in his own interests.

**By Prof. Takayasu Okushima**
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## 7. Labor Law

The following seven cases are cited as important judicial decisions in 1984. Among them, (3) and (7) are regarded as especially important and are introduced herein with brief comments.

(1) Fuse Driving School case where the civil liability of a parent company that dissolved one of its subsidiary companies and discharged all its employees on account of union activities in the subsidiary company was disputed. Decision by the Osaka High Court on March 30, 1984. (Cases Nos. (*ne*) 1557 and 1563 of 1982.) 1122 *Hanrei Jihō* 164.
(2) The Brother Industries, Ltd. case where the validity of dismissal (refusal of regular employment) due to poor results during the trial employment period was disputed. Decision by the Nagoya District Court on March 23, 1984. (Case No. (*yo*) 1092 of 1975.) 435 *Rōhan* 64.
(3) Shizunai Post Office case where the legality of disciplinary punishments (warnings and cautions) imposed on postal workers (national public officials) because of their refusal to work overtime was disputed. Decision by the Second Petty Bench of the Supreme Court on March 27, 1984. (Case No. (*gyo tsu*) 74 of 1979.) 430 *Rōhan* 69.
(4) The Japan Airlines Co., Ltd. case where the legality of dis-

ciplinary punishments (salary cuts and demotions) imposed on an airplane purser who did not follow his company's direction to change his starting time from the day of notice was disputed. Decision by the Tokyo District Court on September 20, 1984. (Case No. (*wa*) 3350 of 1980.) 1182 *Hanrei Jihō* 132.

(5) Takamatsu Forestry Office case where the failure of an employer to perform the duty of care in relation to safety and protection of employees against diseases caused by oscillations of chain saws used in tree felling was disputed. Decision by the Takamatsu High Court on September 19, 1984. (Case No. (*ne*) 176 of 1977.) 1132 *Hanrei Jihō* 31.

(6) Kurokawa Milk Products Co., Ltd. case where the validity of new work rules set by the company that, by reason of changes in the circumstances creating financial difficulties, cancelled working conditions provided in the collective labor agreement, such as the hours of work and length of holidays, was disputed. Decision by the Osaka High Court on May 30, 1984. (Case No. (*ne*) 201 of 1982.) 437 *Rōhan* 34.

(7) The Japan Mail Order Co., Ltd. case where unfairness was disputed of the suspension of payments of bonuses to the members of the minority union for the reason that they rejected the condition which the company had put forward during negotiations for "cooperation with the company in the promotion of productivity", especially in the circumstances that there were several unions in the company, all of which were treated differently. Decision by the Third Petty Bench of the Supreme Court on May 29, 1984. (Cases Nos. (*gyo tsu*) 77 and 78 of 1975.) 430 *Rōhan* 15.

## 1. Shizunai Post Office Case

### *[Facts]*

The appellants including X were mail carriers (national public officials). In November 1967, when X and others returned to the office with undelivered mails, the respondent Y (the postmaster)

ordered them to deliver the mails even though it meant exceeding their prescribed hours of work. X and others returned home regardless of this order. Therefore, Y imposed on them a warning punishment based on the employee warning rule for the postal service section.

There were various agreements between X (and others) and Y concerning their work outside the prescribed hours. (1) There was an overtime work agreement between the union to which X and others belonged and the Ministry of Posts and Telecommunications. According to that agreement, overtime work can be ordered only when "inevitable" and any overtime work order must be "communicated to each worker himself at least 4 hours before the overtime work is to take place." (2) The same provisions as those in the above agreement were included in the office regulations. (3) An agreement based on Article 36 of the Labor Standards Act was concluded between the branch of the union to which X and others belonged and Y, in which it was provided that "overtime work can be ordered in circumstances where users will inevitably be inconvenienced due to an extraordinary increase in postal work or where urgent delivery is needed." (Incidentally, Article 36 prohibits the employer from ordering overtime work exceeding 8 hours a day and 48 hours a week or on weekly holidays unless an agreement is concluded with the union representing the majority of the workers in each work place or the representative thereof.) (4) Further, it was provided that the person in charge of the work place (Y in this case) could order his staff to work overtime in certain circumstances as prescribed by "the rules for hours of work, breaks, holidays, and vacations of postal workers" provided under "the Act Providing Special Measures Concerning Wages in the National Public Enterprises."

X and others sought a declaration that the order imposing the punishment was null, insisting that "the duty to work overtime only arises each time when a worker consents to a proposal to do so from his employer."

At first instance (the Sapporo District Court decision on February 25, 1974, 26 *Rōminshū* 26), the claim was rejected for the

reason that the relevant work rules stemming from the contract of employment imposed a duty to work overtime. It was assumed that the agreement was valid, and thus the court held that X and others owed a duty to the post office to work overtime.

The Sapporo High Court decision on January 31, 1979 (30 *Rōminshū* 81), rejected the *koso* appeal for the reason that the circumstances fell within the range of the agreement of the item (4) noted above where the person in charge of the work place could order overtime work unilaterally within the limit of the agreement concluded under the Labor Standards Act.

X and others filed a *jokoku* appeal.

***[Opinions of the Court]***

*Jokoku* appeal dismissed.

In the agreement between the union to which X and others belonged and the Ministry of Posts and Telecommunications, it was agreed that "overtime work can be ordered when inevitable." And the same provision was included in the office work rules. In addition, an agreement based on Article 36 of the Labor Standards Act had also been concluded.

Under such circumstances, the judgment at first instance is correct in saying that issuing an order for overtime work when X and others brought back a large number of undelivered mails came within the scope of the word "inevitable".

On the above assumption, X and others owe a duty to work overtime because "the rules for hours of work, breaks, holidays, and vacations of postal workers" provided under "the Act Providing Special Measures Concerning Wages in the National Public Enterprises" provides that the person in charge of the work place can order his staff to work overtime and because this order is an official order based on Article 98 of the National Public Officials Act.

***[Comment]***

According to the theories and precedents presently prevailing

in Japan, agreements based on Article 36 of the Labor Standards Act are interpreted as only being a precondition for escaping punishment on account of ordering work exceeding 8 hours a day and a mere presence of such an agreement does not immediately impose on workers a duty to work overtime. Some theories and precedents state that such orders require the consent of each worker given each time and others state that a provision intended to impose such duties upon individual workers in a collective agreement or office work rules suffices to be a basis upon which such orders may be issued. In this case, it was judged that such duties could be imposed without requiring the consent given each time of each individual worker on account of the right to issue official orders as provided in the National Public Officials Act.

However, when considering the fact that the number of hours of work prescribed in the Labor Standards Act is protected by punishments, it is submitted that individual workers should be entrusted with the decision each time as to whether or not to work overtime, because such work is exceptional and occasional work that may interrupt the private life of the workers. This is also applicable to postal workers as national public officials. Thus, with respect, this judgment of the Supreme Court is questionable.

## 2. Japan Mail Order Co., Ltd. Case

*[Facts]*

The respondents Y were a company engaged in the manufacture and sale of goods on consignment. In the company there were two unions: the union A which was a party to the case; and the union B, which was not involved in the case. During negotiations for bonus payments at the end of 1972, Y suggested that the unions should agree to the condition of "cooperation with the company in the promotion of productivity", in exchange for adding a certain amount to the workers' bonuses. The union B accepted the company's offer. The offer, however, lacked con-

crete terms and in the labor-management relations existing at that time in Japan, "cooperation in the promotion of productivity" was understood to have the same meaning as cooperation in industrial rationalization and in cutting the number of employees. Accordingly, the union A rejected the proposal and demanded that the company should make a more concrete proposal. On the other hand, although Y expanded upon the proposal by explaining that the meaning was "to work harder according to the direction of the company," it did not change the actual words in the offer. The negotiations between A and Y did not result in agreement and Y suspended the payment of bonuses to the members of the union A on account of the lack of agreement.

Therefore A sought various orders from the appellants, the Tokyo Metropolitan Labor Committee (hereafter referred to as "the Committee"), claiming that Y's act was unfair and thus prohibited by Article 7(i) and (ii) of the Trade Union Law.

After examining various questions, the Committee concluded that it was not clear what action A would be expected to take under the terms of the company's proposal, and that the proposal lacked rationality. Thus using the proposal as a reason for suspending payment of the bonus was disadvantageous to the members of the union A and a violation of Article 7(i) of the Trade Union Act. At the same time, the Committee judged that it was an act of control and intervention (a violation of Article 7(iii) ) which had the intention of weakening the union A. The Committee ordered Y to pay the bonus to the members of the union A using the same rate that applied to the union B. Y brought an action claiming nullity of the Committee's order.

At first instance (the Tokyo District Court decision on March 12, 1974, 25 *Rōminshū* 106), Y's claim was rejected on approximately the same grounds as those given by the Committee. Y then appealed.

In the Tokyo High Court decision on May 28, 1975 (26 *Rōminshū* 451), Y's appeal was allowed and the judgment of the lower court and the decision of the Committee were reversed.

The reason being that the increment of the productivity to be expected from the result of hard work can be applied in the calculation of a bonus, thus the bargaining point could be seen as rational. The result of A's rejection of the offer should be accepted by A, it was held. The Committee brought a *jokoku* appeal.

***[Opinions of the Court]***

*Jokoku* appeal allowed.

The offer made by Y in this case was an abstract one, and it could not be said that Y had sufficiently explained what A was to do if it accepted the offer. It is natural that A was anxious to avoid a situation where the bargaining points would become an excuse to urge A to cooperate with an increase of work and a reduction in the number of employees once it accepted that offer. Therefore, to maintain or accept such an ambiguous offer would show a lack of rationality. Thus it was inevitable that A rejected the offer. It should be found that Y's ambiguous way of negotiating was the cause of A's rejection of the offer.

On the other hand, it could have been predicted that A would reject the offer in view of A's policies and activities. Therefore it can be seen that, by maintaining the offer, Y intended to treat the members of the union A, which was the minority union, in a manner disadvantageous to them and to thus cause disturbances within the union.

Therefore Y's action as a whole in this case constitutes an unfair labor practice under Article 7(i) and (iii) of the Trade Union Act.

***[Comment]***

If it was not clear what work A should provide in return for a larger bonus, A was not in a position to judge whether or not it should accept the company's offer. And further, if the work to be provided under the offer and the amount received by the workers in return for the work did not balance with each other

and if there were a fear that A would impose an unreasonably heavy burden of work, it could not be called a fair deal. (In the consciousness of labor and management at that time in Japan, to cooperate with the improvement of productivity was understood to have the same meaning as to cooperate with rationalization as viewed from the management's side.) The Supreme Court, looking at Y's real intention, judged that Y intended unfair labor practices.

It can be said that the Supreme Court judged that unless an offer was clear and rational so that it might become a transaction, maintaining an ambiguous offer could not be said to be an attempt to proceed with sincere collective bargaining, and that if such insincere bargaining occurred where more than one union existed in one company and if they were treated differently, it would become unfair labor practices such as discriminatory treatment and intervention in a union.

**By Prof. Kazuhisa Nakayama**
**Kuniyuki Matsuo**

# 8. International Law

## a. Public International Law

**The status of refugees — fear of political persecution.**

Decision by the First Civil Division of the Tokyo High Court on May 7, 1984. Case No. (*gyo-su*) 1 of 1984. An immediate *kokoku* appeal from the decision to reject the complaint against the execution of a deportation order. 1118 *Hanrei Jihō* 117.

[Reference: The Immigration Control and Refugee Recognition Act §§61-2 and 50(1)(iii); The Code of Administrative Procedure §25.]