Labor on a Leash?

A Look at Japanese Enterprise Unions

by Thomas Nevins

The origins of Japan's characteristic enterprise unions may be traced to recognition on the part of management that labor mobility must be reduced. During the Meiji Era (1868–1912), Japan had a floating and mobile labor force with craftsmanlike pride and self-reliance. *Oyakata* ("labor bosses") recruited gangs of skilled workers and supplied them on demand to enterprises. By the end of World War I, however, the labor mobility inherent in the *oyakata* system became a liability for many companies. The advent of assembly-line mass production called for a stable, reliable work force that could undergo specialized training and be updated as technology changed. In order to successfully attract and maintain workers, management faced the challenge of bringing the labor-boss mechanisms under the factory roof. Naturally enough, the *oyakata* at first resisted management's threat to their control over labor. The *oyakata*'s initial resistance to and separate identity from management sowed the seeds for Japan's first unionization along enterprise lines.

Japanese management was familiar with piece-work, merit-based pay systems and other features of Western business enterprise. It also understood the advantages that open labor markets provide for optimum allocation of the labor force. Nonetheless, it opted for a seniority-based pay scale, which it accurately diagnosed as a means to undermine the old free-floating *oyakata* system and to maximize intra-company social cohesion.

Rooted though it was in the prewar era, unionization in Japan did not make any appreciable headway until the postwar period. Encouraged and protected by General MacArthur and the Occupation forces, unions proliferated in the first few months after surrender, with the unionization rate jumping from 0 percent at the end of the war to 39.5 percent in 1946. The Japanese industrial complex, humbled by defeat, was not inclined to oppose workers and Occupation authorities eager for unionization. For both labor and management, unionization within the firm represented self-reflection and a rejection of earlier ways. In addition, unionization was viewed as an important way to democratize the workplace and society at large.

Because of management's willingness to allow in-house unionization, postwar employees were able to organize openly on company premises, rather than arranging clandestine initial organizational meetings, as was true of their counterparts in other countries. Indeed, a comparative lack of management antagonism toward unionization explains much of why Japanese unions are organized along company rather than trade or industrial lines. It also helps account for the characteristic weakness of Japanese unions; they never received a management-administered baptism of fire.

Postwar unions had much to do with systematizing *nenko* ("seniority payments") by forcing management to fix the amount and timing of incremental pay increases. The broad range of privileges enjoyed by unionized workers in the postwar period contrasts sharply with their situation in prewar Japan, when management had absolute power over working conditions and dismissal.

Japanese-Style Collective Bargaining

Article 28 of Japan's constitution guarantees the right to organize and bargain collectively. Accordingly, a Japanese employer must bargain with every union that approaches management for discussion — even if the union has only two members. A system of exclusive bargaining agent is therefore held to be illegal because such a system would violate the right to organize and bargain collectively.

A Japanese employer is caught in a web of contradictory terms since every union has legal status. While it must

Worry furrows the brow of a striking worker

treat all unions equally, it must also bargain in good faith. If it bargains in good faith, settlements will of course differ from union to union. But its arriving at different settlements is discrimination between employees on the basis of union affiliation. The law prohibits such discrimination.

In Japan the law does not specify mandatory collective bargaining issues. In legal theory and practice, almost any issue within management's control is considered within the scope of bargaining. The argument of "management prerogative" is not normally accepted by the courts. Any management decision affecting working conditions may become a legitimate subject of bargaining.

According to the Trade Union Law, collective agreements may not legally exceed three years. If an agreement does not stipulate a fixed term of validity, it may be terminated with 90 days' notice, provided one of the parties submits a notice in writing to that effect, signed or affixed with a seal.

The law says nothing about terminating a definite period agreement. The opinion of the courts and legal theorists is that such termination would only become possible when the fundamental basis or obligations of the agreement have been repeatedly neglected or destroyed.

Japan's Trade Union Law stipulates that any provisions in an individual contract contravening standard working conditions in a collective agreement shall be null and void. Even provision of superior working conditions in an individual contract can be judged to contravene the standards of the collective agreement. Unions are supposed to be responsible for controlling working conditions, rather than merely imposing minimum standards. Thus, management in Japan can run into trouble by showing favoritism or by promoting one employee more quickly than his peers — even if the promotion is allegedly based on merit.

Dispute Activities and Union Legal Rights

In Japanese labor relations, there is not always a clear distinction between bargaining and strike action. Mass demonstrations, for example, are often regarded as merely one of the stages in the confrontation process.

Pickets parade for higher wages

In carrying out acts of dispute, Japanese unions aim mainly at the embarrassment of management rather than the financial crippling of the company. A surprisingly wide variety of dispute activities aimed at upsetting operations and work flow are legally permitted.

In Japan the strike is merely one of many tactics used by labor; it is not the most representative or commonly practiced form of dispute. Since union influence, power, and organization are restricted to a single enterprise, it is comparatively easy for management to hire strike breakers. Also, since enterprise union membership is limited to the employees in a single company, a strike fund tends to be small. Frequently, union strike funds cannot support sustained strikes by the full membership. Thus, unions often choose to circumvent strike action and resort to alternate strategies for interference. Imaginative tactics include work slowdowns, working to the rule, mass taking of personal leave, partial strikes, poster-pasting, the wearing of arm bands, sit-downs, and even seizure of the means of production.

Short strikes are quite common before bargaining even starts, making it possible for the union to easily call workers back to work before strike breakers can be hired. By engaging in short strikes, employees hope to demonstrate their dissatisfaction and elicit a prompt and positive management response. Thus, the strike is not viewed as a last resort or the most powerful weapon in labor's arsenal to force management to come around during collective bargaining.

The legality of partial strikes and working to the rule in Japan is based on the judgment that if a full strike is legal, certainly refusal to provide only a portion of one's work is legal, and, in fact, causes the employer less harm than a full strike. If violent or malicious in nature, however, such acts of dispute can be improper and illegal.

For example, deliberately irritating customers in a service industry would likely be regarded as sabotage rather than a mere work slowdown. Orderly picketing and even sit-downs on company premises may be tolerated. But if a sit-down seriously interferes with the work of non-striking employees by, for example, blocking access to machines or workshop entrances, it may be deemed illegal. Furthermore, the Labor Relations Adjustment Act (Article 36) prohibits any act interfering or causing a stoppage in the maintenance of safety procedures, and therefore any act that endangers human life in the workshop.

The wearing of ribbons and arm bands, as well as the pasting of posters and signs on company buildings and windows, is not usually regarded as an improper act of dispute. When ruling on these matters, the courts and the Labor Relations Commission take into account excessiveness, as well as abuse of union rights, if there is any.

For example, courts have ruled that pasting posters with so much glue that restoring building surfaces requires excessive cleaning amounts to the crime of property destruction.

Even if a dispute action is declared illegal, however, leading legal theory in Japan exempts union members (and sometimes even union leaders) from responsibility for the action. During collective bargaining or acts of dispute, less serious criminal acts are often justified even though they definitely would

Tokyo commuters walk to work during a railroad strike

be punishable if committed by ordinary citizens under normal circumstances. Article 1, Section 2 of the Trade Union Law provides that Article 35 of the Criminal Code applies to appropriate trade union activities and collective bargaining. According to Article 35, certain criminal acts become legal if they are authorized by law or are a legitimate business activity.

For example, as long as their attitudes and actions are not too violent or excessively threatening, union members may legally enter a manager's office, threaten, shout, force a meeting between management and labor, demand to bargain, and refuse to leave the office even though this is repeatedly requested by management. Such union members may not be punished for crimes of trespassing threat and coercion.

Article 8 of the Trade Union Law provides that employers cannot claim indemnity from a trade union or its members. All customer claims must be paid by the employer. The exemption of workers from civil liability is comprehensive, including breach of contract by individual union members, even when they are engaged in unannounced acts of dispute.

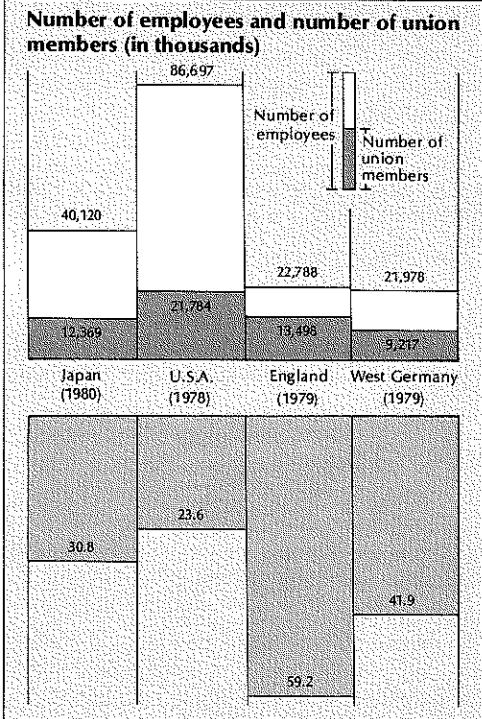
Expatriate managers shocked by such broad legality given to trade union activities have reason to take heart, however. The extensive protection given by sympathetic academics, lawyers, and judges has probably had the effect of spoiling the unions, preventing them from fighting for their gains and from standing on their own two feet in terms of finance and solidarity.

Since the constitution guarantees only workers the right to act collectively, there is some question as to what extent, if any, the employer may exercise his right of lockout. The majority opinion seems to be that in order to maintain balance or fairness, management has a right to implement a defensive lockout. This means one day of lockout for one day of strike.

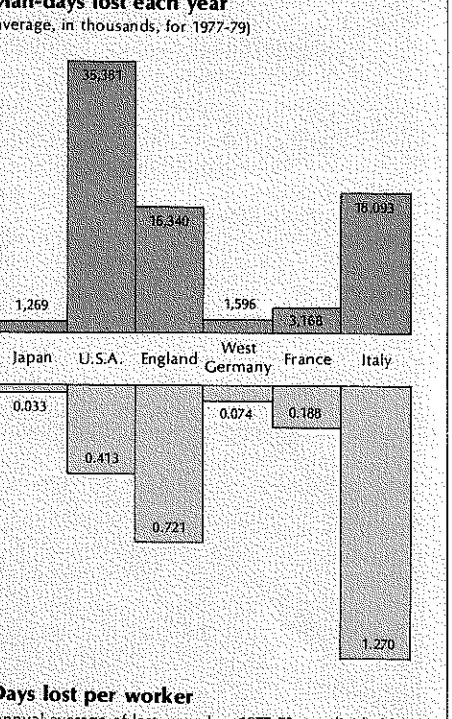
Other than wage claims, however, there is also the legal question of physical expulsion — that is, whether the employer can actively evict workers engaged in a sit-in on company premises. The employer's right of physical expulsion is generally viewed as an exercise of his property rights, rather than as a lockout per se. The situation becomes more complicated, however, as most legal theorists do not recognize an employer's property rights under circumstances in which unions are engaged in collective activity. In any case, to be safe, employers are best advised to go through the court procedure of obtaining an injunction, which may then be enforced.

Although Article 7, Section 2 of the Japanese Trade Union Law prohibits employers from controlling union administration and giving financial assistance to unions, employers often contribute to union welfare funds and provide unions with rent-free offices.

Number of Employees, Number of Union Members, and Rate of Union Membership in Selected Industrialized Nations



The Number of Workdays Lost Because of Labor Strife in Selected Industrialized Nations



Source: "Looking at the Labor Situation Through Graphs," 1982, The Ministry of Labor

Employers normally also assume responsibility for union phone bills, copy machines, furniture, stationery, and miscellaneous items. Unions may congregate in company meeting rooms and tack notices to company bulletin boards. A union dues check-off service is widely provided by companies.

Some union officers even get leave with pay for engaging in union activities other than collective bargaining. Full-time union officers are often given unlimited leave of absence from the company. Obviously, the close ties with management tend to further weaken unions, although the unions like to think that their demands for additional company support are proof of their militancy. Union leaders may also mistakenly believe that the union is made stronger each time it wins an additional concession of support from management.

It is surprising that unions have almost never claimed such management support as an unfair labor practice. Rather, they tend to appeal to the Labor Relations Commission when employers abandon certain forms of support. Employers should be aware that the more benefits they give the unions, the more dependent the unions become on management. With consistently well-planned management policies and avoidance of explicit conflict, labor and management should be able to enjoy a comfortable relationship of reliance and dependence. In its wisdom, the Labor Relations Commission presumably intends to protect unions, but the result is really to further weaken them and make them more subservient to management.

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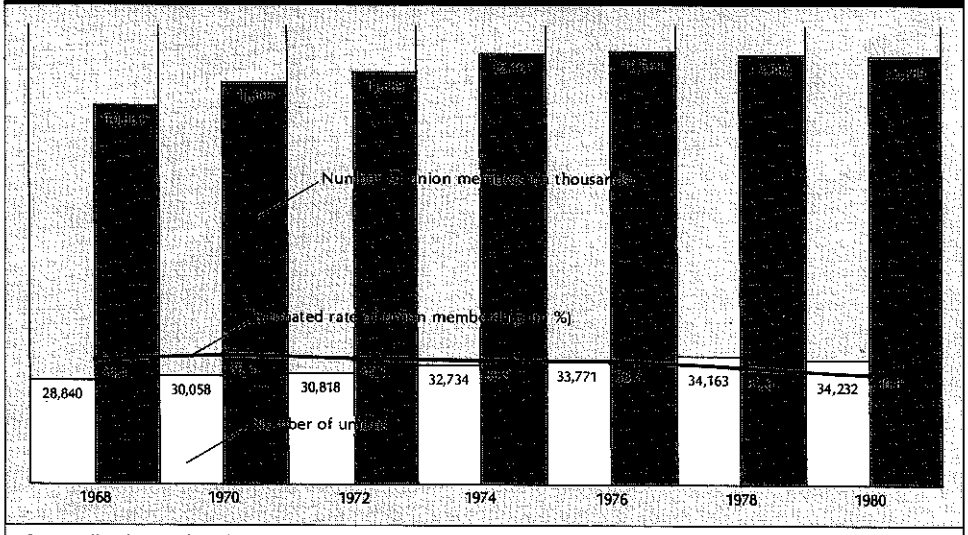
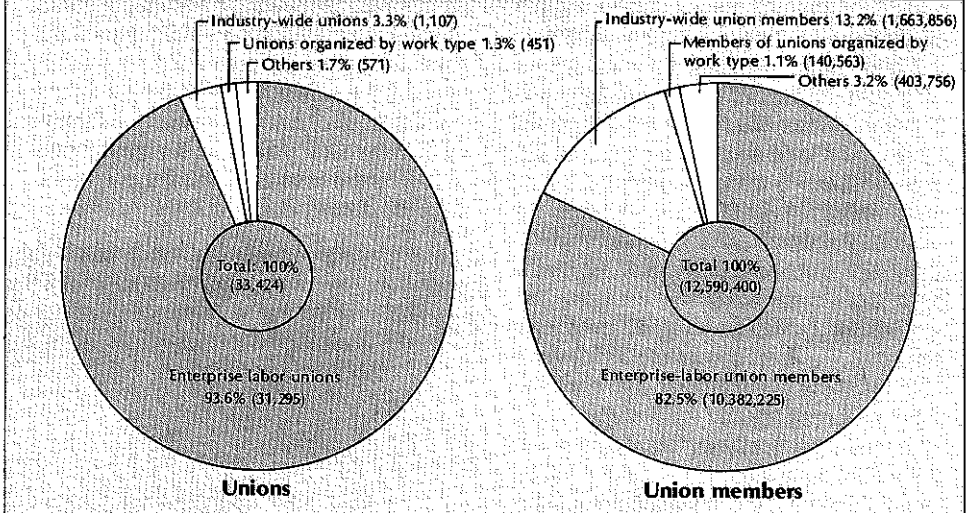
Number of Unions, Number of Union Members, and Rate of Union Membership in Japan (1968-80)



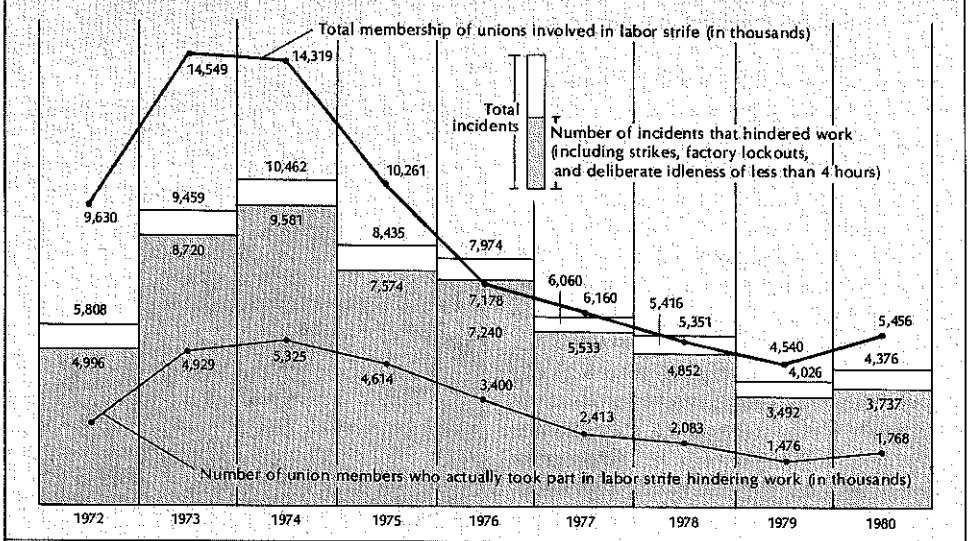
Source: "Looking at the Labor Situation Through Graphs," 1982, The Ministry of Labor

A Breakdown of Labor Unions and Union Membership by Organization Type (1975)



Source: "Looking at the Labor Situation Through Graphs," 1982, The Ministry of Labor

Incidents of Labor Strife and Number of Participating Workers (1972-80)



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