

A Contract Law that Enslaves Japanese Working People

Suda Mitsuteru

A “Contract Law” that Enslaves Japanese Working People

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Translated and introduced by Andrew Gordon

“If we do not hear from you within one week, we will take it that you have consented without objection.”

This is the single cover page sent from the company to a labor union formed by employees of an elder care service company in Tokyo last November, together with employment rules totaling about 50 pages. It was a request for opinions as the company was revising its work rules.

When the union checked the rules, it realized that the rank allowance paid to employees had been abolished. Some union members would lose 20,000 yen out of 200,000 yen monthly pay. The union is trying to prevent the change, insisting that “we cannot allow a unilateral unfavorable revision. We should discuss this in collective

bargaining.”

The union’s representative, Igeta Toshiaki, of the Tokyo Eastern District Labor Union, made this appeal. “It is a basic rule that wages and other labor conditions should be decided with labor and management on an equal footing. Yet, the company is free to change the work rules as it pleases. Asking for our opinion simply means asking and ignoring. We can’t accept having a wage cut forced on us in this fashion.”

Work rules that employers can create unilaterally and change at will. The essence of the draft of the “Labor contract law,” prepared by the ministry of Welfare and Labor to be submitted to the current Diet session, is to make these work rules into “labor contracts.”

The context for preparation of this law is the increased variation of modes of work, with changes such as the expansion of numbers of non-regular employees and the increase in systems of payment-by-result. As a result, the number of disputes between individual workers and employers has increased, so the Ministry view is that the contractual rules between

company and worker need to be clarified.

This bill was discussed in the Welfare and Labor Ministry's Labor Policy Advisory Council (Labor Conditions Sub-Committee) in tandem with the "white collar exemption" system that would remove restrictions on work hours and eliminate need for overtime pay for white collar workers.

This exemption system was discussed extensively in the media, and ran into strong opposition in public opinion. As a result, it was not put forward to the current Diet session. But, the "contract law" is quietly moving forward, under the radar. The government plan is to submit legislation to the Diet in early March. If it is passed, it will be the most important piece of labor legislation in 60 years, since the Labor Standards Law of 1947.

The proposed law would apply to all aspects of employment contracts from hiring to retirement, seconding to related firms, or shifting a worker's contract to another firm. Particular emphasis is placed on consolidating rules concerning "changes in labor conditions."

The key to all this lies in the work rules. The "work rules" is a company document that sets work hours, wages and other labor conditions, as well as sanctions, dress codes and other such matters. The Labor Standards Law requires that any company employing 10 or more people

prepare such rules.

These are commonly understood as "work rules," but unless they violate the law or a collective bargaining contract, the contents are entirely at company discretion. All that employees (unions or worker representatives) can do is attach an opinion. No matter how much "opposition" is expressed by employees, so long as that opinion is heard, the work rules themselves are valid.

The greatest problem with the proposed law is that it will enable this sort of "unfair" document to constrain working people with the force of law.

Opposition and Anxiety from Labor

In the basic articles of the proposed law as submitted to the Welfare and Labor Ministry on February 2 (by the Advisory Council), there is a sort of "principle" stated clearly to the effect that without the consent of the workers, even if work rules are changed, it is not allowed to unilaterally change a labor contract to the disadvantage of the workers. However, the following paragraph stipulates that "Taking into consideration (1) the degree of disadvantage to the workers, (2) the need for changes in work conditions, (3) the appropriateness of the changed work rules, (4) the state of negotiations with a labor union, then, in cases where the changes in work rules are

rational, the working conditions set forth in a labor contract will accord with the changed work rules.”

That is, if the substance of change in the work rules is “rational,” even for those who oppose disadvantageous changes in working conditions, the changes will become part of the employment contract.

The main points here are the questions of rationality and necessity, and the degree of disadvantage of a change in rules. The text of the law puts into words the recent decisions of the Supreme Court.

The content of this legislation has been subjected to criticism and doubts raised by labor. The national union organizations, Rengo, Zenroren, Zenrokyo, have all expressed either concern at, or opposition to, the fact that incorporating work rules into contracts will lead to unilateral worsening of working conditions.

The Ministry of Welfare and Labor’s position is that the requirement of rationality should act to some degree as a brake on disadvantageous changes.

A “Death” Notice for the Principle of Contract

On February 9, about 120 people attended a “Rally to Oppose the Labor Contract Law”

(sponsored by the Japan National Railway Joint Struggle Council).

One speaker, Professor Doko Tetsunari of Hokkaido University, pointed out that “the principle of rationality is vague, and most disputes fall into a grey zone.” In addition, he noted that “the tendency is to define market principles, meritocracy, anything necessary from a managerial standpoint, to be rational,” and he expressed concern that unfavorable changes for workers will be rampant.

A group of 35 scholars of labor law, including Professor Doko, issued a statement in December of 2006. They stated: “the unilateral setting of work conditions by the employer, that is, the legal principle that allows changes to a contract to be made by only one of the parties to it, is extremely peculiar in contract law. One must say that it deviates from the fundamental principle of a contract. ...This is a Contract Law that can stand as a death notice for the principle of contract.” They urged reconsideration of the law so as to prevent a harmful legacy.

A Welfare and Labor Ministry official, interviewed for this article, acknowledged that “this [law] is indeed a bit odd from the standpoint of principles of contracts in civil law.” But he went on, “however, it is important to understand the unusual character [already] of labor contracts [in Japan] that restrict the right to

dismiss employees.”

In the case of ordinary contracts, when one party changes its terms and the other party does not agree to the changes, the contract is dissolved. But in labor contracts, from the standpoint of protecting workers, the ability to dismiss employees is restricted. The Ministry’s logic is that, since it is not a simple matter to “dissolve” an employment contract, there is no choice but to create a structure that differs from that of ordinary principles of civil contracts.

It claims that “situations will inevitably arise where it is necessary to change work conditions in a changing managerial environment. If workers protect their status and do not agree to any changes, paralysis will result. There is no choice but to leave room for flexibility in setting work rules.”

In response to such reasoning, Kawazoe Shozo, the editor of the monthly magazine, “Local Society and the Labor Movement”, who early on spoke out on the danger of the Labor Contract Law, angrily stated “I can’t quietly accept that.”

“From the prewar era to the present, the spirit at the base of work rules is that of the relationship of a master and servant. This is proof that workers are not recognized as individual human beings possessing individual rights.”

Kawazoe stresses that in labor contracts it is an absolutely necessary condition that the workers have the right to decide for themselves. “Why is it that minimal protection for workers, such as limits on dismissals, provides grounds to prevent them from being parties to a contract?”

In addition, he says that labor unions are indispensable to enable individuals to negotiate and decide work conditions with a company on an “equal” basis.

In regard to the Labor Contract Law, business circles, such as Japan Keidanren, consistently reiterate the claim that “we should respect the autonomy of workers and employers, and the state should not interfere with regulations.”

In response to this, at the outset the Ministry proposed a system of “labor-management councils” as a mechanism to decide whether changes in work rules were rational. But due to resistance from the labor side, that “this lowers the value of labor unions,” the proposal was not incorporated into the legislation. However, if the Labor Contract Law is passed, then in the near future it is possible that such a council system will emerge.

The rate of membership in labor unions is decreasing year by year. Many unions are captives of management. Today as in the past, a labor contract concluded between a labor union

and management has greater force than work rules. Despite this, it is the case that labor unions are slipping out of the process for deciding work rules. As a result, they are on the verge of permitting the “contractualization” of unilateral changes in labor conditions through work rules.

On the Road to Enslavement

“Without delay, prepare rules that will protect your company.”

Late last year, this e-mail message came to the president of a factory in Saitama Prefecture. The sender was “The Association to Protect Company Presidents.” It was an invitation to take part in a seminar to prepare “Work Rules to Protect the Company,” organized by a Tokyo firm specializing in labor management and social insurance issues.

The email included the following appeals:

“If you are told ‘please pay 100% of my salary as noted on my time card,’ then reply ‘you don’t have that right.’

“Let’s set things up to allow ‘pay cuts.’

“To be able to dismiss employees, vague language in the rules is effective.

“Let’s write dress codes so detailed that people say ‘do we even specify this?!’”

The road toward the enslavement of working people is being paved.

Translator’s update:

The Labor Contract Law was adopted by the Abe administration’s cabinet on March 13 and submitted to the 166th session of the Diet that concluded on July 5. It was part of a three-bill package of labor legislation, together with legislation to change a portion of the existing Labor Standards Law, and legislation to change a portion of the existing Minimum Wage Law.

In May and June the proposed legislation was discussed on the floor of the Diet’s lower house and in committee, formally for a total of over 13 hours. In fact, the majority of the questions raised by the opposition parties focused on the proposed reform of social insurance and the revelations of sloppy handling of individual pension records over past decades.

As a result, the session ended with no votes taken, and the three pieces of legislation will be carried over to the next session of the Diet for

further deliberation.

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(http://www.amazon.com/Modern-History-Japan-Tokugawa-to-the-Present/dp/0195110617/ref=pd_bbs_1/104-1615893-2559918?ie=UTF8&s=books&qid=1186412716&sr=8-1).

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1). He translated and introduced this article for Japan Focus.

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