of Commercial Code provisions, holds that if a transactor signs a promissory note knowing that it is a note, the fact of handling it becomes fully valid. In the case involving a third party in bad faith, the proviso to Article 17 of the Bills Act is applied and the third party in question is not protected. The current decision was the first case in which the Supreme Court adopted the second view.

The decision also indicated a sort of concept on partial invalidity even in the case of mistake that the transaction of the bill is effective within the bounds of the genuinely, effective, real intention held by the transactor. This is worthy of note in that the decision maintained that such does not interfere with the second paragraph, Article 12, of the Bills Act stipulating that a partial endorsement is null and void.

By Prof. TAKAYASU OKUSHIMA

7. Labor Law

[Overall Trends of Judicial Decisions]

There were a number of trends featuring judicial decisions in 1979. To begin with, there were few decisions by the lower courts in favor of labor on the ground of "unconstitutionality" or "qualified application" during the year under review in the fields of government and public workers, largely due to the series of decisions made at the Grand Bench of the Supreme Court.

Secondly, important judgments including those of the Supreme Court were rendered with regard to union activities such as the display and distribution of leaflets and bills.

Thirdly, the number of court decisions on cases involving confrontation among labor unions over the choice of policies and

relevant labor-management relations remained the same as before. In concrete terms, the cases involved dismissal, disciplinary action, relocation and temporary transfer, and other unfair labor practices.

Fourthly, as the latest trend, there were cases involving expulsion from union membership and union shop dismissal resulting from confrontation between majority and minority groups within the same union over such questions as the support of specific political parties and choice of policy lines.

1. The case in which the removal of a name from the membership list because of factional activities within the union was contested.

At Yokohama District Court. Decision handed down on October 26, 1979. Application for provisional disposition of the confirmation of the status of union members. Accepted. (Case No (*yo*) 1089 of 1979. 330 *Rōhan* 41.)

[Facts]

The petitioner (hereinafter called X) was a member of the other party petitioned against All Nissan Motors Union (hereinafter called Y). X and his supporters formed an independent organization within the union Y in protest of the latter's pro-company policy line and management as well as being compelled to support the Democratic Socialist Party. X et al. centering on the newly-established organization deployed criticism and publicity activities against Y.

As a countermeasure Y, in anticipation of possible dismissal by the company on the basis of the union shop system, called a meeting of union delegates unexpectedly and came to a decision to oust X et al. from the membership list. The decision was approved later at the annual union convention. Thereupon, X et al. filed a petition for provisional disposition for confirmation of their status as union members.

[Opinions of the Court]

The court in its decision declared that the activities of X et al.

"orginated in the differences of views with regard to thought, creed, political conviction and others, and that the emergence of varied opinions and ideologies could not be avoided in the present day in which multilateral views on values and ideologies exist or can exist."

"In particular," it said, "freedom of opinion and expression by union members must be honored to the utmost degree in a labor union that ought to be a democratic organization." In this regard, it continued, "it is highly questionable to conclude that the speeches and behavior of the petitioners in their factional activities had disrupted the control or discipline of the union. The leaflets and bills issued by the petitioners did contain more or less improper expressions at times, but they could not be considered as having soiled the reputation of Y," it added. In this regard, the court said, the union regulation partaining to the expulsion from membership could not be applied to X et al.

[Comment]

The decision that criticism between majority and minority groups within a labor union, especially criticism of union leaders by dint of the expressions contained in the leaflets, bills, etc., does not run counter to the policy of union control from the standpoint of democracy will have an important bearing on future union activities in the nation. It also entertains significant problems when seen from the viewpoint of guaranteeing union democracy and judicial intervention.

2. The case, in which the behavior of union members who used part of the company facilities for posting bills in defiance of an order of the superior official not to do so, was contested whether or not it deserved disciplinary action for disobeying the order.

Decision at the Third Petty Bench of the Supreme Court. (October 30, 1979) Status confirmation appeal to the Supreme Court. Judgment of the court below was set aside. Disciplinary action found effective. (Case No. (*o*) 1188 of 1976. 33 Minshū 582.)

[Facts]

As part of the nationwide spring labor offensives in 1974, the Japanese National Railways Workers Union to which the defendants (hereinafter called X) belonged engaged in bill posting activities in order to raise the morale of union members. X et al. posted bills on clothe lockers in definace of an order by management to stay away. Taking note of their actions, the appellants, the Japanese National Railways, a public service corporation (hereinafter called Y), subjected X et al. to disciplinary action on the ground of violating shop regulations under the Japanese National Railways Act.

The trial court upheld the punishment meted out by management. As the appellate court found the punishment null and void, Y appealed to the Supreme Court contending that the second rulling be set aside.

[Opinions of the Court]

The court decision said: "An enterprise establishes its business policy and engages in its activities under this policy in order to maintain its existence and carry out its business smoothly for which it stands, and, thereby, the enterprise is qualified to call on its constituent members to abide by its policies."

Workers as well as labor unions can only use the material facilities of the enterprise on the basis of the latter's consent or agreement made through collective bargaining. Even if the need for the use of the so-called "union within an enterprise," the "labor union or its members have no right to acquire the right to use the material facilities of the said enterprise for their union activities."

By the same token, "the enterprise has no obligation to provide the labor union or its members with the use of its material facilities for union activities." Accordingly, "unless there is a special circumstance in which refusal of the use of said material facilities by the union or its members is recognized as an abuse of the right enjoyed by the enterprise," the use of the facilities of the enterprise without the consent of management not only violates the right of the enter-

prise to maintain facilities but disrupts its operations. Use of facilities as such cannot be called "justifiable union activity."

In this case, the court found the disciplinary action against the behavior of X et al. effective and overruled the decision at the court of the second instance on the ground that the refusal to permit the posting of bills out of the need for maintaining business order did not in any way constitute abuse of the right on the part of Y when viewed from the public nature of the railway business.

[Comment]

The decision by the Supreme Court was the first of its kind concerning the posting of bills and the right to maintain facilities. Since most labor unions in Japan are unions within enterprises, the current decision will have an important bearing on future union activities.

When viewed from a legal standpoint, it is problematical whether belittling the need arising from union activities, while at the same time anticipating a possible "abuse of rights," will square with the ideal guaranteed by the right of workers to organize as stipulated in Article 28 of the Constitution.

[References: Constitution § 28, Labor Union Act § 7, Japanese National Railways Act § 31, etc.]

3. The case in which the propriety of an emergency order was contested in connection with an exception filed to the ruling dismissing an application for an emergency order.

The Tokyo High Court decision (August 9, 1979). Exception to the ruling dismissing an application for an emergency order. Dismissed. (Case No. (*gyo su*) 805 1979. 30 Rōminshū 826.)

[Facts]

A company (hereinafter called Y) wanted to carry out a transfer of some of its employees who were union members. In the face of the refusal by the union members in question, the company dismissed them.

The labor relations commission (Tokyo Metropolitan Labor

Relations Commission and Central Labor Relations Commission; hereinafter called X) termed the dismissal an act of unfair labor practice and issued instructions to the company to restore the original status of the said employees and pay them retroactively.

Dissatisfied with the action taken by X, Y filed an administrative suit for cancellation of the said order. Thereupon, X filed an application for an emergency order with the court of the first instance.

In the ruling in the original instance, the application should be judged taking into consideration the propriety of the said order and the necessity of immediate relief. In the present case, the application was dismissed on the ground that the selection of the personnel to be relocated and the proportion of union members among those to be transferred were not necessarily unreasonable.

Upon receiving the ruling dismissing the application, the Central Labor Relations Commission appealed to the High Court.

[Opinions of the Court]

In making a decision whether or not to accept the application for an emergency order, the court may examine the propriety of the said relief order as well as the "necessity" of immediate relief, so to speak. Then, with the aid of some explanation submitted in the course of the proceeding, the court may study if there exists any serious doubt about the decision made in favor of the said relief.

In the light of this fact, the personnel transfer in the current case cannot be called "unreasonable" as stated in the original instance. Even if there existed such a background that made it possible to issue a relief order as requested, it is still difficult to conclude that the transfer of local chapter members was designed to put them out of the "head office" since they were members of local chapters and ordered transferred to local areas.

In this regard, the court ruled that the issue of an emergency order at this stage was not appropriate, as the relief order in question was requested on the erroneous assumption of "some important facts."

[Comment]

An emergency order has seldom been dismissed in respect of the professional expertise of labor relations commissions, whose task is to promote the stabilized and smooth conduct of the labor-management relationship on a long-range basis. If ever it was rejected, it was due to the doubtful nature of the "emergency" the party concerned had claimed.

The current case was the first instance of its kind in which the "acknowledgement" itself was questioned. Strong criticism is raised against the ruling that the professional expertise of labor relations commissions should be honored and that the commission, in the current case, has not adjudged the company action as "unfair labor practice" simply taking into account the proportion of local chapter members to the number of those also involved in the said transfer.

[Reference: Labor Union Act § § 7 and 27 (8)]

4. The case in which the validity of cancelling a company's decision to employ a newly graduated college student was contested.

Ruling at the Second Bench of the Supreme Court (July 20, 1979). Appealed to the Supreme Court contending that the cancellation of the company's decision should be validated.
Dismissed.

[Facts]

The plaintiff (appellee) to the current case, who was then expected to graduate from a college (hereinafter called X), through the good offices of his school, applied for a position in a company engaged in general printing business (defendants, appellants). The company, upon conducting an examination, informed X of its informal decision to employ him and had him submit a "written oath."

About two months before formal employment, the company informed X of the cancellation of its informal decision. Thereupon, X filed a suit contending that the informal decision be confirmed and that wages be paid retroactively. Both the district court and

the high court concerned ruled in favor of X. The company then appealed to the Supreme Court.

[Opinions of the Court]

What is called a provisional notice of employment comes in many forms and each case must be scrutinized independently and thoroughly. Considering that such procedures as solicitation of applicants, application, provisional notice of employment and submission of a written oath have been carried out, it can be interpreted that a labor contract, with a rider attached to its concerning the right to cancel the informal decision of employment for reasons described in the written oath, has been concluded on the understanding that the employment begins immediately after graduation from school.

The right to cancel can be exercised only when such action can be acknowledged as objectively reasonable from the generally accepted social concept in the light of the intent and tenor of the reservation, and that the facts which justify the cancellation could be known or foreseen at the time of the informal decision. The court, as a result, ruled that the cancellation of the informal notice did not apply for such a simple reason as "the applicant gave a gloomy impression."

[Comment]

The Supreme Court, upon studying the real situation concerning the employment of college graduates by enterprises in this country, acknowledged that the labor contract with a rider concerning the right to cancel is concluded during the stage of informal decision of employment. The ruling, it is hoped, will greatly influence future findings of lower courts and will take root in labor practices.

Legally speaking, the current ruling can be considered an extension of the ruling given at the Grand Bench of the Supreme Court on December 12, 1978 in connection with the case involving Mitsubishi Plastics Industries Co., Ltd. in which the Court stated that there should be such restrictions as "rationality" and "social

tolerance" regarding the freedom of cancellation (or the freedom of dismissal).

5. A case in which the validity of dismissal of all the workers of a department of an enterprise to which they belonged, following the closure of the said department on the ground of poor business performance amid the recession, was contested.

Decision by the Tokyo High Court on Oct. 29, 1979. Appeal allowed. Dissmissal found effective. (Case No. (*ne*) 1028 of 1976. A case of appeal contending that the application for the provisional disposition of the maintenance of the status of employees, etc. should be granted. 30 *Rominshū* Appellant 1002.)

[Facts]

Upon deciding on the closure of its deficit-ridden "acetylene" department, the company (appellant) informed the entire staff of the department of their "dismissal."

The company, as a whole, however, was in the black thanks to the good business performance of its "oxygen" department, the company's main department. Moreover, the company employed scores of new male and female workers following the dismissal. The discharged workers (appellee) then filed a suit saying that their dismissal was invalid.

The court of the original instance found the dismissal null and void on the ground that the failure of the company to settle the issue smoothly and enter fullfledged negotiations with the workers ran counter to the "principle of faith."

Dissatisfied with the decision, however, the company lodged an intermediate appeal.

[Opinions of the Court]

In view of the economic conditions prevailing among workers in this country, the freedom of dismissal should be restricted to a certain extent. The discharge, if carried out, should be based on the following three-point principle: Firstly, the discharge should be carried out only when necessary and unavoidable for the rational

management of an enterprise. Secondly, the dismissal must be necessary because the employees cannot be transferred to more or less the same type of work at other departments located at the same or nearby places, or, even if they are transferrable, the company may find it difficult to prevent an increase in surplus personnel, and the dismissals are not carried out from the selfish or arbitrary will of the enterprise on the pretext of closing the specific department. Thirdly, the selection of personnel to be discharged should be made according to objective and reasonable yardsticks.

In the current case, the poor business record of the acetylene department resulted from its structural character common to the industry in question and the low productivity of the company itself.

In this regard, it is difficult to expect that the management of the company would improve in the future. If the situation was left as it was, the company as a whole would have been affected seriously. Hence, the closure of the said department was necessary. Moreover, considering the special professional skill needed for the work at other departments, it was believed difficult to transfer the workers to other departments. Such being the situation, the dismissal in the current case was unavoidable and the decision in the first instance was overruled.

[Comment]

The current decision was made in line with past cases in that it recognized legal restraints on the freedom of dismissal while calling for "rationality" in justifying the dismissal. The point in question, however, is the nature of the "rationality" in concrete terms.

Even if the enterprise as a whole is earning a profit and there exists a lingering fear of decline in its competitiveness, it is highly problematical for the company to capitalize on it for discharging the employees in the deficit-ridden sector.

Since there is no immediate danger of management crisis or bankruptcy, the company should have endeavored to engage in thoroughgoing collective bargaining to seek the understanding of

the employees, while making further efforts to avoid discharging them for reasons of company reorganization, for instance, by soliciting voluntary retirement, etc. Such a way of thinking has so far underlined many past decisions made in court.

By Prof. KAZUHISA NAKAYAMA
KUNIYUKI MATSUO

8. International Law

a. Public International Law

1. Status of Aliens

Action for cancellation of a deportation order. Osaka District Court, Case No. (*gyo u*) 20 of 1975; No. (*gyo u*) 44 of 1976. Decision by the No. 2 Civil Affairs Department on March 29, 1979. Appeal dismissed. 395 *Hanrei Taimuzu* 127.

[Issues]

Whether or not the Justice Minister abused his right of discretion by not giving special permission for residence to an alien who smuggled himself into Japan, stayed in the country for 10 years, and enjoyed economic stability with his own children.

[Reference: Immigration Control Order § 50 (1) (iii) and Administrative Litigation Act § 30]

[Facts]

See Issues.

[Opinions of the Court]

"Whether or not the Justice Minister should give special permission to stay to anyone who files an objection according to Article 50 of the Immigration Control Order belongs to the ex-