-management relations.

### III. COLLECTIVE BARGAINING

Three features characterize the Japanese system of collective bargaining. First, it is practiced within the boundaries of each individual enterprise. Significantly, union officials from outside an enterprise usually cannot participate in the bargaining at that enterprise. According to the Ministry of Labor, only ten percent of those collective agreements surveyed in 1967 and thirteen percent surveyed in 1977 allowed outside union officials to take part in the negotiations.<sup>78</sup> Second, labor unions are concentrated in the large enterprises.<sup>79</sup> This is where union membership has been the least ideological and has most closely conformed to the traditional model of "consultation in good faith."<sup>80</sup> Third, both white- and blue-collar workers are members of, and are represented by, the same union.<sup>81</sup>

Article 28 of the Japanese Constitution guarantees as a fundamental human right the "eternal and inviolable" right of workers to organize and bargain collectively.<sup>82</sup> These guarantees have been firmly implemented.<sup>83</sup> The Trade Union Law, one of Japan's major pieces of labor legislation, provides that all bona fide unions have the right to organize. The employer cannot refuse to bargain with a minority union simply because a majority of employees have organized separately.<sup>84</sup> This represents a fundamentally different philosophical approach from that taken in American labor law where exclusive majority representation operates as a basic safeguard of union security

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78. Kōshiro, *Development of Collective Bargaining in Postwar Japan*, in CONTEMPORARY INDUSTRIAL RELATIONS IN JAPAN, 205, 212 (T. Shirai ed. 1983). Outside unions do, on occasion, undertake regional negotiation. For instance, "Dōmei's metal workers' union in Kanagawa prefecture has a long tradition of regional negotiations in Yokohama that dates from before the war. The union directly organizes all metal workers in the region and tries to standardize their wages and working conditions as much as possible. The practices of Sōhyō's metal worker's union are similar." *Id.* at 214.

79. *Id.* at 205.

80. Shirai, *supra* note 11, at 127. Most Japanese collective bargaining contracts contain a clause called the "consultation in good faith" clause. These provisions mandate amicable resolution of disagreements by consultation and mutual understanding. See T. HANAMI, LABOR RELATIONS IN JAPAN 53 (1979).

81. Kōshiro, *supra* note 78, at 205.

82. KENPŌ (Constitution) art. XXVIII (Japan).

83. Kōshiro, *supra* note 78, at 206 ("This principle has been established by court decisions and is supported as well by academic theories.").

84. T. HANAMI, *supra* note 80, at 108.

and independence from management interference. In addition, the Trade Union Law provides no method for selection of a representative.<sup>85</sup> Almost any two or more employees can legally require that management recognize them as a legitimate union and engage in good faith bargaining.<sup>86</sup> For instance, the Central Labor Relations Commission<sup>87</sup> declared that "an employer cannot refuse to bargain with a labor union, even though the union does not prove its qualification by presenting a constitution or other documents."<sup>88</sup>

Although the coexistence of rival unions is a rather exceptional phenomenon in Japanese industrial relations,<sup>89</sup> it is one of the major types of cases now being raised before the Labor Relations Commissions.<sup>90</sup> According to Central Labor Relations Commission statistics, of 483 unfair labor practice cases filed with the Local Labor Relations Commissions in 1983, 177 cases (37 percent) involved alleged discrimination between coexisting unions.<sup>91</sup> The percentage was even higher among large enterprises.<sup>92</sup>

Japanese case law has broadly construed the Trade Union Law to support the workers' right to form a rival union which must be recognized by employers. One such case was recently decided by the Supreme Court of Japan.<sup>93</sup> That case involved the Japan Mail Order Company which had two unions, one with approximately twenty employees and the other with about 120 members. In 1972, the company proposed a certain bonus on the condition that the "employees cooperate with increasing productivity."<sup>94</sup> The majority union agreed and the company paid the stated amount. However, the minority union refused, believing that the condition was vague and would re-

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85. W. GOULD, *supra* note 4, at 37.

86. Kōshiro, *supra* note 78, at 206.

87. The Central Labor Relations Commissions were established under Chapter IV of the Trade Union Law for the purpose of remedying unfair labor practices and adjudicating labor disputes.

88. State Bank of Sao Paulo Tokyo Branch, 68 Meireishu 777 (1980) (a decision of the Central Labor Relations Commission).

89. It has been estimated that "only four or five percent of all labor unions in Japan coexist with rival unions at the same undertaking." Sugeno, *The Coexistence of Rival Unions at Undertakings and Unfair Labor Practices*, 23 JAPAN LABOR BULLETIN 10 (Oct. 1984).

90. *Id.*

91. *Id.*

92. *Id.* ("For enterprises employing more than 500 employees, 66 percent of the cases filed were rival union cases.").

93. Japan Mail Order Co. v. Tokyo Metropolitan Relations Commission, 3 Rōdō Keizai Hanrei 1189 (1984) (Supreme Court Judgment).

94. *Id.*

sult in mechanization with a concomitant reduction in both the labor force and real wages, intensification of work, and subordination of the union to the company. Since the minority union refused to accept the condition, the company withheld the additional bonus that had been paid to the majority union.<sup>95</sup> The Court analyzed the case in light of the relative bargaining strengths of the parties involved.<sup>96</sup> It found that the minority union was forced into its position as a result of the employers insistence on the unreasonable (too vague) condition.<sup>97</sup> Therefore, the action of the company was deemed to be an unfair labor practice under article 7: it was done "with an intention to cause frustration among the members of the Minority Union and thereby weaken the organization of the Minority Union."<sup>98</sup> The case demonstrates the courts' fervent desire to support the right of a rival union to organize and bargain collectively for its members.

Although the issue of minority union recognition is typically framed in the context of the need for unfettered union ability to organize, its application may in fact reduce the overall power of unions. The *Nissan Motor Company* case<sup>99</sup> helps to illustrate this point. Nissan acquired the Prince Automobile Company and, as a result of this reorganization, the former Prince Company employees splintered into two groups. The overwhelming majority supported the absorption and changed their membership to the Nissan Labor Union.<sup>100</sup> A small minority of employees, however, chose to remain in the branch union because they opposed Nissan's production method (a shift system requiring night work).<sup>101</sup> After negotiating a basic agreement with the Nissan Union, and without seeking to negotiate with the branch union, the company implemented a Nissan shift system accompanied by night work and planned overtime work.<sup>102</sup> As a result, the company gave no overtime assignments to branch union members. The Court held that the company had first discriminated against the branch union members concerning overtime work and then acted to maintain such treatment by refraining from good faith bargaining.<sup>103</sup>

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95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. See Sugeno, *Collective Bargaining with Rival Unions*, 24 JAPAN LABOR BULLETIN 5 (Oct. 1985) (discussing the *Nissan Motor Company* case of Apr. 23, 1985).

100. *Id.*

101. *Id.* (The minority numbered approximately 150 of the 7600 Prince Co. employees).

102. *Id.* at 6.

103. *Id.* at 7.

Most significantly, however, from the perspective of future union strength, was the Court's concluding remarks. The Court stated:

[W]ith respect to the future relationship between the company and the union, if the company exhausts its good faith efforts to explain and persuade the branch union on the relationship of the Nissan work system and overtime work in the manufacturing section and the union still persists in its decision, the company can terminate the negotiations and enter the decision to exclude the branch union members in the section from the planned overtime work.<sup>104</sup>

The practical application of this decision would appear to benefit the company more than the union. Indeed, it would seem possible for a company to play each union off the other and adopt a wait-and-see attitude as to which set of negotiations produced the most favorable result. Or, in the event neither discussion pleased the firm, its frustration with dual track negotiations might more easily convince a fact finder that the company had fulfilled its duty to bargain in good faith and had simply reached impasse.<sup>105</sup> Therefore, it is possible that union pluralism has the potential to facilitate company manipulation in the collective bargaining process.

This, in any case, has been a guiding premise of American labor law as manifested by the National Labor Relations Act (NLRA). The NLRA imposes a threshold requirement that employers only bargain collectively with a properly elected union or union certified by the National Labor Relations Board (NLRB).<sup>106</sup> Only unions considered to be appropriate bargaining units, meaning that there exists a sufficient community of interests among the prospective employee class, will be certified. Once certified, the union becomes the exclusive bargaining representative for all the employees within the certified class.<sup>107</sup> Thus, an employer may not bargain separately for different terms even with willing employees. Moreover, if a properly recog-

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104. *Id.*

105. From the inception of the trade union movement employers were vehemently opposed to the notion of exclusive bargaining representation, fearing that such a provision would tip the balance too strongly in favor of labor unions. T. Hanami, Lecture at Harvard Law School (Apr. 15, 1985). Surprisingly, unions also disfavored exclusive bargaining representation because at that time, the union movement was so factionalized that no union felt sure that they would become the exclusive bargaining representative and hence favored plurality.

106. The NLRB was created under the NLRA to serve as the enforcement arm of the act. National Labor Relations Act, ch. 372, §§ 9-10(a), 49 Stat. 449, 451, 453 (1935) (current version at 29 U.S.C. §§ 153, 159-160(a) (1982)).

107. National Labor Relations Act, ch. 372, 49 Stat. 449, 453 (1935) (current version at 29 U.S.C. § 159(a) (1982)).

nized union negotiates a collective bargaining agreement with an employer, the NLRB will dismiss any petition for representation from a rival union (even if it shows it has majority support) on the grounds that the contract bars it.<sup>108</sup> "The contract bar has a duration of three years or the period of the collective bargaining agreement, whichever is shorter."<sup>109</sup>

The express purpose of the principle of exclusive representation is to prevent the company from co-opting the union to serve its own interests.<sup>110</sup> This flows from the two basic goals of the NLRA which are to institutionalize industrial conflict and encourage equality of bargaining power between management and labor.<sup>111</sup> Japanese labor law pursues the similar aim (though in a different, seemingly mutually inconsistent manner) of promoting industrial democracy by elevating the status and power of unions in dealing with employers.<sup>112</sup> The most compelling explanation reconciling these distinct approaches is that they stem from fundamentally different assumptions about the nature of the relationship between labor and management. This is evident in the style and conduct of labor negotiations in both countries.

#### A. *The Notion of Management Prerogative*

In the United States, the NLRA imposes upon labor and management a duty to bargain in good faith with respect to wages, hours, and other terms and conditions of employment.<sup>113</sup> Though the NLRB is strictly precluded from attempting to regulate the substantive terms of the parties agreement, refusal by either the employee or the union to bargain collectively on these issues constitutes an unfair labor practice.<sup>114</sup> As might be expected, defining the scope of mandatory issues has been a major source of labor-management disagreement. At the root of the problem is the notion of management prerogative, a concept deeply entrenched in American management practices. Concerns such as long-term investment plans and the in-

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108. W. GOULD, A PRIMER ON AMERICAN LABOR LAW 1 (1986).

109. *Id.* at 92.

110. See National Labor Relations Act, ch. 372, §§ 2(2), 8(1)-(2), 49 Stat. 449, 450, 452 (1935) (current version at 29 U.S.C. §§ 152(2), 158(a)(1)-(2) (1982)).

111. See *id.* § 1 (current version at 29 U.S.C. § 151 (1982)).

112. W. GOULD, *supra* note 4, at 34.

113. 29 U.S.C. § 158(d) (1982).

114. See 29 U.S.C. § 158(a)(5) (1982) (failure of an employer to bargain collectively with the representatives of the employees is an unfair labor practice); *id.* § 158(b)(3) (failure of a labor organization to bargain collectively with an employer is an unfair labor practice).

roduction of new technology, which vitally affect future employment, have long been considered to be outside the scope of the bargaining process. Instead, these topics have been deemed to be within the sole discretion of management.<sup>115</sup> The need for this statutory distinction is concededly necessary in a framework premised on hostile relationships. However, the effect is to widen the cleavage between labor and management.

The premises of management prerogatives are perhaps even more significant than their exercise: the enterprise is owned by the shareholders and is to be operated for the benefit of the shareholders. A noted Japanese labor expert has indicated that

Management represents the shareholders and it is management's responsibility to protect and promote the interests of those who own the enterprise. Entrusted with that responsibility, management can not share decision making with the workers or the union, for they have interests which conflict with those of the owner. This logic on which claims of management prerogatives is based requires that collective bargaining have an adversarial character. The more management prerogatives are emphasized, the more adversarial the bargaining will be.<sup>116</sup>

Because of the nature and degree of control exercised by shareholders over the investment decisions and management practices of American corporations, the loyalty of most boards of directors is more closely identified with the shareholder-owners than with the employees of the firm. Moreover, in American companies directors are, for the most part, named to the board from outside the company. The corporate pattern in the United States and Europe has been described "as an alliance of senior management and shareholders to optimize current earnings from the company to mutual benefit."<sup>117</sup> This view has far reaching implications for the conduct of labor-management relations. The success of the company must be assumed to depend foremost on the particular skills of the executive-level management. The corollary assumption is that labor is but one among many fungible units of production, important though it might be, not ultimately responsible for a company's success or failure.

American compensation patterns reinforce this view. "In 1982 at least eighty-five American chief executives earned more than \$1

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115. K. Sugeno, *supra* note 20, at 6-7.

116. *Id.* at 7-8.

117. J. ABEGGLEN & G. STALK, *KAISHA, THE JAPANESE CORPORATION* 184 (1985).

million.”<sup>118</sup> *Business Week*, reporting on 1983 executive compensation levels in the United States, noted that there were twenty-five U.S. chief executive officers with annual compensation over 2.3 million dollars.<sup>119</sup> Moreover, chief executive salary raises are often unrelated to corporate profitability. Lee Iacocca, chairman and chief executive officer of Chrysler Corporation, for instance, earned \$1,617,455 in salary and bonuses — a thirty-five percent increase from 1984 — while Chrysler’s net income over the same period dropped 31.2 percent.<sup>120</sup> Meanwhile, General Motors reported paying its chairman and chief executive officer, Roger B. Smith, \$1.9 million in salary and bonuses in 1985.<sup>121</sup> The company’s other top five executives made more than one million dollars each.<sup>122</sup> Not surprisingly, the United Auto Workers union president, Owen Bieber, roundly criticized these executive salaries, stating that they displayed “greed, self-absorption and poor business judgment in equal and appalling measure.”<sup>123</sup>

The rationale for corporate executives receiving such handsome profit-related bonus plans and stock options is that such benefits are incentives to help ensure that management makes decisions in the best interests of the shareholders.<sup>124</sup> This is logical given that the stock market tends to reward those companies which maintain the highest earnings per stock share. Since declining earnings trends lowers share price, which in turn lowers the value of earnings-pegged compensation programs, management is motivated, even on a short term quarterly basis, to maintain a steady improvement in earnings.<sup>125</sup> The cumulative effect of this type of salary structure, often disproportionate to the company’s economic performance, is to place the interests of management at fundamental odds with those of labor.

Such a consequence becomes even more evident in a comparative analysis. In Japan, the corporation also belongs to the shareholder.<sup>126</sup>

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118. Miller, *Are You Underpaid?*, FORTUNE, Mar. 19, 1984, at 21.

119. *Executive Pay: The Top Earners*, BUSINESS WEEK, May 7, 1984, at 88-89.

120. Wall St. J., Apr. 7, 1986, at 18, col. 1.

121. Wall St. J., Apr. 21, 1986, at 7, col. 1.

122. *Id.*

123. Wall St. J., Apr. 8, 1986, at 1. The UAW had earlier criticized executive pay at Ford Motor Company. Ford executives received up to sixteen percent higher pay in bonuses in 1985, compared with 1984.

124. See J. ABEGGLEN & G. STALK, *supra* note 117, at 183-84.

125. *Id.* at 184. The authors note that in a survey regarding corporate objectives of U.S. and Japanese management teams, U.S. executives ranked return on investment as their first objective and share price second. Japanese executives, by comparison, rated share price as the least important objective in managing their companies. *Id.* at 187.

126. *Id.* at 183.

However, the role and influence of shareholders is completely different from the role and influence of shareholders in the United States. The common stock shareholder of the Japanese corporation is similar to a preferred shareholder in an American company.<sup>127</sup> Although the shareholder anticipates dividends (not as a percent of earnings but as a percent of the par value of the shares of the company), once this expectation is met, the shareholder has virtually no further influence in corporate affairs.<sup>128</sup> Indeed, the board of directors of Japanese companies consists almost exclusively of senior career employees of the company itself. Two prominent Japanese corporate scholars have observed, "To the extent that they [board members] might be seen as representatives of a constituency, their constituency is the career employees of the company itself."<sup>129</sup> Thus, the Japanese company, unlike its American counterpart, is not an organization external to its members.

The strength of these observations is fortified by the compensation patterns of Japanese executives relative to company employees. *Fortune* magazine reported that salaries of Japanese chairmen and presidents range from \$50,000 to \$250,000, depending on company size.<sup>130</sup> Rather than seeking personal income, Japanese executives focus upon enhancing the growth of the enterprise.<sup>131</sup> As a result, the employees of the Japanese corporation share more equally in the cash benefits from the company than is the case in the United States.<sup>132</sup> For instance, when a Japanese company is facing financial difficulties, the general pattern is for management to announce across-the-board cuts in executive compensation before it approaches the union to negotiate a possible wage reduction.<sup>133</sup> Consequently, the entire system of compensation is premised on the assumption that the enterprise is a unit in which all members share in its success or failure.<sup>134</sup>

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127. *Id.* at 184. Financial institutions are the dominant stockholders in Japanese companies, most of which are large banks and insurance companies. The funds of these financial institutions are an accumulation of deposits and policies of the general public. Therefore, inasmuch as the depositors are not the owners, but rather the politically and geographically dispersed general public, there is little sense of ownership control. *See generally id.* at 188-90.

128. *Id.* at 184-85.

129. *Id.* at 185.

130. Miller, *supra* note 118, at 21.

131. J. ABEGGLEN & G. STALK, *supra* note 117, at 195.

132. *Id.*

133. *Id.* at 197.

134. *Id.* at 198.

### B. *The Scope of Bargaining in Japan*

Japanese labor law reflects a de-emphasis on the notion of managerial prerogative. Rather than concentrating on "mandatory subject[s] of bargaining" as in the United States, the Trade Union Law states that an employer may refuse to bargain collectively for a "proper reason."<sup>135</sup> Failure to bargain without a proper reason" constitutes an unfair labor practice.<sup>136</sup> The Central Labor Relations Commission surveyed the scope of collective bargaining in 193 major enterprise-wide agreements, defined as one thousand or more employees, and summarized the number of agreements, by type, as follows:

conclusion of the collective bargaining agreement, 7; revision and abolition of the collective bargaining agreement, 110; new working conditions, 53; wages and other working conditions, 61; grievances, 14; personnel affairs, 10; interpretation of the collective bargaining agreement, 23; subjects for joint consultation, 50; subjects not settled by joint consultation, 94; management, 11; subjects not settled by other agencies, 11; any subject recognized as necessary by the employer or the union, 61.<sup>137</sup> [See Table 4.]<sup>138</sup>

The survey illustrates the rather vague distinction between management prerogatives and negotiable issues in the collective bargaining of large Japanese enterprises. Additionally, little distinction exists between disputes of interest and disputes of right.<sup>139</sup>

Typically, any conflict arising in the labor-management relationship is submitted first to joint consultation, and, if unsuccessful, then to collective bargaining.<sup>140</sup> Hence, there is a procedural relationship between joint consultation and collective bargaining. Different rules, however, regulate the two processes. In collective bargaining, unlike joint consultation, the union may strike to press its demands.<sup>141</sup>

135. W. GOULD, *supra* note 4, at 117. The law's lack of specificity has been a source of numerous labor disputes as to the scope of collective bargaining.

136. *Id.*

137. Kōshiro, *supra* note 78, at 216 (quoting statistics compiled by the Central Labor Relations Commission, Executive Office [*Chuō Rōdō Inkai, Jimukyoku*] at 113 (1970)).

138. *Id.* at 278 (footnotes omitted). The table was developed from information compiled by the Japan Ministry of Labor (*Rōdōsho*) in 1976.

139. *Id.* at 216. Interest disputes are best characterized as arising out of the ongoing collective bargaining process in which both labor and management bargain to better their position in reaching an employment agreement. Rights disputes, on the other hand, generally involve the interpretation and application of the substantive legal rights of the parties.

140. *Id.*

141. *Id.*

TABLE 4  
 CONTENT OF LABOR DISPUTES: STRIKES AND  
 LOCKOUTS CLASSIFIED BY MAJOR  
 ISSUES, 1970, 1975

Issue	1970	1975
Total labor disputes	4,446	8,330
Total demands	4,533 (100%)	10,050 (100%)
Union security and union activities	168	132
Conclusion and overall revision of the collective bargaining agreement	37	75
Effectiveness of the labor contracts	7	18
Wages and allowances	3,495 (77.1%)	7,412 (73.7%)
Wage increases	2,110	5,294
Summer and year-end bonuses	1,240	1,923
Retirement allowances	81	40
Others	63	155
Other working conditions	50 (1.1%)	375 (3.7%)
Hours of work	14	46
Holidays and vacations	9	150
Others	27	179
Management and personnel problems	267 (5.9%)	316 (3.1%)
Dismissals and reinstatement	100	120
Plant shutdowns or curtailment of production	25	31
Others	142	165
Others	509 (11.2%)	1,722 (17.1%)

### *C. The Spring Offensive*

Unlike in American industrial relations where strikes are generally perceived as a last recourse in the collective bargaining process, strikes in Japan are often a preliminary step to negotiation.<sup>142</sup> Since

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142. T. HANAMI, *LABOUR LAW AND INDUSTRIAL RELATIONS IN JAPAN* 121 (1979). Professor Hanami has noted that:

Most of the Japanese strikes are not strikes in the Western sense. Strike is a means of protest, or more precisely, it is the only means of showing their will. When they go on strike, they do not mean that they will never return to their jobs until they are satisfied or completely defeated. Rather, sometimes they first go on strike and then start to bargain. Employers also start to bargain seriously only after the union carries out some short-term strikes and shows how serious they are.

the 1960's, Japanese unions have coordinated their bargaining efforts (referred to as *Shuntō*, or Spring Offensive) for wages on a national scale.<sup>143</sup> In this way, the bargaining power of individual enterprise unions is maximized by applying national pressure upon selected key industries in the economy. This particularly benefits employees of smaller enterprises of lesser bargaining strength. The number of workers participating in the joint Spring Offensive has increased from 730,000 in 1955 to 4,390,000 in 1961, to 9,672,000 in 1979.<sup>144</sup>

With the advent of the Spring Offensive, both the amount and percentage of the wage increase have tended to become standardized.<sup>145</sup> Simultaneously, there has been a measured decrease in wage differentials by size of firm. It has been reported that

In 1960, high school graduates in white-collar jobs in small firms were being paid 72 percent as much as the earnings of similar workers employed by large firms, but by 1975 their salaries were 91 percent of those paid in the large firms. Over the same period, the percentage figures for college and university graduates were 68 and 85.<sup>146</sup>

Thus, the use of acts of dispute occupy an important place in Japanese labor relations. Table 5 demonstrates the increasing importance of strikes and slowdowns in forcing wage concessions from management.<sup>147</sup>

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Hanami, *The Characteristics of Labor Disputes and Their Settlement in Japan*, in SOCIAL AND CULTURAL BACKGROUND OF LABOR-MANAGEMENT RELATIONS IN ASIAN COUNTRIES 209 (1971).

143. Kōshiro, *supra* note 78, at 218-19.

144. *Id.* at 219.

145. *Id.* at 222.

146. *Id.* at 224 (reference to table omitted).

147. T. HANAMI, *supra* note 80, at 149. The table was developed from information compiled by the Japan Ministry of Labor in its Annual Report of Statistics and Survey of Labor Disputes (*Rōdō Sogi Tōkei Chōsa Nen Hōkoku*) in 1976.

TABLE 5  
NUMBER OF STRIKES IN JAPAN

Year	Strikes longer than half a day	Strikes shorter than half a day
1966	1,239	1,452
1967	1,204	1,403
1968	1,537	2,021
1969	1,776	3,282
1970	2,256	2,356
1971	2,515	4,653
1972	2,489	3,531
1973	3,320	6,667
1974	5,197	6,378
1975	3,385	5,475

Professor Hanami perceives this as a basic dichotomy in Japanese industrial relations. On the one hand, there is a highly developed capacity for cooperation between employers and employees. However, once disputes do arise few rules exist to regulate the conduct of the parties by conventional means. Therefore, should tensions rise above a certain threshold, the potential for unrestrained violence is very real.<sup>148</sup> Moreover, this is due, in part, to the very legal informality which many identify as responsible for Japan's industrial stability.<sup>149</sup>

#### D. Joint Consultations

Although labor violence is far from unknown in Japan, the great majority of disputes are resolved through the process of "joint consultation."<sup>150</sup> Joint consultation and collective bargaining are considered the most important vehicles for labor-management communication. Often the same union official and management representative will participate both in joint consultation meetings and collective bargaining sessions. As a result, the agenda for the collective bargaining session is frequently not distinguished from that of the joint consultation meeting.<sup>151</sup>

There are two forms of joint consultation. One type, held three or four times a year, is attended by top management and union lead-

148. T. HANAMI, *supra* note 80.

149. *Id.*

150. Kōshiro, *supra* note 78, at 248; Inagami, *Labor-Management Communication at the Workshop Level*, in THE JAPAN INSTITUTE OF LABOR, 11 JAPANESE INDUSTRIAL RELATIONS SERIES 23 (1983).

151. *Id.*

ers. Here, management representatives report on business performance and discuss future business plans and strategies.<sup>152</sup> The other type, commonly referred to as *Seisan-iinkai* (production committee), is conducted closer to the workshop level and is convened once every month. These committees provide labor and management the opportunity to consult on monthly production and work schedules at the factory and company level.<sup>153</sup> Discussions are often informal. In practice, joint consultation has been remarkably successful in dealing with such diverse problems as industrial reorganization, technological change, and international trade conflict.<sup>154</sup>

The need for joint consultation is, in part, a product of the fact that few collective bargaining agreements in Japan set forth the working conditions of employees in any comprehensive or detailed manner.<sup>155</sup> Rather than specifying each of the terms and conditions of employment, unions look to joint consultation procedures to regulate their employment relationship with management.<sup>156</sup> For instance, a typical collective agreement will provide for "a wage increase agreement for a given year; a summer or year-end bonus agreement for a given year; a retirement benefit agreement; an agreement implementing a reduction in working hours or a 5-day work week in a certain manner; and so on."<sup>157</sup> Such loosely drafted agreements allow for enormous flexibility in responding to unanticipated employment problems. However, their effectiveness is wholly dependent on the mutual trust and respect of labor and management. In this respect, the strong enterprise identification held by both employers and employees is integral to the bargaining process.

Many enterprises, particularly the larger ones, also provide for formal grievance procedures in collective agreements to resolve shop-floor disputes.<sup>158</sup> However, they play a minimal role in Japanese labor relations. One survey showed that although forty percent of enterprise unions have grievance procedures under collective agreements or other arrangements with the employer, those procedures consist simply of a few steps of informal negotiations between

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152. *Id.*

153. *Id.*

154. Kōshiro, *supra* note 78, at 249.

155. K. Sugeno & K. Kōshiro, Resolution of Shop Floor Disputes in Japan; Formal and Informal Processes and the Role of Third Party Neutrals 46 (1985) (available in the Loyola of Los Angeles International and Comparative Law Journal office).

156. *Id.*

157. *Id.*

158. *Id.* at 53.

union and management representatives. They rarely provide for an arbitration process as their final step.<sup>159</sup> Moreover, such grievance procedures are rarely utilized.<sup>160</sup> Table 6 shows the types of complaints raised in the Grievance Committee at Yawhata Steel Mills.<sup>161</sup>

TABLE 6  
TYPES OF GRIEVANCES SET FORTH TO THE  
WORKSHOP GRIEVANCE COMMITTEE  
AT YAWHATA STEEL MILLS  
BETWEEN APRIL 1963 AND APRIL 1984

	No. of Cases	Cases Turned Down
Pay problems		
Periodical individual increase	42	1
Job rates	2	
Payment by results	1	
Bonuses	148	
Reduced pay as a result of transfer	1	
Hours of work		
Overtime	1	
Shift work	1	
Transfer and assignment		
Transfer	7	
Temporary assignment to other workshops	10	
Assignment to other plants	2	
Supplement to vacancy	1	
Qualifications		
Grading of qualifications	28	
Not recommended for up-grading examination	36	1
Up-grading	14	
Personnel affairs		
Disciplinary actions	1	1
<b>TOTAL</b>	<b>295</b>	<b>3</b>

Between April 1963 and April 1984, a total of only 295 cases were submitted to the Committee.

A radically different pattern is presented in the United States as to the manner in which disputes are resolved. As in Japan, most American collective bargaining agreements provide for preliminary grievance procedures; however, its steps are considerably more formal. American procedures generally involve a two- to four-step process of relatively informal discussion with increasingly higher level union and

159. *Id.*

160. *Id.*

161. *Id.* at 69. The table was developed from information compiled by the Department of Labor Administration about the Yawhata Steel Mills of the Japan Steel Corporation.

management officials participating at each successive stage. Furthermore, unlike in Japan, the vast majority of those disputes arising during the life of a collective bargaining agreement are resolved through this process. Beyond a few model programs in a select number of companies, joint consultation is simply not an alternative available to management and labor in resolving employment disputes. This might be expected given that American employers and employees are much more accustomed than their Japanese counterparts to exercising their legal rights to protect their respective positions.

### III. THIRD PARTY DISPUTE SETTLEMENT

The most important third party dispute settlement agency in Japan is the Labor Relations Commission.<sup>162</sup> The Commission is charged with two primary functions: to assure that union and management conduct their relations fairly, and to prevent the escalation of labor disputes which would be detrimental to society.<sup>163</sup> The Commission's major duties "are to adjudicate unfair labor practice cases and to adjust labor disputes."<sup>164</sup> Procedures for regulating both responsibilities are designed to assist the parties to develop their own rules for the resolution of individual and collective disputes by mutual agreement.<sup>165</sup>

The Commission's adjudicatory machinery is invoked upon receipt of a complaint filed either by a union or individual that an employer has committed some form of unfair labor practice. The Commission will then investigate the complaint and if necessary, hold a hearing to examine witnesses and evidence.<sup>166</sup> This is a formal adversary proceeding open to the public in which both parties are usually represented by lawyers, most of whom specialize in labor cases.<sup>167</sup>

Although procedurally, the Commission is expected to issue a formal written decision concluding whether or not an unfair labor practice has been committed, in practice, the Commission's most important function is mediative.<sup>168</sup> The petitioning party normally seeks the assistance of the Commission panel to resolve the dispute volunta-

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162. The Labor Relations Commission consists of a Central Labor Relations Commission in Tokyo and forty-seven Local Labor Relations Commissions, one in each prefecture. *Id.* at 61. See generally W. GOULD, *supra* note 4, at 27, 40-41.

163. Matsuda, *Conflict Resolution in Japanese Industrial Relations*, in CONTEMPORARY INDUSTRIAL RELATIONS IN JAPAN 179, 179-80 (T. Shirai ed. 1983).

164. K. Sugeno & K. Kōshiro, *supra* note 155, at 62.

165. Matsuda, *supra* note 163, at 179.

166. T. HANAMI, *LABOUR LAW AND INDUSTRIAL RELATIONS IN JAPAN* 142 (1979).

167. K. Sugeno & K. Kōshiro, *supra* note 155, at 62.

168. *Id.* at 63.

rily because this represents the more expedient remedy.<sup>169</sup> The respondent, meanwhile, is also inclined to favor a voluntary settlement in the interests of promoting smoother relations at the workplace.<sup>170</sup> Moreover, the institutional orientation of the Commission is that voluntary settlements produce more stable long-term labor relations than compulsory orders. Accordingly, in the great majority of cases, the panel pursues voluntary settlements and will only issue a formal decision only as a last resort.<sup>171</sup> Indeed, if at any time the panel perceives a possibility for a negotiated settlement, it will suspend the proceedings and hold intensive "meetings for settlement."<sup>172</sup> At this time, the panel interviews both parties individually in order to evaluate the possibilities for achieving a settlement.<sup>173</sup> As a consequence of these efforts, seventy percent of unfair labor practice cases are resolved by agreements negotiated by the parties themselves, either outside the proceeding or in the presence of the panel.<sup>174</sup>

The other important Labor Relations Commission function, administering the procedures for adjusting labor disputes, is performed in accordance with the Labor Relations Adjustment Act.<sup>175</sup> The Act provides for three methods of adjusting labor disputes: conciliation, mediation, and arbitration. In conciliation, the least formal of the three procedures, the Commission chairman appoints a conciliator upon the request of either party to the dispute or upon the chairman's own initiative.<sup>176</sup> Mediation is a more formal adjustment procedure than conciliation.<sup>177</sup> Unlike conciliation, mediation cannot be invoked by a mere request of one party or on the chairman's own initiative. "The mediation committee interviews both parties to ascertain their cases and then makes a formal mediation proposal to settle the case, which is not binding on the parties."<sup>178</sup> Arbitration, finally, is the most formal adjustment method in which a committee award has the same binding legal effect as a collective agreement.<sup>179</sup>

The methods of adjustment most often chosen by the disputing

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169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.* at 63-64.

174. *Id.* at 64.

175. *Id.*

176. *Id.*

177. *Id.*

178. *Id.* at 65.

179. *Id.*

parties tells something about the nature of their relationship. "In 1983, 1,113 labor disputes were adjusted by the Labor Relations Commissions: 95.4 percent of them were handled by conciliation, 3.9 percent by mediation, and 0.7 percent by arbitration."<sup>180</sup> Moreover, the wide range of subjects of dispute reveals that little differentiation is made in Japan between interest disputes and rights disputes. Sugeno and Koshiro have observed that

Looking at the subjects dealt with in those adjustment procedures, 62.4 percent involved economic matters such as wage increases (17.4 percent), bonuses (17.0 percent), working hours and holidays (7.7 percent) and retirement benefits (6.3 percent), while 36.8 percent concerned non-economic matters such as methods and conditions of negotiations (17.2 percent), managerial and personnel affairs (dismissals, disciplinary measures, transfers, employment adjustment, moving of plant, etc., 10.4 percent), recognition of labor unions and rules of union activities (2.7 percent) . . . Thus, we can roughly speculate that a substantial percentage (15-20 percent) of disputes adjusted every year through conciliation procedures . . . involve individual employees' rights, and more than half of them are resolved by attaining agreement between the parties.<sup>181</sup>

The labor dispute adjustment process thus reveals a system of industrial relations premised on the need for continuous informal negotiation and information sharing.

Even the courts, to which a party to a dispute may appeal a Labor Relations Commission order, consistently encourage voluntary settlements rather than pronounce a legally principled decision.<sup>182</sup> The court may suspend a proceeding at any stage and assist the parties in reaching an agreement. In fact, approximately sixty percent of the labor cases filed in courts by workers complaining of an unfair labor practice are resolved through voluntary settlement.<sup>183</sup> The forces responsible for reaching compromise appear to be similar, whether the forum is the court or the Labor Relations Commission. These include institutional pressures to make concessions in order for the relationship to prosper, a belief by either party that the benefit achieved through legal recourse is not worth the attendant costs, and the parties' desire to improve the union-management relationship.<sup>184</sup>

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180. *Id.* (footnote omitted).

181. *Id.*

182. *Id.* at 61.

183. *Id.*

184. *See generally id.* at 58-66.

By comparison, the pattern of dispute settlement in the United States reveals considerably more antagonism in union-management relations. On average, there have been thirty times more unfair labor practice complaints filed in the United States than in Japan (see Table 7).<sup>185</sup> The agency responsible for adjudicating these complaints is the National Labor Relations Board. Once a complaint is filed before the NLRB, the agency engages in a rigorous investigation which is characterized by an appreciably greater willingness than their administrative counterparts in Japan to intervene in the conduct of the employer-employee relationship.<sup>186</sup> Like the Labor Relations Commission, however, the NLRB urges the parties to either compromise or withdraw their complaint. In fact, most settlements have taken place at this early stage of the proceeding. (See Table 8).<sup>187</sup>

TABLE 7  
NUMBER OF UNFAIR-LABOR-PRACTICE  
CASES FILED

Year	Japan		U.S. (NLRB)
	Local Commission	Central Commission	
1975	929	93	31,253
1976	730	98	34,509
1977	729	95	37,828
1978	685	64	39,652
1979	563	83	41,259
1980	778	84	44,063

What occurs subsequently in the proceeding, however, offers the most telling comparison. Unlike the Labor Relations Commission, the NLRB procedures provide little basis to facilitate a settlement. Once a complaint is issued, a highly formal judicial process is engaged which significantly diminishes the likelihood of voluntary settlement.<sup>188</sup> Gould comments that:

185. W. GOULD, *supra* note 4, at 45. The table was developed from information compiled by the following agencies: for Japan, from the Annual Report of the Central Labor Relations Commission; for the United States, from the National Labor Relations Board Annual Reports. *Id.* at 48.

186. *Id.* at 49-50.

187. *Id.* at 49-51. The table was reprinted from page 256 of the 1980 National Labor Relations Board Annual Report. *Id.* at 50.

188. *Id.* at 51.

A majority of the small number of formal agreements are entered into either after a complaint has issued or after a hearing has commenced. However, the same is true of only about one-third of the informal settlements. This seems to indicate that the complaint and the hearing produce a considerably more adversarial and confrontational atmosphere. . . . [T]he more formal procedure reduces the prospect for settlement.<sup>189</sup>

TABLE 8  
NLRB SETTLEMENTS OF UNFAIR-LABOR-  
PRACTICE CASES, FISCAL YEAR 1980

Method and stage of disposition	Number	Percentage of total cases closed	Percentage of total method
<b>Agreement of parties</b>	11,531	27.5	100.0
Informal settlement	11,357	27.0	98.5
Before issuance of complaint	7,424	17.7	64.4
After issuance of complaint, before opening of hearing	3,848	9.2	33.4
After opening of hearing, before issuance of administrative law judge's decision	85	0.2	0.7
<b>Formal settlement</b>	174	0.5	1.5
After issuance of complaint, before opening of hearing	118	0.3	1.0
Stipulated decision	60	0.2	0.5
Consent decree	58	0.1	0.5
After opening of hearing	56	0.2	0.5
Stipulated decision	17	0.1	0.2
Consent decree	39	0.1	0.3
<b>Total number of cases closed</b>	42,047	100.0	0.0

However, the tremendous number of unfair labor disputes filed in the United States relative to Japan is not remarkable in light of the absence of informal procedures to resolve labor-management differences short of legal action. This is a natural consequence of a relationship premised on discordant motives and purposes. Given this background, legal rules must (and should) be utilized both to institutionalize conflict and to protect the due process rights of the concerned parties. Unlike in Japan, there exists in the United States no

189. *Id.* (footnote omitted).

underlying assumption of group harmony that threatens to be eroded by seeking third-party assistance in resolving a labor dispute.

## V. CONCLUSION

In identifying the major differences in Japanese and American labor relations, many of the subtleties which might otherwise soften the distinctions are sometimes lost. Cooperation is not unknown in American labor-management relations. In fact, in this era of concession bargaining, employees are becoming increasingly aware that their economic future is directly related to the ability of their company to remain competitive in the market place. Moreover, American managers obviously appreciate the need to generate employee loyalty to their enterprise. Compensation schemes such as employee stock option plans, designed to motivate employees in much the same way that bonus plans motivate management, represent a step in this direction.

Similarly, labor-management consensus is not necessarily the rule in Japanese industrial relations. As has been shown, conflict, and even violence, has frequently occurred in labor-management dealings, particularly in the smaller enterprises.<sup>190</sup> Moreover, as Japan shifts its focus from that of an export oriented economy to more of an import and domestic economy, significant changes may result in the relative allegiance that employees bring to the enterprises in which they work.

Nevertheless, the general tone of labor-management relations in Japan and the United States is most distinct. Japanese managers and employees demonstrate a sense of enterprise identity and consciousness that simply has no corollary in American industrial relations. The corporate enterprise, as the organizing principle of Japan's system of labor relations, shapes and defines all incidents of the employment relationship. As a result, the labor-management relationship in founded upon a common purpose which is fundamentally foreign to American experience.

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190. Labor relations are most antagonistic in Japan's public sector (beyond the scope of this paper), which accounts for forty percent of all strikes in Japan with four times the employee participation rate than that found in the private sector. For a discussion of the growth of public-employee unionism in Japan, see generally W. GOULD, *supra* note 4, at 152-61.

## APPENDIX

The following is a profile of employment adjustment patterns in selected American and Japanese industries which is the product of a recent (1985) joint United States-Japan Comparative Study of Employment Adjustment.<sup>191</sup>

*The U.S. Automobile Industry*

Production and employment in the U.S. automobile industry fluctuated dramatically over the 1970's. Short-term declines in employment in the 1970 and 1973-75 recessions, for example, affected over 100,000 and 150,000 workers, respectively. Following these recessions, employment levels increased to their pre-recessionary peaks, with the employment rate growing almost as rapidly as the rate of decline. Employment in the automobile industry declined again between 1979 and 1980 by over 200,000. By the end of 1980, monthly layoff rates averaged 4.4 percent, up from 1.0 percent in 1978, and unemployment in the industry reached a historic high of 20.3 percent with over 150,000 workers on indefinite layoff.

The declines in employment caused by the recession were superimposed on several longer-term problems the industry was experiencing. The increase in the price of gasoline and the periodic uncertainties in obtaining adequate supplies began with the oil-crisis in 1973 and continued through the decade. U.S. consumer purchase preferences shifted from larger-size, high-profit automobile models traditionally produced by American car manufacturers to smaller, more fuel-efficient cars. At the same time, and partly as a result of these trends, U.S. producers began to lose their share of the domestic automobile market. In 1975, imports of passenger automobiles were slightly over two million units. By 1979, imports had increased to 2.8 million units, or over thirty-two percent of the domestic market, with imports from Japan accounting for over fifty percent of all imports.

The trends in the automobile market have resulted in large-scale permanent job losses and plant closings by each of the three major U.S. auto producers — Chrysler, General Motors, and Ford. Recent Chrysler Corporation plant closings have affected over 20,000 workers in ten plants including over 4,000 workers each in the Hamtramck assembly plant and the Mack Avenue stamping plant in Michigan. Over forty percent of Chrysler's hourly work force was on indefinite

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191. J. Orr, H. Shimada & A. Seike, *supra* note 41.

layoff by mid-1980. Ford closed six plants in 1980 affecting almost 10,000 workers, including 4,800 workers in its Mahwah assembly plant in New Jersey. Over thirty-five percent of Ford's hourly work force was on indefinite layoff in mid-1980. General Motors has also shut down operations in six plants, although these facilities are scheduled to be replaced by newer plants.

The adjustment problems in the automobile industry extend beyond the plants and into the communities in which the plants are located. The regional impacts are severe in the older urban areas in Michigan, Illinois, New York, Ohio, Indiana, Wisconsin, and Pennsylvania, where many of the closed facilities are located and, consequently, unemployment is high.

Employment adjustments in all U.S. automobile companies have traditionally been characterized by short-term layoffs and subsequent recalls. During their unemployment, automobile workers are eligible to receive unemployment benefits (UI) from the government's unemployment insurance system and weekly supplementary benefits (SUB) from an employer-financed unemployment fund. The current situation of the automobile industry, however, suggests that many of the workers on indefinite layoff may not return to their jobs. The programs of income maintenance are not oriented toward either permanent assistance or aiding the worker's adjustment to new employment. In fact, by mid-1980, over ninety percent of the SUB funds of both Ford and Chrysler had been depleted due to the prolonged unemployment of their workers.

The major government program of assistance to automobile workers who lose their jobs has been the Trade Adjustment Assistance Program. Initially established in 1962 following the Kennedy Round of multilateral tariff reductions, the program was expanded by the Trade Act of 1974 to provide weekly benefits and re-employment services, over and above UI and, in some cases, SUB benefits, to workers whose job loss was certified to have been caused, in part, by increased imports. Between April 1975 and September 1981, the Department of Labor certified 556 petitions for trade adjustment assistance covering over 700,000 workers. Over 3,000 of the 4,000 workers in the Hamtramk Assembly plant cited above, for example, were certified to receive adjustment assistance benefits.

Beyond providing benefits to laid-off workers, the government provided the Chrysler Corporation in 1980 with loan guarantees totaling \$1.5 billion in order to prevent the collapse of the company and

job losses for its 200,000 workers. As part of the aid package, Chrysler was required to raise \$2.1 billion in private funds and submit an adjustment plan to the government demonstrating the company's ability to operate past 1983 without further federal government assistance. Beyond this adjustment assistance to Chrysler, however, the government has argued, in denying a 1980 petition for relief from imports, that imports are not a substantial cause of serious injury to the industry and further assistance in the form of trade protection is not warranted.

### *The U.S. Steel Industry*

The major U.S. steel producers have been adversely affected throughout the 1970's by a combination of rising production costs, declines in the growth of the work market for steel, and declines in the U.S. shares of both the world and domestic steel markets. During this period imports rose by thirty-one percent while exports dropped by sixty percent and employment in the industry declined by over 120,000 workers. Currently, the sources of growth in the industry are the new, smaller mini-mills and specialty steel mills rather than the larger integrated mills.

Employment levels in the steel industry have not only been in a state of gradual long-term decline, but have also fluctuated in a highly cyclical pattern since the peak employment level in 1969. As in the automobile industry, employment declines in the steel industry were greatest in the 1970 and 1973-75 recessions. Employment levels, however, did not fully recover following 1975, and declined sharply again in 1980.

Since 1975, there have been numerous plant shutdown in the steel industry resulting in the permanent loss of over 60,000 jobs. In 1977 alone, over 10,000 employees were permanently displaced. Between 1977 and 1980, the industry closed nineteen plants. The Bethlehem Steel Company, which operates one of the most efficient plants in the world at Burns Harbor, Indiana, has permanently shut down operations, either totally or partially, in about thirty-five of its facilities affecting over 15,000 workers.

Bethlehem Steel and the other major producers operating large, integrated mills are engaged in a massive program of capital investment to modernize existing plants. Over the next year, the steel industry is forecasted to become smaller but more productive with fewer employees manning more modern capital equipment. Key ar-

eas of investment include the replacement of open hearth furnaces with basic oxygen and electric furnaces, and the construction of continuous casters, larger coke ovens, and finishing mills. Furthermore, although no manpower programs exist for workers in the steel industry, the government has certified over 130,000 laid off steel workers as eligible for employment adjustment benefits under the Trade Adjustment Assistance Program.

### *Japanese Shipbuilding Industry*

The Japanese shipbuilding industry has enjoyed a large share of the world market during the last two decades ranging from fifty to sixty percent in peak times, to thirty to forty percent in recessed times. The world demand for vessels increased steadily during the 1960's but declined drastically since the oil crisis in 1973. The volume of demand dropped almost by half between 1974 and 1978. This drastic change in world demand had a direct impact on the Japanese shipbuilding industry. Furthermore, the competitive position of the Japanese shipbuilding industry has been steadily eroded by competition from newly industrialized countries.

As a consequence, the Japanese shipbuilding industry was obliged to make drastic structural adjustments both in terms of its capital equipment and its labor force. Employment adjustment was carried out on a substantial scale during the years following the oil crisis. Employment was reduced from a peak of 200,000 workers in 1974 to 100,100 in 1979. Many shipbuilding companies had to undergo serious adjustments both in terms of capital equipment and human resources.

The shipbuilding industry also has been under the strict control of the government on the basis of shipbuilding laws designed for various classes of builders. During the recent adjustments period, the industry formed a recession cartel under the guidance of the government and promoted a substantial reduction of productive capacity under the guidelines of the Structurally Depressed Industries Law. Considerable adjustment in capital equipment was carried out in the form of buying excess capacity by a credit organization which was established by the ad hoc measure. Let us describe briefly some of the notable examples of employment adjustments in the shipbuilding industry.

Substantial employment adjustments were carried out also for large shipbuilders, such as Mitsubishi Heavy Industry (HI), IHI, Ka-

wasaki Heavy Industry (HI), Hitachi Shipbuilding Company (SC), Mitsui Shipbuilding Company (SC), and Sumito Heavy Machinery Company. By 1972 or 1973 when the prospect of a recession was recognized (the recession was due, in part, to the revaluation of the yen), most of these large companies adopted adjustment policies which included halting the recruitment of mid-career workers and reducing the number of new recruits.

By 1975 or 1976 when the "structural depression" of the shipbuilding industry was recognized, each company launched substantial employment reduction plans. For example, in 1976, Hitachi SC announced a plan to reduce 3,300 employees from its payroll: 2,300 workers were trimmed through attrition with the remaining 1,000 transferred to a subsidiary or other related company. In 1975, Kawasaki HI decided to reduce 1,500 manual workers and 900 office workers within three years. Mitsubishi HI reduced its workforce by 8,500 employees within two years: 1,500 by compulsory retirement, 3,300 by natural attrition, and 3,700 by transfer to 104 related companies. Mitsubishi Auto Company and Sato Machinery Company each accepted more than 100 transferred workers from Mitsubishi HI.

In 1978, even more substantial employment adjustments were enacted. For instance, Hitachi SC adopted selective temporary training layoffs for some workers and transferred still others to different companies; e.g., 230 to Daihatsu Auto Company, 40 to Toyo Rubber Company, 150 to Hitachi Manufacturing Company, etc. Mitsubishi HI also executed temporary layoffs for training and transferred 850 employees to Mitsubishi Auto Sales Company and 200 to Toyo Auto Company. IHI, also, applied temporary layoffs to workers in several plants and sent workers to various related companies. Nippon Kokan Company in 1978 reduced 1,000 employees within a year, Kawasaki HI reduced its workforce by 3,500 employees by 1979, and Mitusi SC reduced its workforce by 2,000 in a few years, all by a combination of natural attrition, regular compulsory retirement and out-company transfers.

Recognizing the adverse economic conditions faced by the company and attempting to take advantage of the favorable conditions given to persons who voluntarily retire at an early age, many workers began to opt for early retirement. In some companies, the number of employees who retired early exceeded the planned number of employment reductions.

In contrast to these relatively well planned and carefully organ-

ized processes of employment adjustment in very large companies, some troubled companies, often in the class of small or medium-sized companies, had difficulties throughout the process of employment adjustment. For example, Hakodate Dock Company, a company of this class, twice presented to the two unions organizing its workers a "rationalization plan" in 1978 which contained the solicited retirement of 1,000 workers and a ten percent wage cut. Failing to secure an agreement from the two unions, the company was unable to carry out the plan and had to run a large deficit. The company eventually had to sell its new shipbuilding facilities to the credit organization and terminate the construction of large ships. However, the massive layoffs of 1,000 to 1,200 workers which the company still needed for its reconstruction failed to be carried out due to union resistance. Employment was eventually reduced by the beginning of 1979 through out-company transfers, temporary layoffs of 200 employees and sizeable reductions of overtime hours and various fringe benefits for all remaining workers.

### *Japanese Textile Industry*

The decline in international competitiveness of the Japanese textile industry has become increasingly conspicuous since the late 1960's. This is seen in such symptoms as the decline in its world market share and a secular decline in Japan's exports relative to imports. In addition to this long-term decline in international competitiveness, the trade frictions with the U.S., the impacts of the drastic re-valuation of the yen and the oil crisis during the late 1960's and 1970's have seriously shaken the Japanese textile industry and made substantial employment and capacity adjustments unavoidable.

In 1971, Unitica Company, a large textile manufacturer, decided to carry out massive employment adjustments over a two-year period which included the reduction of 5,000 employees and the shutdown of some plants. The company planned to reduce employees by taking advantage of the relatively high natural attrition of female workers, extensive transfers of workers to branches of the company, and voluntary early retirement. The adjustment process was delayed when the local union, with the assistance of the national textile worker's union — Zensen — opposed the plan of soliciting early retirement. However, in subsequent years, the large-scale reduction of employees was eventually achieved by extensively utilizing transfers of workers to

subsidiary companies, which were separated from the parent company, and other unrelated companies.

Mitsubishi Rayon, a large synthetic fiber manufacturer, announced in 1972 that it planned to reduce 2,000 employees within a year and a half by techniques of stopping new recruitment, shutting down plants and transferring workers. Extensive employment reductions have also been carried out by other major producers such as Toray, Teijin and Asahi Kasei Company. Common employment adjustment methods among these firms included the restructuring of business activities by closing or contracting textile plants and transferring workers to other operations, and solicitations of early retirement as a last resort.

Adverse impacts on medium-size firms in the spinning and synthetic fiber segments of the industry have been more severe than for larger firms in the industry. Many of these mid-size firms had to close their plants and were obliged to conduct dismissals and solicitations of early retirement during the adjustment period of the 1970's.

As a result of such "rationalization," the major synthetic fiber manufacturers reduced 33,000 employees or thirty-eight percent of total previous employment during the four years since 1975. Their market position was restored and profitability levels, though slim, were achieved by 1979.

This completes a brief and selective review of employment adjustment experiences of individual firms in several major industries. As one can clearly see from this brief review, the mode of employment adjustment measures is quite different between the large firms in key industries. The former is characterized by smooth and carefully coordinated processes incorporating a variety of adjustment measures; the latter is more frictional, far-reaching, and at times fatal. The former is known to be a typical Japanese type of adjustment. However, although it is certainly typical in the sense that such features are characteristic of large firms in major export-oriented industries, it should also be noted that the adjustment experiences in the medium and smaller-sized firms are commonly found throughout the Japanese economy.

