

affirmed at the time the appeal was dismissed.

Prof. YASUHIRO OSAKI
Assist. YASUHIKO KUBOTA

6. Labor Law

A case in which it was held that the collective agreement and the work rules which include disadvantageous changes of retirement allowances have no effect on unorganized workers because of the existence of a “special circumstance”, though even a collective agreement which causes a disadvantageous change of working conditions of unorganized workers affects them in principle. The case of *Asahi Kasai Kaijo Hoken Co.*

Decision by the Third Petty Bench of the Supreme Court on March 26, 1996. Case No. (o) 650 of 1993. 691 *Rōhan* 16.

[Reference: Trade Union Law, Article 17.]

[Facts]

The issue of law in this case is the general binding effect of a collective bargaining agreement (Trade Union Law, Article 17) which changes a working condition (retirement allowance) disadvantageously. Y (defendant, *kōso* respondent, *jōkoku* appellant) is a non-life insurance company. Y took over another company's business and unified most of working conditions in order, but Y could hardly coordinate its own mandatory retirement system and the retirement allowances for the other company were more advantageous. Then, Y concluded a collective bargaining agreement with a trade union which lowered the mandatory retirement age and reduced retirement allowances because of poor business conditions. Thus the age of mandatory retirement was lowered from the former 63 years old to 57, and the retirement allowance was reduced from about 20,070,000 yen to about 18,500,000 yen. X (plaintiff, *kōso* appellant, *jōkoku*

respondent) engages in investigation at Y and was made a nonmember of the union by the collective bargaining agreement. Because Y revised provisions of the work rules in conjunction with the conclusion of the collective bargaining agreement, X, who was already 57 years old at that time, filed a lawsuit in the Fukuoka District Court asking to confirm his status as an employee of Y under the labor contract and to be paid the difference between about 20,070,000 yen and about 18,500,000 yen, that is about 1,570,000 yen. Y insisted that the aforesaid collective bargaining agreement was extended to affect X based on the general binding effect of Article 17 of the Trade Union Law.

The court of first instance (decision of the Fukuoka District Court, Kokura Branch on May 30, 1989, 545 *Rōhan* 26) dismissed most of X's claim and upheld the provisions of the collective agreement etc. However, the high court (decision of the Fukuoka High Court on December 24, 1992, 691 *Rōhan* 22) rejected the application of the provisions of the new standard for retirement allowances and upheld X's claim for the difference in wages, i.e., about 1,570,000 yen. Y then filed a *jōkoku* appeal to the Supreme Court.

[Opinions of the Court]

Jōkoku appeal dismissed.

Article 17 of the Trade Union Law provides that "when three-fourths or more of the workers of the same category regularly employed in a particular factory or other workplace come under the provisions of a collective bargaining agreement, such agreement shall be regarded as also applying to the remaining workers of the same type employed in the same factory or workplace" and has no limitation on the general binding effect which affects workers of the same category. The purpose of this provision is regarded as maintaining and strengthening the right of unions to organize, and realization of fair working conditions in the workplace by unifying working conditions in the workplace with the working conditions in a collective bargaining agreement which is applied to three-fourths or more of the workers of the same type in the workplace. Therefore, it is not proper that the normative effects of collective agreements do not af-

fect unorganized workers just because their working conditions are in some aspect more advantageous than the ones in collective agreements.

Unorganized workers, however, cannot participate in making decisions in unions; on the other hand, unions do not exist in order to improve the working conditions of unorganized workers. Thus, it is necessary to examine the extent and substance of disadvantages which collective bargaining agreements give to a particular unorganized workers, the circumstances under which the collective bargaining agreements were concluded, and whether the workers are entitled to be members of the union. When there is a special circumstance in which it is regarded as quite unreasonable to apply the collective bargaining agreement to the unorganized workers, we hold that the normative effects of the collective bargaining agreement can not affect the unorganized workers.

In this case, X received the only great disadvantage because X was not only regarded as retired on the ground that X had already reached the age of retirement on the day on which the collective bargaining agreement was concluded, but also his retirement allowance was reduced by it. Besides, the change of the provision applying to the retirement allowance means that the union disposed of or changed X's claim to his retirement allowance. Moreover, X was excluded from a range of the members of the union. Taking these into account, we hold that the effect of the collective bargaining agreement in this case does not apply to X, because it was quite unreasonable for X to be disadvantaged by the reduction of the retirement allowance. For the same reason, it was also unreasonable for the retirement allowance to be reduced due to a change of the work rules.

[Comment]

As regards the general binding effect of Article 17 of the Trade Union Law, there are discussions in legal essays and courts about whether to extend the effects of collective bargaining agreements to unorganized workers when the change decreases the level of their working conditions. The extension to unorganized workers has been consistently affirmed by past lower courts; additionally, "special cir-

cumstances” in which the general binding effect was denied as an exception were limited to such cases in which unions concluded collective bargaining agreements without any reasonable need. In addition, no courts have actually confirmed the existence of “special circumstances.” On the other hand, legal comments are roughly divided into two views. One is that disadvantageous changes should be recognized in order to unify working conditions and establish fair labor standards allowing both the advantageous and disadvantageous effects of collective bargaining agreements on unorganized workers. The other is that it should not be permissible to decrease the working conditions of unorganized workers based on the standard of collective agreements taking into account advantageousness as a principle.

Regarding this decision, which was reviewed for the first time by the Supreme Court with respect to this question, the Court confirmed the extension of the effects of collective agreements which change working conditions disadvantageously in principle. It held that there is an exception in which the extension may be denied due to the existence of “special circumstances” in which the application of the agreement to particular unorganized workers is quite unreasonable. Further, the Court recognized the “special circumstances” as a concrete matter. Taking into account the circumstances in which unorganized workers cannot participate in making decisions in unions and the extent and substance of the disadvantage which collective agreements give to particular unorganized workers, the Court interpreted “special circumstances” liberally and held that there were “special circumstances” in this case.

Moreover, another significance of this decision is that the Court held it unreasonable to disadvantageously change the work rules which were revised in conjunction with the conclusion of the collective bargaining agreement on the same ground as the decision about the disadvantageous change of working conditions in existence before the collective bargaining agreement was concluded. In short, the Court considers the standard to assess the reasonableness of disadvantageous changes of working conditions by the extension of the collective bargaining agreement and the standard concerning the dis-

advantageous change of work rules to be identical.

Prof. YOICHI SHIMADA
SHINO NAITO

7. International Law

- 1. A case in which it was held that Japanese fishing laws and regulations are applicable to fishing operations conducted in the vicinity of the Northern Territories by Japanese nationals under the pretense of a Japanese-Soviet joint venture.**

Decision by the Third Petty Bench of the Supreme Court on March 26, 1996. Case No. 466 (*a*) of 1992. A case concerning a violation of the Hokkaido Ocean Fishing Regulations. 50-4 *Keishū* 460, 1564 *Hanrei Jihō* 140, 905 *Hanrei Taimuzu* 136.

[Reference: Fishery Act, Article 65 (1); Marine Resources Conservation Act, Article 4 (1); Hokkaido Ocean Fishing Regulations (prior to amendment by the 1991 Hokkaido Rule No. 13), Articles 5 (xv), 55 (1)(i), and 57.]

[Facts]

The facts and decision in the first instance are reported in volume 12 of this *Bulletin* (pp. 93-102, 1991). The decision in the second instance is reported in volume 13 of this *Bulletin* (pp. 92-98, 1992). The main points are briefly restated here.

Defendant X is the president of A Corp., a company engaged in fishing and seafood processing and sales. In June 1989, A Corp. established a Japanese-Soviet Union joint venture (B Corp.) with a Soviet public corporation. B Corp. is a Soviet company.

In October and November 1989, the captain and the crew of a fishing vessel chartered by A Corp. from another company engaged in basket-fishing for crabs in the vicinity of Shikotan Island (one of the islands of the so-called Northern Territories) with the permis-