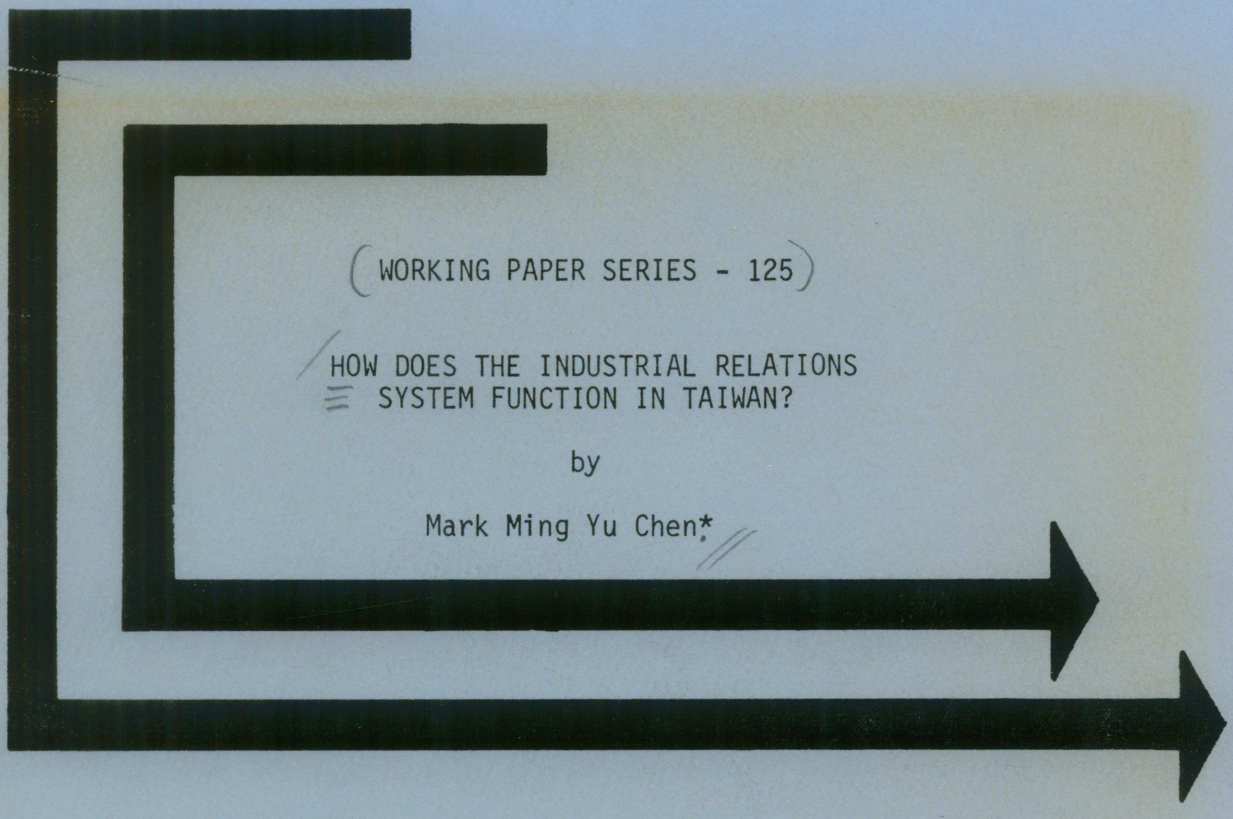

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HOW DOES THE INDUSTRIAL RELATIONS SYSTEM FUNCTION IN TAIWAN?

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CHAPTER I. INTRODUCTION

Many people in the free world have bought and enjoyed merchandise that was made in Taiwan. But how many people have known what and where Taiwan is: What kind of institutions govern it? How was its economic success achieved? What standard of living do its people enjoy? How does its industrial relations system function? The answers to these questions are not widely known. I believe that these topics are relevant to potential investors, traders, academic researchers in the field of industrial relations, and unionists.

Four decades ago, the menace of cheap Oriental labor was feared by American workers. American labor has tried to protect itself by demanding high tariffs which cannot solve this problem in the long run. A tariff wall high enough to shut out foreign goods has the effect of throttling international trade, hurting American exports, and hastening depressions. The only permanent solution is to equalize labor standards in the East and West--not by lowering standards in America, but raising them in the Orient.[1] This point of view still prevails in the United States today. And this point of view, from the standpoint of labor relations, is absolutely correct because it may raise labor standards in Taiwan without immediate endangering its employment level if that raising is reasonable.

In Taiwan, the industrial relations system is composed of numerous employers and employers' organizations, employees and employees' organizations, and different levels and branches of government which interact through collective bargaining, workers' participation, and resolution of labor disputes.

In order to familiarize the reader with the Republic of China on Taiwan, before describing how the industrial relations system functions there, I will introduce the ROC in more detail.

1.The Republic of China on Taiwan In Brief

Taiwan, which is also known as Formosa (which means "beautiful island"), is situated off the southeastern coast of the Chinese Mainland and separated from Fukien Province by the Taiwan Straits, which are from 90 to 120 miles wide. The southern tip of the island is 225 miles north of the Philippines, and the northern tip is 665 miles southwest of Japan. South-central Taiwan is bisected by the Tropic of Cancer. Since 1949, when the Chinese Communists overran the Mainland and the Republic of China moved its government to this island, Taiwan has been the bastion of the National Government of China.

The area of Taiwan is about 13,000 square miles, about the same size as the Netherlands, or larger than Massachusetts and Connecticut combined. With more than 19

million people living on this island in 1985, the population density of Taiwan in 1984 is 524 persons per square kilometers, one of the highest in the world outside Hong Kong's 5,167 persons per square kilometers and Singapore's 4,303 persons per square kilometers.[2]

Except for about 280,000 aborigines (less than 2 percent of the total population) all people are ethnic Chinese. Their language is Chinese in Mandarin, Amoy, and Hakka dialects. Mandarin is taught in the schools. English and Japanese are widely spoken as second languages.

Subject to the constitution which was adopted by the National Assembly in 1946, promulgated by the National Government January, 1947, and became effective on December of that year, structure of the National Government follows the five-power system originated by Sun Yat-sen. Under the President of the Republic are five Yuan (or branches of Government) : Executive, Legislative, Judicial, Control, and Examination.

The President and Vice President of the Republic are elected for six-year terms by the National Assembly, which is chosen by universal suffrage. A two-term limit was waived for being unable to proceed prompt reelection of National Assembley in the old electional areas in terms of the period of the Communist rebellion.

The Executive Yuan resembles the cabinet of a Western country. The Executive Yuan Premier is nominated and appointed by the President of the Republic with the consent of the Legislative Yuan. Vice premier and ministers are appointed by the President of the Republic upon recommendation of the Premier. The Executive Yuan is responsible to the Legislative Yuan. There are eight ministries (Interior, Foreign Affairs, National Defense, Finance, Education, Justice, Economic Affairs, and Communications), two commissions and several other offices and agencies.

Lawmaking is the function of the Legislative Yuan which as of 1984 had 380 members elected by direct suffrage. The Control Yuan has powers of consent, impeachment, censure and audit. Under the Judicial Yuan are the Council of Ground Justices, the Courts, and Committee on the Discipline of Public Functionaries. The Examination Yuan supervises the Ministries of Examination and Personnel.

In accordance with the constitution, only the central government has the power to enact labor laws and enforce them, or to delegate adminstrative power to provincial (or municipal) and county (or city) government.

Generally, the authority-in-charge of labor adminstration is the Minster of the Interior in the case of the central government, and the provincial department or municipal bureau of social affairs in the case of a province or municipality, and county (or city) government in the case of a county (or city).

Since workers in Taiwan have become a main force in economic development, the

government recently decided to set up the Bureau of Labor, which will directly be supervised by the Executive Yuan to administrate the increasing labor affairs.[3] That means labor will play a much important role in Taiwan, both economically and politically.

2. Plan of the Paper

Since the ROC was founded in 1911, a series of labor laws which were already enforced in western countries were directly transplanted into agricultural China. Many of them were imcompatible with Chinese political, social, economical, and cultural environments. Accordingly, the industrial relations system that was constituted by these transplanted labor laws was unable to work very effectively.

Through this paper, readers will learn the structure of the industrial relations system and how it actually functions in Taiwan. The industrial relations system functions within a legal framework. This paper is about that framework and the functioning of industrial relations system in Taiwan. It is divided into seven chapters which describe aspects as follows:

Chapter1: briefly introduces ROC and defines certain terminology.
Chapter 2 : describes the background of industrial relations in Taiwan.
Chapter 3 : briefly examines labor legislation in Taiwan.
Chapter 4 : describes collective bargaining in Taiwan.
Chapter 5 : describes workers' participation in Taiwan.
Chapter 6 : describes labor dispute resolution in Taiwan.
Chapter 7 : makes a comparison of the U.S., Japan and Taiwan in industrial relations.
Chapter 8 : summarizes and concludes this paper.

3. Definitions and Concepts

Some definitions of the terms and concepts being expressed will be helpful for readers to understand the context of the paper.

(1). What is an Industrial Relations System?

Before defining what an industrial relations is, one should first understand what "system" means and what "industrial relations" means. The concept of a system emphasizes the interrelation between persons, organizations, and standards in the industrial environment. Industrial relations may be defined as the process by which human beings and their organizations interact at the workplace and in the society to establish conditions of employment. The processes of relations and their organizations are emphasized, not just the results.

If we synthesize " system" and "industrial relations", we can find out that the "industrial relations system" is a context within which labor-management relations take place. The concept of such a system is a very broad one in terms of collective bargaining,

or workers' participation, or labor dispute. An industrial relations system is characterized by having certain active institutions, a context in which they operate, and a certain output.[4]

(2). Labor and Management

In this paper, "labor", "worker", "employee", and "working people" refers to the same thing except where defined as having a special meaning. All of these represent nonsupervisory personnel. And "management" refers to the supervisor or employer. Hence we speak of labor-management relations. As the terms imply, labor essentially acts the performance role at the workplace, and management essentially takes on a supervisory or leadership role.

(3). The Republic of China on Taiwan

The Republic of China on Taiwan in this paper refers to a political entity. Taiwan refers to an area that is being controlled by the ROC government.

The scarcity of books or articles introducing Taiwan's industrial relations system and its actual functioning gives me the incentive to write this paper. For the same reason, this paper has only a brief bibliography as references. Most of the descriptions are based on the author's observation basic to the understanding of industrial relations in Taiwan.

Notes:

1.Eleanor H. Lattimore, "Labor Unions in The Far East" Amercan Council, Institute of Pacific Relations,1945, p.3.

2.Council for Economic Planning and Development, Executive Yuan, Republic of China, Taiwan Statistical Data Book, 1985 (Taipei : June 1985) p.305.

3.Centre Daily News (printed in Chinese), February 27, 1987, Los Angeles, p.2.

4.Daniel Q. Mills, Labor-Management Relations, New York, McGraw-Hill 1986.

Chapter II The Background of Industrial Relations in Taiwan

The Republic of China on Taiwan has been recognized as a newly industrialized country. Its high continuous economic growth rate and balanced income distribution have been viewed as an "economic miracle", which has impressed people around the world. In constructing the country, laborers, entrepreneurs, and government played their roles effectively.

Under established economic policy, the government enforced land reform to decentralize the ownership of land around 1950 and to introduce to industrial development rural capital which was held in the hands of landlords. From the 1950's to early 1970's, governments at various levels continuously developed labor-intensive industries not only to create tremendous job opportunities to absorb the surplus labor force in rural area but to increase the labor participation rate. This kept Taiwan's employment level high.

For promoting education in order to cope with the need of future economic development, in 1968 Taiwan extended compulsory or mandatory education from six years to nine years. This measure helped make feasible the economic transformation from labor-intensive industries to capital-intensive and technological-intensive industries. As the transformation proceeded, a high degree of employment was maintained.

Since the population growth rate gradually declined, the expansion of labor-intensive industries has made the labor market become highly competitive. The labor market was no longer only dominated in the demand (or employer's) side but was more balanced in terms of both supply and demand of labor. The relative shortage of labor began to influence the levels of wages. Recently, a rapid rise in the wage level was a testimony to this phenomenon. The rise in wages that was faster than the rise in productivity has been considered a potential danger to exports. Once exports were depressed, that would lower the level of employment.

For historical reasons, by now Taiwan has no active unions powerfully to represent the voice of labor. The unique national labor body was formed by law rather than formed from the natural need of unionism. From 1950 to present there has been no comprehensive collective bargaining in Taiwan. The improvement of the conditions or terms of employment mostly relied on the mechanism of the labor market, and government's intervention in labor protection and the educational improvement of the labor force. Labor organizations and employers' organizations actually did very little in the function of industrial relations.

In order for readers to become more familiar the functioning of industrial relations in Taiwan, it is helpful and necessary to introduce the background of industrial relations of Taiwan. This chapter covers this background, including economic achievement (or the "economic miracle") and workers' standard of living, the structure

of the labor force and the level of employment, wages' structure, the background of the labor movement and union structure, and the employers' organizations.

1. The Economic Miracle

Taiwan has enjoyed a phenomenal growth-"the economic miracle"-in the past three decades. The fruits of economic growth have been shared by members of all income groups on the island. The improvement of the material well-being of the people has been accomplished within a climate of consumer sovereignty, in which consumers, behavior can fully influence the prices and items of goods and services, and with few social tensions.

This achievement includes the following features: rapid growth of per capita gross domestic product; high growth with a high degree of employment and price stability; economic growth with a declining birth rate; high growth with a highly balanced distribution of income. All of these features are the causes and effects of each other. In describing them, because of the limitation of sources of statistical data, and the emphasis on some specific subjects, some comparative intervals are different. This achievement will be illustrated as follows:

(a) Rapid Growth of Per Capita Gross Domestic Product

Taiwan has enjoyed a rapid, sustained growth of per capita gross domestic product (GDP). From 1952 to 1984 real per capita GDP in Taiwan grew at the astounding rate of 6.4 percent a year. When the factor of population growth is disregarded, GDP grew at 8.9 percent a year during that period (see Table 2-1). After 1963, the annual growth rate has never been below 9 percent except in 1974 and 1975, when Taiwan's economy slumped as a result of the world oil crisis, and from 1979 to 1983, when Taiwan's economy slumped as a result of the worldwide recession and second oil shock. During the period from 1963 to 1984, there were 13 years when the growth rate exceeded 9 percent. There were five years (1971, 1972, 1973,1976, and 1978) when the GDP grew around 13 percent a year. For the period 1963-1984 as a whole, the growth rate of the GDP averaged 10 percent a year.

Such a growth record was unseen in any country before the 1950's. Since then, there have been only a few countries, (Korea, Hong Kong, Singapore, Japan, Isreal, Brazil and some oil-producing countries), whose growth rate record are comparable to Taiwan's.

(b).High Growth with a High Degree of Employment and Price Stability

Taiwan has enjoyed the distinction of achieving high growth rates with a high degree of employment and price stability, whereas virtually all developed countries long-term economic growth has been accompanied by major economic downturn. In the United States, for example, eight recessions have been identified since 1945. Unemployment is usually widespread during recession or depression years.

Taiwan has not suffered a recession or depression in the past three decades except

the 1974-75 recession. As a result, unemployment has never become a problem. The yearly rate of unemployment has never exceeded 1.6 percent since 1967 (see Table 2-2).

Taiwan has also had a reasonably good record of price stability, at least until 1972, the year before oil shock. In terms of wholesale price, the average annual increase was 8 percent from 1953 to 1962; 2 percent from 1963 to 1972; and 9 percent from 1973 to 1984. For the latter period, large price jumps took place in 1973 (23 percent increase), in 1974 (41 percent increase), in 1980 (22 percent increase) as a result of the increase of oil price.

(c). Economic Growth With Declining Birth Rate

For the last thirty two years, 1952 to 1984, the average annual natural rate of increase of population in Taiwan was 2.56 percent. For the first five years 1952 - 1956, it was 3.65 percent. It declined to 1.69 percent in 1979 - 1984. This gradual decline in the natural rate of increase was accompanied by a sharp decline in both the death rate and the birth rate (see Table 2-3). The crude death rate declined from 8.8 per thousand in 1952-1956 to 4.8 per thousand in 1980-1984. The crude birth rate declined from 45.3 per thousand in 1952-1956 to 21.7 per thousand in 1980-1984. Taiwan has undergone the same pattern of population growth that the developed countries have experienced, except that Taiwan has done it at an accelerated rate. In the United States, for example, the crude birth rate declined gradually over the course of 160 years from 55 per thousand in 1790-1800 to 25 per thousand in 1950-1959, and crude death rate from 25 per thousand in 1790-1800 to 9 per thousand in 1950-1959.[1] The forces affecting the decline of the birth rate are complicated, but from observing the decreasing trend of the population in most developed countries, it is obvious that a declining birth rate is a concomitant of economic growth.

(d) High Growth Rate with Highly Balanced Distribution of Income

In addition to Taiwan's high growth rate, per capita income reached nearly US$3,000 in 1985,[2] which is one of the highest in Asia outside Japan. Also, employees' share of compensation in total national income increased from 43 percent in 1952-54 to 63 percent in 1982-84,[3] whereas the share of income of entrepreneurs and the self-employed and the share of income from assets declined. The employees' getting the lion's share of compensation will predictably go on in Taiwan in the near future. This trend of income distribution by factor shares between labor and capital were quite similar to that of the developed countries. For example, the share of compensation of employees in the United States increased from 54 percent in 1899-1908 to 69 percent in 1954-1960.[4]

The increase of employees' share of compensation in total national income accompanied with considerable highly equal distribution of income has narrowed the gap between the richest group of people and the poorest group of people. The middle class became the main force in Taiwan. That has made Taiwan quite stable and free of tensions.

In Taiwan, the ratio of the income of the richest 20 percent of households to the poorest 20 percent had already fallen from 20.47 in 1953[5] to 5.33 times in 1964[6]. This ratio fell still further to 4.36 in1984[7]. The percentage share of the richest 20 percent group was 38.61 percent in 1972; 37.55 in 1983. For most industrialized countries the share of the richest 20 percent group was in the range of 41-47 percent in the late 1960's or 1970's. For most of the middle-income countries, the share ranged from 55-60 percent.[8]

2.Labor Force And Employment

(a). The Labor Force

The trend toward an increase in the rate of labor force participation in Taiwan is a symbol of an increasing demand of the economy. It also means that the number of dependents in a family will gradually decline while the number of employed increases. The increase of female labor force participation rate represents the movement toward more social acceptance of women working.

In 1984, the total population in Taiwan reached 18,865,000 persons. Sixty-six percent of the population were civilians age 15 or older. During the same year, the labor force amounted to forty percent of the total population. This constituted a labor force participation rate of 59.72 percent within the civilian population age 15 or older. The participation rate for males was 76.11 percent. The female labor force participation rate was 43.29 percent (see Table 2-4). Compared to 1965, in 1984 the male participation rate declined by 6.23 percent, due to increase in the student enrollment rate and the retirement rate. Meanwhile, the female labor force participation rate had a big increase of 10.19 percent due to the automation of housework through appliances such as the washing machine, refrigerator, microwave oven, etc, that made women have more time available to work and due to gradual social acceptance of women working.

Among women age 15 or above not in the labor force, most were staying at home for housekeeping; about a quarter were students; the others were aged or disabled, or planning to work but not seeking a job.

(b).Employment

With economic growth a significant shift of employment among industries has occurred in the last three decades (see Table 2-5):

(i) A decline in the share of employment in primary industry (including agriculture, hunting, forestry, and fishing), from 56.1 percent in 1952, 49.70 percent in 1962, 33 percent in 1972, to 17.6 percent in 1984.;

(ii) An increase in the share of employment in secondary industry (mining and quarrying, manufacturing, construction, and electrcity,gas, and water), from 16.9 percent in 1952, 21 percent in 1962, 31 percent in 1972, to 42.3 percent in 1984.;and (iii) An increase in the share of employment in tertiary industry (commerce, transport, storage and communication, finicing, insurance, real estate, and bussiness services, and public administration, social and personal services) from 27 percent in 1952, 29.3 percent in 1962, 35.2 percent in 1972, to 40.1 percent in 1984.[9]

These shifts are well-known in the developed countries and accompany "industrialization". Taiwan in the process of industrialization is no exception to this general shift. Employment rate increased. The share of tertiary industry's employment increased. The rapid and significant shift from primary industry to secondary industry is clear. By comparison to the history of developed countries, the rise of the share of secondary and tertiary industries relative to total employment in Taiwan has been extremly rapid. In most developed countries, the share rose just a few percentage points over long periods. A doubling or more of the share is found only in a few countries such as Great Britain, Sweden, Japan and USSR.[10] It usually took decades to effect such a shift.

In 1984 the employed population was 97.56 percent of the labor force and the unemployed population was 2.44 percent of the labor force,[11] one of the lowest unemployment rate in the world. Of all the unemployed workers in 1984, 38 percent has no previous work experience.[12] Most of the unemployed and the new job-seekers usually found thier jobs through their friends or relatives. Although Taiwan has enjoyed a low unemployment rate, it seems that Taiwan needs to improve the capacities and facilities for vocational training and public employment services in order to accommodate people who need them.

3.Wages

Most workers in Taiwan are paid on a monthly basis. The levels of wages in the firm usually are determined by external labor market rather than internal collective bargaining. In 1984, the average monthly cash earnings amounted to approximately US$350.

Prior to the 1970's, the wage or salary increases in Taiwan had maintained a steady and sound pace, but in 1974, because of a very high inflation rate, laborers received an increase of 33.7 percent. Thereafter, wages or salary grew at the astounding rate of 15.6 percent a year because of an excellent economy and a strong demand in the employment market. Since 1984, wage or salary increases have begun to slow down.

Historically, there have been no active labor unions in Taiwan, and there are no barriers to entry into any occupation or industry. All of this, when coupled with a rather elastic supply of labor, has in all probability made the labor market in Taiwan competitive since wages were determined by the market. But the government employees' salary increase always serves as a standard for private sectors increasing their wage level.

Employees' earnings are calculated to include both regular earnings such as regular cash receipts and pay in kind and irregular earnings such as overtime premiums, bonuses, performance rating awards, nonabsentee awards etc. The ratio of irregular earnings to total earnings stood at 89 percent in 1984, compared to 86 percent percent in 1974. The ratio of manual workers' earnings to that of office workers increased from 52 percent in

1974 to 68 percent in 1984.[13] That increase demonstrates that the diffrential of earnings between office and manual workers has narrowed.

The ratio of increase in labor productivity in manufacturing fell behind the rate of increase in wages in recent years (see Table 2-6). To some export-oriented companies, it seems they will increasingly meet a tough compitition in the world market.

If the monthly wage or salary is constant, decreasing monthly working hours means an increase in the wage rate as well as an improvement in quality of life. In 1984, manufacturing employees worked an average of 211 hours per month compared to 238 hours in 1966.[14] An important change is taking place in the length of the work week in Taiwan: it has been reduced to 5.5 days for 60 percent of today's workers. But that is only common in large companies rather than small ones.

4.Trade Union Structure

(a)The Background Of the Chinese Labor Movement

(i).The Situation Before 1949

Since the Republic of China was founded in 1911, the Chinese labor movement has had close ties to government and is strongly involved in political movements. From 1911 to 1949, vital industries such as steel and machinery were dominated by capitalists of western countries.

The Chinese handicraft industry received a fatal blow because of foreign machine production, although within a certain limit national mordern industry was also promoted, especially in the time of the First World War. At that time, however, the developing industry was limited to light manufacturing, such as textiles and rubber shoes.

Heavy industry such as iron and steel and machine works did not develop a sound foundation. Being hard-pressed by foreign competition and seriously handicapped by the paucity of natural capital and the inferiority of productive techniques, new-born industry faced overwhelming odds against the foreign goods and capital.

Confronted with these difficulties, the only recourse open to Chinese enterprise was to reduce the cost of production by lengthening its workers' working hours, decreasing their wages, and lessening their benifits. This is certainly contrary to the interest of labor, but the capitalist would not hestitate to do it, so long as it will augment his profit.

The intrusion of capitalists comprises the most important cause of the labor problem. Besides, the foreign factories in China not only crushed Chinese factories but also severely exploited and ill-treated Chinese workers. The concessions and extraterritoriality that stemmed from the Unfair Treaty gave them permission to oppress the workers. Opposition against the economic imperialism of foreign

capitalistic countries has been the primary mission of the Chinese labor movement.[15]

The philosophy of the Three Principles of People, originated in the 1920's by Dr. Sun Yat-Sen, the founding father of the Republic of China, opposed the economic imperialism of foreign capitalistic countries and supported the development of the productive capacity of the people. It also proposed the gradual reform of the socio-economic strcture at that time, in order to create a society where every citizen has equal means to live on and happiness is generally promoted, not for the benefit of one class or another, but for the whole of the people.

In order to accomplish this purpose, according to Dr. Sun Yat-Sen, class struggle must be abandoned, and superseded by capital-labor harmony. Both sides must assume equal footing. So that national production may be rationalized and increased, and the problem of human existence solved, Chinese workers must first lift up the status of the nation, and, secondly, seek the improvement of their living conditions in the development of national industry. It was believed that, apart from the national interests, there are no labor interests. So long as national industry remains backward, the workers can get no happiness.[16]

Under this premise, from the revolutionary Northern Expedition that started from Canton in 1926 through the Sino-Japanese War that begun in 1937, to the end of the Second World War in 1945, the labor movement was involved in a political movement to win the unification of national sovereignty, in the form of the abolishment of the Unfair Treaty with western countries. During this interval, there was much labor legislation favorable to workers such as the Labor Union Law, the Collective Agreement Law, and the Factory Law, being promulgated (see Chapter III). In the same period, Chinese Communists penetrated and intervened in labor unions at various levels. They viewed and used labor unions as a revolutionary vehicle. The ruling party Kuomintang has prevented the Communists from occupying labor unions again, since it enforced the Party Purge to undermine the strength of Communists in labor unions. Since then, the Chinese labor movement has somewhat lost its independent devevlopment. Since 1949, the year of the amendment of the Labor Union Law, the general federations of labor unions at various levels are even able to get governments subsidies as their operational funds in accordance with the Article 22 of the Law. Why does the Chinese labor movement fall into this situation?

The ruling party Kuomintang does not want the strength of labor unions to be too powerful to control, because on the one hand, it has experienced suffering from the penetration of Communists in unions. On the other, as the Principle of People's Livelihood, one of the Three Principles Of People, aims at a society of economic equality, it prefers the harmony of the economic interests of the different classes in the society to the struggle by them against one another.[17] Accordingly, it emphasizes capital-labor rapprochement and not class struggle. It is believed that the best way to embody this Principle is the enactment of labor laws to protect workers from suffering, to raise their standard of living by improving their conditions of employment, and to give them more opportunities to express their voices in the legislative organization.

The government enacted the Legislative Yuan Organization Law in 1947, which allows members of labor unions and of industrial associations to elect approximate 20 legislators each to represent their interests in Legislative Yuan. This model is quite different from those prevailing in western countries. All of these old arrangements still more or less continue to influence the current situations.

(b) Transition form Pre-1949 to Present

From 1950 on, the chief focus of Taiwan's labor movement has been on increasing the level of employment, establishing the labor insurance institution, expanding the membership of labor unions, and recommending government enact protective-labor legislation--labor standards-- to prevent workers from suffering from low wages, long working hours, and inferior terms of employment, especially in workers' safety and health.

To increase the level of employment, in the first half of this period, government actively encouraged the development of labor- intensive industries in terms not only of their comparative advantage but of their lower ratio of capital to labor. In order to cope with the coming need for promoting the level of technique and technology , various technical schools and vacational training institutions have tremendously expanded their capacities and facilities and increased the enrollment of the students and trainees since early 1970s. These all have significantly contributed to preventing the increase of unemployment in the second half of the period.

In establishing the labor insurance institution, labors won the enactment of Labor Insurance Statute (1958) in which the insured workers can enjoy maternity benefits, injury and sickness benefits, medical-care benefits, disability benefits, old-age lum sum benefits, and death benefits(see Chpter III).

In order to expand the membership of labor unions, the labor movement has won the amendment of the Labor Union Law of 1975 to lower the minimum membership requirement of industrial union from 50 workers to 30. This is helpful for the development of the labor movement in small and medium enterprises in which smaller number of people were employed although its achievement was still limited because of the strong resistence of the employers.

In recommending that the government enact protectivelabor legislation to prevent labor from suffering from low wages, long working hours, and inferior terms of employment, unions have won the promulgation of the Law Governing Safety and Sanitation of Workers (1974) and of the Labor Standard Law (1984). These Laws not only guarantee the safety of the workers' lives but they also establish minimum labor standards and the enterprise seniority-based retirement system.

Generally speaking, the labor movement in the period between 1949 and 1984 emphasized the enactment of protective-labor legislation rather than the promotion of collective bargaining and workers' participation.

(c) Current Labor Organization

In 1984, the organized workers totaled 1,370,592,18 only 18 per cent of the total labor force (including employees, self-employed, and unemployed etc.) or 29 per cent of the total employees. By comparison, in 1973 only 12.5 percent of total labor force was organized. Of the organized workers 48 percent are members of industrial unions,and 52 percent are members of craft unions.19 Why did these changes take place in Taiwan in recent years?

In Taiwan, craft workers join unions not for collective bargaining but in order to be eligible to participate in labor insurance and to enjoy the government subsidies of insurance premiums. Unlike industrial workers, who are able to participate in labor insurance when being hired, craft union members may participate in labor insurance only as long as they remain union members.

According to the stipulation of the Statute of Labor Insurance, once craft union members were insured, forty percent of the insurance premium must be paid by the provincial government or municipal government and the remaining sixty percent contributed by the insured persons themselves. The stipulation motivates many self-employed workers to join craft unions. That is the reason why the craft unions' membership grew so fast even though workers knew unions did not give them benefits through collective bargaining.

The current union organizational system (see Figure 2-1) has three aspects:

(i).National Organization

The Chinese General Federation of Labor Unions (CGFLU) is the only national trade union center in accordance with the Labor Union Law. It consists of 3 general federations at the provincial or municipal level, and 4 national unions, namely, The Chinese Federation of Postal Workers' Unions, The Chinese Federation of Railway Workers' Unions, The Chinese Federation of Mining Worker's Unions, and The National Chinese Seamen's Union.

(ii).Regional Organization

Regional labor organizations include provincial (or municipal) federations and those whose jurisdictional area covers more than two counties (or cities). At the initiation of seven or more labor unions of a single industry or craft, application for registration of the organization of a provincial (municipal) federation of labor unions may be filed with the authority-in-charge. However, only one federation shall be organized for each specific industry or craft. Up to the end of 1984, there were 224 regional organizations including 3 provincial (or municipal) federations of labor unions, 19 provincial (or municipal) federations of labor unions for a specific industry,12 provincial (or municipal) federations of labor unions for a specific craft and 180 regional industrial unions whose jursdictional area cover more than two county (or city).

(iii). Local Organization

Local labor organizations include county (or city) federation of labor unions, industrial unions and craft unions in county (or city) level. "Industrial union" refers to a union organized by at least 30 workers who are employed in an enterprise or workplace. "Craft union" refers to the union organized by at least 30 workers of the same craft in the same area (i.e. city or county).

In 1984, there were 1,197 industrial unions possessing 48 percent of total union members and 657 craft unions possessing 52 percent of total union members. All of these unions are separately affiliated with 21 county (or city) general federations of labor unions.

(d).Main functions of the Trade Union

In Taiwan, a labor union is a juristic person according to the Trade Union Law. Its functions whether at national level or regional level or local level, are as follows:

a).To conclude, revise, or abolish a collective agreement;

b).To render vocational assistance to its members;

c).To undertake savings projects for its members;

d).To organize producers', consumers' or credit and other cooperative societies;

e).To undertake medical and sanitary services for its members;

f).To undertake workers' education and nursery projects;

g).To establish libraries, newspaper and magazine societies; and to print and issue publications;

h).To undertake entertainment activities for its members;

i).To conciliate disputes between labor and management;

j).To investigate the livelihood of the worker's family, and to compile labor statistcs; and

k).To make recommendations on enactment, revision, or abolishment of labor laws or regulations;

l). To expedite the improvement of labor conditions and the promotion of the welfare of its members.

5. Employers' Organization

The employers' organization in the ROC. is classified into 3 levels in terms of governmental adminstrative area: county (or city) industial or comercial association; regional organization including provincial (or municipal) federation of industrial or commercial association, regional industrial or commercial association; and national general federation of industrial or commercial association.

The purposes of an industrial or commercial association are to plan for improvement and development of an industry or commerce and to promote the common intersts of its members. Its right to bargain with federation of trade unions is guarenteed by labor law, however, it does actually not do. Nevertheless it still has adminstrative jurisdiction over labor affairs as follows:

(i) to handle matters relating to promotion of cooperation,and assistance in

conciliation of disputes between labor and management;

(ii) to handle matters relating to assistance in governments' implementation of its economic policy.

Notes:

1.Simon Kuznets, Modern Economic Growth: Rate, Structure and Spread (New Haven: Yale University Press, 1966) pp.42-44.

2.Taiwan Statistical Data Book, 1985, p.29.In 1984,the amount of per capita income in Taiwan was NT$111,526,(approximately equal to US$2935, as US$ = NT$38). In 1985 the estimated per capita income will be more than US$3,000.

3..Taiwan Statistical Data Book, 1985, p.32.

4.Kuznets, Modern Economic Growth, pp168-69.

5.Kowie Chang, "An Estimate of Taiwan Personal Income Distributed in 1953", Journal of Social Science 7, (1956), p260.

6.Taiwan Statistical Data Book 1985, pp54-55.

7..Taiwan Statistical Data Book, 1985.

8.International Bank for Reconstruction and Development(IBRD), "World Development Report", 1980 (Washington D.C.1981) pp.156-57.

9.Taiwan Statistical Data Book, 1985, p.16.

10.Kuznets, Modern Economic Growth, p.110.

11.Taiwan Statistical Data Book 1985, pp.13-14.

12. Directorate-General of Budget, Accounting and Statistics, Executive Yuan, .Yearbook of Labor Statistics, (Republic of China 1985), p.12.

13. Directorate-General of Budget, Accounting and Statistics, Executive Yuan, .Yearbook of Labor Statistics, (Republic of China 1985), p.402-404.

14. Directorate-General of Budget, Accounting and Statistics, Executive Yuan, .Yearbook of Labor Statistics, (Republic of China 1985), p.312.

15. Ma Chao-Chun, History of the Labor Movement in China, Trans. Peter Min Chi Liang, (China Cultural Service,Taipei, Taiwan. 1955). pp10-11.

16. Ma Chao-Chun. p.69.

17. Ma Chao-Chun. pp.66-67.

18. Yearbook of Labor Statistcs, pp.867-69.

19 Yearbook of Labor Statistcs.

Table.2-1 Growth rates of GNP,GDP,population,and GNP per capita in Taiwan,1952-84

year	GNP*	GDP*	population	GNP per capita*
1952	13.0	12.0	3.3	8.3
1953	9.8	9.3	3.8	5.8
1954	8.1	9.6	3.7	5.8
1955	8.6	8.1	3.8	4.1
1956	4.5	5.5	3.4	1.8
1957	7.4	7.4	3.2	4.0
1958	6.9	6.7	3.6	3.2
1959	7.4	7.6	3.9	4.3
1960	6.1	6.3	3.5	3.1
1961	6.7	6.9	3.3	3.5
1962	9.0	7.9	3.3	4.7
1963	12.0	9.4	3.2	6.2
1964	13.8	12.2	3.1	9.1
1965	7.6	11.2	3.0	7.9
1966	9.5	8.9	2.9	6.1
1967	11.1	10.7	2.3	7.9
1968	9.7	9.1	2.7	6.5
1969	10.8	8.9	5.0	6.6
1970	12.2	11.3	2.4	9.0
1971	13.0	12.8	2.2	10.6
1972	13.8	13.2	2.0	11.2
1973	12.0	12.9	1.8	10.7
1974	-2.4	1.1	1.8	-0.7
1975	4.2	4.8	1.9	2.4
1976	16.6	13.7	2.2	11.2
1977	9.7	10.0	1.8	7.9
1978	12.0	13.5	1.9	11.8
1979	8.1	8.2	2.0	6.4
1980	4.2	7.3	1.9	5.1
1981	5.4	6.1	1.9	3.8
1982	4.0	2.8	1.8	1.5
1983	8.6	7.7	1.5	6.1
1984	11.4	10.3	1.5	9.4

Source:Taiwan Statistical Data book, 1985. p4,p21, p23, p25.
*Adjusted for gain or loss due to changed terms of trade.

Table 2-2. Indicators of economic stability in Taiwan

Year	Rate of unemployment*	Rate of annual change in consumer prices	Rate of annual change in wholesale prices
1953	2.7	18.8	8.8
1954	2.6	1.7	2.4
1955	2.4	9.9	14.1
1956	2.3	10.5	12.7
1957	2.3	7.5	7.2
1958	2.4	1.3	1.4
1959	2.4	10.6	10.3
1960	2.5	18.5	14.2
1961	2.6	7.8	3.2
1962	2.5	2.4	3.0
1963	2.6	2.2	6.5
1964	2.6	-0.2	2.5
1965	1.9	-0.1	-4.6
1966	1.7	2.0	1.5
1967	1.3	3.4	2.5
1968	1.0	7.9	3.0
1969	1.1	5.1	-0.3
1970	1.0	3.6	2.7
1971	1.0	2.8	–
1972	0.8	3.0	4.4
1973	0.8	8.2	22.9
1974	0.9	47.5	40.6
1975	1.4	5.2	-5.1
1976	1.0	2.5	2.8
1977	0.7	7.0	2.8
1978	1.0	5.8	3.5
1979	0.7	9.8	13.8
1980	0.7	19.0	21.5
1981	0.8	16.3	7.6
1982	1.2	3.4	-0.2
1983	1.6	1.8	-1.2
1984	1.4	0.2	0.5

Source:Taiwan Statistcal Data Book, 1985. pp.2 &14.

*means the ratio of the unemployed to population age 15 & over.

Table 2-3. Vital Statistics in Taiwan

Year	Birth rate	Death rate	Year	Birth rate	Death rate
1952	4.66	0.99	1969	2.79	0.50
1953	4.52	0.94	1970	2.72	0.49
1954	4.46	0.82	1971	2.56	0.48
1955	4.53	0.86	1972	2.41	0.47
1956	4.48	0.80	1973	2.38	0.48
1957	4.14	0.85	1974	2.34	0.48
1958	4.17	0.76	1975	2.30	0.47
1959	4.12	0.72	1976	2.59	0.47
1960	3.95	0.70	1977	2.38	0.48
1961	3.83	0.67	1978	2.41	0.47
1962	3.74	0.64	1979	2.44	0.47
1963	3.63	0.61	1980	2.34	0.48
1964	3.45	0.57	1981	2.29	0.48
1965	3.27	0.55	1982	2.21	0.48
1966	3.24	0.55	1983	2.06	0.49
1967	2.85	0.55	1984	1.96	0.48
1968	2.93	0.55			

Source:Taiwan Statistcal Data Book,1985, P.5.

Table 2-4 Important Labor Force Status and Indicator in Taiwan Area

unit:in thousands , or percentage

Year	Total Population (A)	Civilian population aged 15 years & older		Labor Force							
		numbers (B)	percent to total population (B)/(A)	numbers (C)	participation rates (C)/(B) both	male	female	Employed numbers (D)	Employed percent of labor force (D)/(C)	Unemployed numbers (E)	Unemployed percent of laborforce (E)/(C)
1965	12,876	6,689	51.95	3,891	58.17	82.59	33.11	3,763	96.71	128	3.29
1966	13,207	6,948	52.61	3,976	57.23	81.37	32.63	3,856	96.98	120	3.02
1967	13,525	7,212	53.32	4,145	57.47	80.89	33.72	4,050	97.71	95	2.29
1968	13,850	7,482	54.02	4,298	57.44	80.23	34.36	4,225	98.28	74	1.72
1969	14,185	7,787	54.90	4,474	57.45	79.21	35.38	4,390	98.12	84	1.88
1970	14,576	8,115	55.90	4,654	57.35	78.87	35.45	4,576	98.30	79	1.70
1971	14,848	8,444	56.87	4,819	57.07	78.35	35.37	4,738	98.51	80	1.66
1972	15,160	8,763	57.80	5,022	57.31	77.04	37.07	4,948	98.51	75	1.49
1973	15,445	9,070	58.72	5,395	59.48	77.13	41.53	5,327	98.34	68	1.26
1974	15,737	9,383	59.62	5,571	59.37	78.22	40.22	5,486	98.47	85	1.53
1975	16,040	9,712	60.55	5,656	58.24	77.61	38.56	5,521	97.60	136	2.40
1976	16,343	10,043	61.45	5,772	57.47	77.09	37.56	5,669	98.22	103	1.78
1977	16,650	10,375	62.31	6,087	58.67	77.79	39.27	5,980	98.24	107	1.76
1978	16,976	10,777	63.48	6,333	58.77	77.96	39.16	6,228	98.33	106	1.67
1979	17,306	11,084	64.04	6,507	58.71	77.92	39.21	6,424	98.72	83	1.28
1980	17,641	11,378	64.49	6,629	58.26	77.11	39.25	6,547	98.77	82	1.23
1981	17,974	11,698	65.08	6,764	57.82	76.78	38.76	6,672	98.64	92	1.36
1982	18,293	12,013	65.67	6,959	57.93	76.47	39.30	6,811	97.86	149	2.14
1983	18,603	12,263	65.92	7,266	59.25	76.36	42.12	7,070	97.29	197	2.71
1984	18,865	12,544	66.49	7,491	59.72	76.11	43.30	7,308	97.56	183	2.44

Source:Yearbook of Labor Statistics Republic of China ,1985.PP.6-7.

Table 2-5. The Shift of Employment Among Industries in Taiwan in 1952-1984 unit:%

Industries	1952	1962	1972	1984
Primary Industry	56.1	49.7	33.0	17.6
Secondary Industry	16.9	21.0	31.0	42.3
Tertiary Industry	27.0	29.3	35.2	40.1

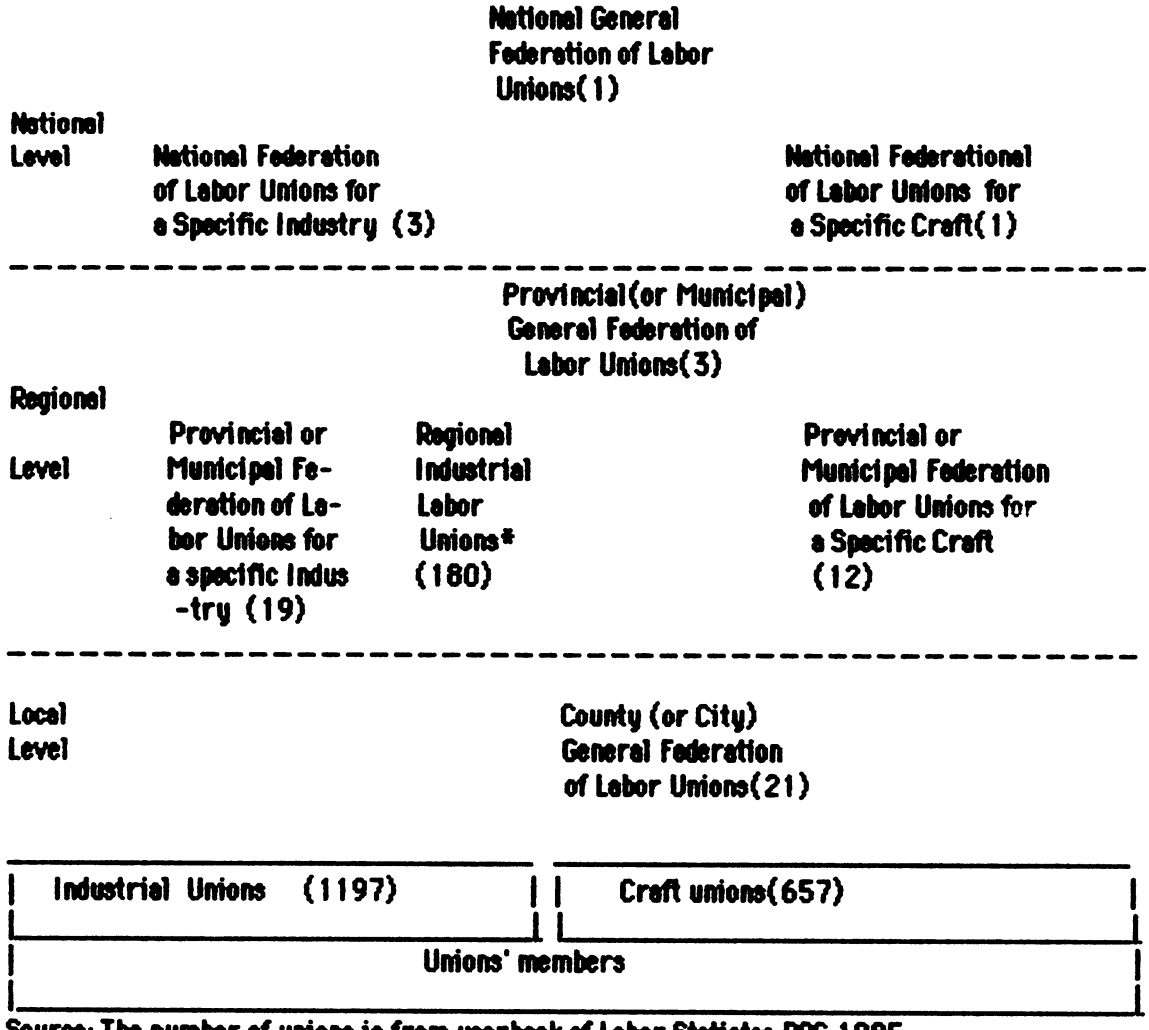
Source : Yearbook of Labor Statistics, ROC. 1985.

Table 2-6. Indices of Average Monthly Earnings and Labor Productivity of Employee on Payroffs of Manufacturing in Taiwan Area

Year	Monthly Earnings		Labor Productivity	
	base:1981=100	last year=100	base:1981=100	last year=100
1974	30.70	—	58.34	—
1975	35.95	17.1	63.95	9.6
1976	42.39	17.9	74.29	16.2
1977	50.96	20.2	78.18	5.2
1978	56.77	11.4	90.12	15.3
1979	68.73	21.1	91.74	1.8
1980	84.27	22.6	93.46	1.9
1981	100	18.7	100	7.0
1982	109.66	9.7	103,29	3.3
1983	116.60	6.3	116.90	13.2
1984	134.59	15.4	120.67	3.2

Source:Yearbook of Labor Statistcs, Republic of China,1985.

Figure.1.The System of Union Organization in ROC



Source: The number of unions is from yearbook of Labor Statistcs ROC 1985.

* These labor unions' jurisdictional area covering more then one administrative area was defined by authority-in-charge.

Chapter III Labor Legislation in Taiwan

Industrial relations in Taiwan are regulated by a set of laws. Many of the laws were promulgated before the National Government moved its government institutions to Taiwan; others were developed in response to the economic and social environment on Taiwan. Some of the labor laws became effective upon their progulgation; other laws' date of enforcement will be prescribed by ordinance. So the date of promulgation of the law may differ from that of enforcement. The Minimum Wage Law and the Labor Contract Law were suspended due to the government's failure to announce their enforcement.

The reasons for such failure of announcement were mainly as follows: (1) These laws were transplanted around the1920's and 1930's from western advanced countries and were too impractical to enforce in agricultural China, and (2) The political turmoil and economic unrest before 1949 gave no chance to enforce these labor laws.

All of these labor laws, whether they are effective or ineffective are briefly described below, in order to provide a sense of the scope of the legislation.

1.Individual Employment Relations

Individual employment relations law includes those laws which govern the relationship between employers and emplyees who provide labor in a position of subordination. It can be described as the body of rules concerned with the individual employment relationship between employers and employees including the provision of standards for wages, hours, and other working conditions fixed by law and the individual contract of employment. Roughly, individual labor legislation includes labor protection legislation and employment relations legislation.

A. Labor Protection Legislation

(a). Minimum Wage Law (Promulgated on December 23, 1936, but its date of enforcement is still not prescribed by the government, so it is not being enforced now)

The purpose of this law is to improve the working conditions of low-paid workers by prescribing minimum-wage rates according to regions or kinds of industries. It applies where there is no collective agreement or other methods available to fix the pay rate for all or part of the workers, when the rates are extremely low. Even if there is a collective agreement or another method for fixing the wage rates, both labor and management concerned must not either individually or collectively contract a collective agreement providing for wage rates lower than minimum-wage rates. In cases where contracts or collective agreements have been concluded which provide for wage rates lower than minimum-wage rates, the wage must nevertheless be paid at the minimum-wage rates.

The Minimum-Wage Law also states that minimum-wage rates must be fixed in accordance with the following standards with consideration for the cost of living in the respective locality and the situation of the workers in the particular industry: (a) For an

adult worker, the wage must be sufficent to maintain an essential living standard for himself or herself and for two members of his or her family who are incapable of working; and (b) For a minor worker, the waye must not be less than one-half of the minimum wage of an adult worker. The rate for disabled or feeble workers who are still able to partially perform work, after being approved by the authority-in-charge, may be lower than the minimum-wage rates. If the terms of emplyment are lower than the basic standard set forth in the law, it would be deemed as null and void and replaced by the standard of the law.

Although this Law is not effective now there is still an ordinance decree, the "Rule Instituting Basic Wages Scale" (put forth in the Labor Standard Law of 1984), to take over the enforcement of this Law.[1]

(b). Law Governing Safety and Sanitation of Workers (April 16,1974)

The purpose of this law is to secure, in conjunction with the Labor Standard Law, the safety, health, and comfort of workers in the workplace. It promotes comprehensive and systematic counter-measures aimed at preventing occupational accidents, insuring safety and the health of the workers by establishing standards for prevention of danger and injury, clarifying of responsibility, and promoting of voluntary activities with a view to preventing industrial injuries.

(c). Labor Standard Law (July 30, 1984)

This law establishes basic standards for working conditions, protects the rights and privileges of workers, strengthens the worker-employer relationship, and promotes socio-economic development.

The standard for working conditions fixed by this law is considered a minimum. Any working conditions agreed upon between an employer and worker must not be lower than the basic standard set forth in the law.[2] Therefore, parties of labor relations must not reduce working conditions below this standard and, instead, should endeavor to raise the working conditions.

The law applies even for one employed individual, including within a primary industry where workers are employed to perform work for a wage. The Labor Standard Law states that an employer must not forcefully demand labor service from a worker by violence, intimidation, confinement,or any other unlawful means, and that nobody may interfere with a labor contract of others in order to make an unlawful profit.

According to this law, labor contracts are divided into fixed-term contract and undefined-term contract. All temporary, short- term, for recurrent work assignments, shall be in the form of an fixeded-term contract. The others shall be in the form of an undefined-term contract.

The contract shall be considered as an undefined-term contract,if, at the expiration of a term-contract: (i)a worker continues to work; (ii) the employer raises no

immediate objection; (iii) a new contract has been signed; (iv) the total length of time under the old and new contracts cover a working period of more than 90 days, the gap between these two contracts does not exceed 30 days.

Once being an undefined-term contract, an employer shall not serve advance notice to a worker for terminating the contract except under any of the following conditions: (a) when the enterprise is being dissolved, or the ownership of the enterprise is being transferred; (b) where an employer faces loss and deficit or curtails business operations; (c) where the business is suspended due to unavoidable circumstances and the work stoppage is more than one month in time; (d) where there is change of business nature which necessitates a reduction of employment, and, there is no other suitable job avaliable for the idled workers; and (e) where a worker is actually incapable of undertaking the work assigned to him or her.

When an employer wishes to terminate a labor contract in accordance with the provisions discussed above, the period of advance notice applicable thereto must be from 10 days to 30 days, depending on the seniority of service. In addition, an employer who terminates a labor contract must compensate the worker with severance pay in accordance with the following stipulations: (a) If the worker has worked continuously in business units of the same employer for a certain period, the severance pay payable shall be calculated on the basis of one month of his of her average wage for one year of service proportionally; (b) After counting the years as prescribed under the preceding stipulation, if there are extra months remaining, or the length of service of a worker is less than one year, the calculation of serverance pay shall be made proportionally. For the time less than a month, it shall be counted as a month.

In the case of pregnancy, an employee cannot be dismissed within the required 8-week materity leave before and after the childbirth. The Labor Standard Law also contains a provision that an individual who is receiving disability compensation and who does not recover at the end of two years cannot be discharged unless the employee receives compensation equivalent to 40 months pay.

There are also provisions whereby the employer cannot withhold in advance any money from the worker's wage as a guarantee against breach of contract or as indemnity, and the employer cannot discriminate against any worker because of sex. Workers doing the same work with equal efficiency, or the same quantity of the same quality, shall be paid the same wages.

In accordance with the Labor Standard Law, the authority-in-charge at the national level will form a committee to formulate the basic wage scale. Wages will be determined through negotiation between the employer and workers themselves or through collective bargaining, but cannot be lower than the basic wage scale..

According to the Labor Standard Law, the authority-in-chagre at the central level entrusts the Bureau of Labor Insurance in the Taiwan-Fukien Area to receive and collect the Outstanding Standing Wage Settlement Fund. An employer must make a monthly payment to the Fund. The amount is calculated on the basis of his or her insured amount

of total wages payable to the workers employed in the month. When a business closes, or an employer goes bankrupt, if the cumulative outstanding wages owed to workers according to the labor contract is less than 6 months pay, the outstanding wage payment must have the top priority in settlement. If an employer owes wages to a worker and cannot pay upon the authority-in-charge's request, the money can be advanced by the Outstanding Wage Settlement Fund and the employer must reimburse the advanced money to the Fund within a designated time limit. The purpose of this provision is to protect the worker's interest.

The Labor Standard Law also establishes the system of retirement. The retirement of a worker may fall into one of two categories: the worker may voluntarily apply for retirement or an employer may force a worker into retirement. The former must qualify according to the following conditions: (a) The worker has worked in the same enterprise for 15 years and reached the age of 55, or (b) The worker has worked in the same enterprise for 25 years. The latter must satisfy the following conditions: (a) The worker has reached the age of 60, or (b) The worker's state of mind has degenerated, or he has become physically disabled, and he is therefore incapable of undertaking work assignments.

The criteria for paying retirement pensions to workers are as follows: (a) Based on the worker's length of service, two basic amounts (every basic amount equaling the average wage of the worker for the month) are given for every year of service completed in employment. If the worker has completed 15 years of service, only one basic amount will be given to him or her for every additional year of service he or she performed. However, the ceiling of basic amounts to a worker shall be 45 basic amounts. (b) For those workers who are compulsorily retired under the condition of mental degeneration or physical disability which was induced by work, a 20 percent increment to the basic amounts accordable to retired workers must be made.

To assure the required payment of retirement pensions, the Labor Standard Law states that an employer must allocate monthly a certain amount of money ranging from 2 percent to 12 percent of total payroll as a workers' retirement reserve, to be kept in a special account, which shall not be transferred, seized, offset, or used as warranty. The workers' retirement reserve funds are under the overall control and management of a financial institution designated by the authority-in-charge at the central level, in conjunction with the Ministry of Finance. The allocation for setting up workers' retirement reserve by an employer must be under the supervision of a committee, organized and paticipated in by the workers and employer jointly. The worker representatives must constitute no less than two thirds of the members of the committee.

B. Individual Employment Relations Legislation

(d). Labor Contract Law (Promulgated on December 25, 1936, but its date of enforcement is still not prescribed by government, so it is not being enforced now)

The object of this Law is, through defining the term "Labor Contract", to stipulate

the obligations of workers and the obligations of employers, and to specify what should be done regarding termination of the individual employment contract.

According to the Labor Contract Law, the terms or conditions of the individual employment contract can be terminated only by agreement between the two parties concerned. When any part thereof is contrary to the provisions of any Law, a collective agreement, or rules of employment, and is to workers' disadvantage, such part is null and void.

Since this Law is not effective now,[3] all of the matters concerning labor contracts are dealt with in accordance with civil law and related law such as the provisions of the Labor Standard Law concerning labor contracts.

2.Collective Labor Legislation

Collective labor legislation guarantees workers' rights to organize, bargain, and act collectively. It includes laws regulating labor disputes and their settlement.

(e). The Law Governing the Handling of Labor Disputes (June 9, 1928. with subsequent revision, the most recent being May 31, 1943)

These legislative provisions govern the settlement of disputes within the private sector. Basically, this law has established compulsory mediation and compulsory arbitration systems. This law, along with the Measures for the Handling of Labor Disputes During the National Mobilization for the Suppression of Communist Rebellion, will be described in more detail in Chapter VI.

(f). Labor Union Law (October 21,1929, effective from November 1, 1929, the most recent revision being May 21, 1975)

The Labor Union Law governs labor relations in any sector except in administrative or educational agencies of governments at various levels, and military ammunition industries. The Law states that the purpose of a labor union is to protect the rights and interests of workers, to advance the knowledge and skill of workers, to develop productive enterprises, and to improve the livelihood of workers.

The main functions of a labor union, according to the Law, are (a) To conclude, revise, or abolish a collective agreement, (b) To conciliate disputes between labor and management, among labor unions,or among the members thereof, and (c) To make recommendations on the enactment, revision, or abolishment of labor laws or regulations.

According to the Law, there are two kinds of labor unions, industrial unions and craft unions. Industrial unions are those organized by more than 30 workers of different crafts in various divisions of a single industry. Craft unions are those jointly organized

by more than 30 workers of a single craft.

The jurisdiction of a labor union should coincide with a government administrative area. In comunication enterprises, transportation enterprises, or public utility enterprises, which cover more than are administrative area, the jurisdiction of the labor union may be separately defined by the authority-in-charge.

Whether an industrial or craft union, a labor union is exclusively organized by workers of a single industry in the same area, in the same factory or workshop, or by workers engaged in the same craft in the same area. Also, only one federation may be organized for each specific industry or craft.

In addition to becoming a member of a federation of labor unions at the provincial or municipal levels, the industrial union and craft union may also affiliate as a member union with a general federation of labor unions at the county or city level.

The unification of the system of union organization is characterized by the Labor Union Law. So, the general federations of labor unions at various level are unique. Besides, a union shop is mandatory. According to the Law, once the labor union is established, all male and female workers within the jurisdictional area of the union over age 16, have the right and the obligation to join the union for the industry or craft in which they work. However, those who have joined an an industrial union may choose not to join a craft union. If a worker who works for a company in which a union has been organized refuses to join a labor union, in spite of persuasion and warning, he or she may be suspended from employment for a prescribed period of time by the labor union, in accordance with the provisions of its constitution or upon resolution of the general meeting.[4]

(g) Collective Agreement Law (Promulgated on October 28,1930; Effective on November 1, 1932)

In conjunction with the Labor Union Law and the Law Governing Handling Labor Disputes, the purpose of this law is to establish the institution of collective labor relations. It grants authority to negotiate collective agreements, in order to create a peaceful industrial environment. Details will be described in Chapter IV.

(h). The Measures for Handling of Labor Disputes During the National Mobilization for the Communist Rebellion (of November 1, 1947, but its date of enforcement is still not prescribed by the government)

3. Employment Security Legislation[5]

(i). Vocational Training Law (Of December 5 ,1982)

The purpose of this Law is to encourge and spread vocational training and

occupational skill testing. It is meant to develop and improve the ability of workers through reinforcement and smoother execution of training and trade skill testing, thereby assuring the security of employment and the improvment of the workers' status, as well as economic and social development.[6]

(j). Measures for Implementing Unemployment Compensation Benefits Insurance (These Measures are enacted as a part of the Labor Insurance Statute, but not yet prescribed)

4. Social Security Legislation

(k). Labor Insurance Statute (July 21, 1958. with subsequent revisions, the most recent being February 19, 1979)

The Labor Insurance Statute aims at protecting workers' living and promoting social security. Its insurance coverage is of two types: (a) Ordinary Injury Insurance, which provides seven kinds of benefits: maternity benefits, injury (being cured) and sickness benefits(paid by cash while the worker is sick and unable to work), medical-care benefits (paid by medical treatment), disablity benefits (paid by cash due to permanent disabilty), unemployment compensation benefits[7], old-age benefits and death benefits; and (b) Occupational Injury Insurance, which provides four kinds of benefits: injury and sickness benefits, medical-care benefits, disability benefits, and death benefits.

The premium rates for ordinary injury insurance is prescribed by the authority-in-charge of the central level. The rate ranges from 6 percent to 8 percent of the insured worker's monthly covered salary or wage. However, the premium rates of occupational injury insurance are fixed pursuant to the provisions of the "Schedule of Premium Rates for Occupational Injury", ranging from 0.3 percent to 3 percent of the insured worker's monthly covered salary or wage .

If the worker is employed, twenty percent of the premium on ordinary injury insurance shall be contributed by the insured worker and eighty percent shall be paid by his or her employer. The premium on occupational injury must be totally paid by the employer. If the worker is not employed and is a member of a craft union, sixty percent of the premium on both ordinary injury and occupational injury insurance must be contributed by the insured worker and forty percent will be paid by the provincial or municipal government.

Those who are eligible to submit claims for the compensation of occupational injury, on the basis of the provisions of the Labor Standard Law, are also able to claim for the benefits under the provisions of the Labor Insurance Statute, if the said workers satisfy these laws' requirements.

5. Employee Welfare Legislation

(l) Statute on Employee Welfare Fund (Jonuory 26,1948, as amended

on December 16, 1948)

The purpose of the Statute on Employee Welfare Fund is to contribute to the promotion of workers' welfare by establishing an employee welfare fund for the conduct of employee welfare activities.

According to this Statute, a factory, mine, or other enterprise determines the sum for the welfare fund according to the following criteria: (a) to allocate 1 to 5 percent of the total amount of capital at the time of establishment; (b) to allocate 0.05 to 0.15 percent of the total amount of monthly revenue; (c) to deduct 0.5 percent from the salary or wages of each employee every month; and (d) to allocate 20 percent to 40 percent of proceeds from sale of wastes (which are useless for producing the products in the same factory, but still useful for other establishments to use) at the time of each such sale. This Employee Welfare Fund shall be managed by the employees' welfare committee.

The employees' welfare committee is formed jointly by a labor union and the factory, mine, or other enterprise concerned. And no less than two thirds of the members of an employees' welfare committee may be representatives of the labor union concerned.

6.Worker's Education Legislation

(m). Measures for Conducting Worker's Education (December 16,1958, as amended in 1981)

The purpose of the Measures for Conducting Worker's Education is to improve workers' knowledge and technical skills, strengthen the leadership of causcuses of a labor union, and increase workers' civic awareness. The employers must provide this education and pay for it.

Notes:

1. The current basic wage scale of an adult (age of 16 or above) is fixed by NT$ 6,150 or US$ 162 (as US$ = NT$38), while minor worker by 70 percent of that of an adult.

2. Although the Minimum Wages Law is not effective now, it deserves to be described here for reference.

3. Like the Minimum Wage Law, this is not in effect. It is discussed here to explain the background of labor relations in the ROC.

4. Recently, the National Government has considered revising this provision in the next amendment of the Labor Union Law.

5. Employment security legislation may include vocational training laws, employment service laws, and unemployment compensation laws. According to the legislative planning of the National Government of the ROC, the employment service law

will be enacted in the years to come.

6. The enforcement rules of the Vocational Training Law is not now prescribed by the authority-in-charge at the central level.

7. The premium rates, the enforcement region, the time, and the regulations for unemployment insurance coverage are separately prescribed by the Executive Yuan.

Chapter IV Collective Bargaining in Taiwan

1.The Legal Framework of Collective Bargaining

The legal framework of collective bargaining in Taiwan is established by the "Collective Agreement Law", in conjunction with the "Labor Union Law" and the "Law Governing the Handling of Labor Disputes." The purpose of the Collective Agreement Law is to establish the institution of collective labor relations. This law mainly states the level and scope of bargaining, the validities and restrictions of bargaining agreements. When collective bargaining involves dispute, the parties concerned need to seek resolution.

In accordance with the decision of a mediation or arbitration board that is set up by the Law Governing the Handling of Labor Disputes, the decision about the term of employment is part of a collective agreement made by the parties concerned. The Labor Union Law prescribes the election of union bargaining representatives. This chapter will describe the Laws instituting the system of collective bargaining

(1).The Level of Bargaining

According to the provisions of the Collective Agreement Law, only an employer and an incorporated organization of workers can conclude a collective agreement. If there is no labor union established, there is no collective bargaining. Since the jurisdiction area of a labor union (either a craft union or industrial union) and an organization of employers should coincide with the governmental administrative area, an employer is eligible to negotiate only with the union within his or her enterprise and *vice versa*. Similarly, an organization of employers at the county or city level is eligible to negotiate with its counterpart, the organization of workers at the county or city level, and so on. Likewise, the industry-wide and national collective agreement may be concluded between a federation of industrial associations and its counterpart of a federation of labor unions for a specific industry.

(2).The Selection of Negotiators

On the employer side, the employer's representatives of collective bargaining should be appointed by the board of the enterprise at the enterprise level, or elected by the general meeting of the federation of employer associations. On the union side, representatives should be elected by the general meeting of its members (or a general meeting of its members' representatives) or appointed by a standing board of directors if the provision of the union constitution entitles them to do so.

The size of a negotiating committee has no maximum limit and is determined by the parties concerned. However, the number of representatives should be no less than 3 persons.

(3).Scope of Bargaining

Any matters concerning labor relations, such as wages, hours, other terms of employment, duration of the agreement, and check-off to collect dues through payroll deduction, etc., could constitute the scope of bargaining in Taiwan. Even apprenticeship relations, labor organization within an enterprise, utilization of employment agencies (meaning a closed shop), and establishment or utilization of labor dispute investigation or arbitration agencies, are permissive subjects. In other words, the Collective Agreement Law may not be applied to matters beyond the scope of labor relations. Nevertheless, there are still some subjects prohibited by the Law which cannot be part of an agenda of negotiation. The mandatory subjects, permissive subjects, and the prohibited subjects will be discussed below:

(A).Mandatory Subjects

Duration of the agreement is a mandatory item of bargaining. Bargaining may conclude in a written agreement for a fixed period or an indefinite period, or for the period of time necessary to complete certain work.

If an agreement is reached for an indefinite period, according to the Collective Agreement Law, either of the parties may terminate the agreement at any time after one year from the date the agreement is reached; but it is necessary that the notice shall be given to the other party in writing at least three months in advance.

If an agreement is concluded for a fixed period, the said period may not exceed three years. If the agreement is in excess of that, according to the Collective Agreement Law it shall be deemed to have been concluded for a term of three years.

(B) Permissive subjects

(a).Closed Shop:

A labor union may require the employer to employ only the members of a particular organization of workers if the collective agreement currently in effect has a closed shop clause. However, the employer shall not be subject to this restriction in the following cases: (i) If the workers' organization concerned is dissolved; (ii) If the workers' organization concerned is unable to supply the specialized technical workers required by the employer; (iii)If the available members of the union are either insufficent to meet the needs of the employer or unwilling to accept employment; (iv) If the employer is engaging apprentices or miscellaneous hands; (v) If the employer is engaging persons to take charge of his financial affairs, seals, correspondances or confidential documents; and (vi) If the number of workers other than members of the union concerned employed by the employer has not yet exceeded two-thirds of the total number of workers employed in his factory or workshop, excluding those types of workers discussed in items (iv) and (v) above.

In addition, a labor union may not require the employer to engage workers in accordance with the priority set forth in a rotation-hire list of the union. A labor union also may not require the employer to employ only the workers recommended by the union; any conclusion restricting the employer's discretion in accepting or rejecting workers recommended shall be null and void.

(b).Labor Organization within an Enterprise

Both parties to the bargaining may reach a conclusion regarding matters concerning the establishment and utilization of labor-management conferences, employees welfare committees, workers' safety and sanitation committees, and workers' retirement reserve supervision committees, etc,under the provisions of the relevant laws and regulations.

(c).Leave for Staff Member of Union

In bargaining, the representatives of a labor union may require the employer to provide for a leave of absence from work for staff members actively involved in handling the affairs of the union. Presidents or standing directors and supervisors of a union may request such official leave of absence for a half day or a full day to handle union affairs. The period of such official leave for each of other directors and supervisors shall not exceed 50 hours in total per month. But, under special circumstances, the period of official leave of absence may be prescribed in the agreement.

C. Prohibited subjects:

(a).Placing Restriction upon Production

In bargaining, any agreement placing restrictions upon the employer in respect to the use of a new type of machinery or the improvement of the methods of production or the purchase of refined or processed products is prohibited.

(b).Excessive Overtime Wages Rates

Both parties of bargaining may conclude that the rate of wages shall be raised when the employer requires the workers to work or to continue to work on holidays or outside the normal working hours. But the increase may not exceed two times the normal wages. If in excess thereof, the rate is deemed to be two times the normal wages

(4). Process of Bargaining

By the Labor Union Law, a labor union is a juristic person. Since to conclude a collective agreement is one of its most important functions, a labor union has legitimate authority to initiate the collective bargaining process. If an employer refuses to bargain with its union counterpart, the union may apply to the authority-in-charge for mediation or even arbitration. The mediation or arbitration board will be presided over by the authority-in-charge. The members of the mediation or

arbitration board will be selected by parties concerned from the lists that have been recommended to the authority-in-charge by labor unions and employers' organizations respectively every two years. The decision of the mediation or arbitration board is part of the collective agreement of the parties concerned (about this, more detail will be discussed in Chapter VI). In order to avoid making matters more complicated, an employer ordinarily accepts bargaining with its union counterpart.

Although the Collective Agreement Law does not provide ground rules for negotiation and bargaining with good faith, if the negotiation hits an impasse, both employer and union shall not resort to a lockout or strike. According to the Law Governing the Handling of Labor Disputes (described in Chapter VI), the employer or the union must apply to the authority-in-charge for mediation or arbitration when disputes occur between them. The decision agreed upon in successful mediation or made by an arbitration board is considered a collective agreement between the two parties.

Normally, the process of bargaining concludes with the registration of the agreement with the authority-in-charge. Registration has a more substantive implication and is made following a verification of the content of the agreement with the legal requirements concerning the inclusion of certain mandatory clauses and of the compatability of the agreement with public law provisions and the minimum standard of protection. If the authority-in-charge finds that any provision of the agreement is contrary to laws or regulations, is incompatible with the progress of the employers' business, or is not suited to ensure the maintenance of the workers' normal standard of living, this provision is cancelled or amended. The revised agreement may be approved after this cancellation or amendment, if the parties agree thereto, and the approved agreement shall become effective from the day immediately following approval.

(5).Validity of the Agreement

(A) To Current and New Members of the Parties

In the absence of specific restrictions in a collective agreement, those considered to be concerned parties to a collective agreement, and therefore bound to it, are: the employer who is one of the contracting parties to the collective agreement; and all employers and workers who are contracting parties to a collective agreement, and all employers and workers who became members of the said agreement. Except as otherwise provided in a collective agreement, its provisions respecting conditions of labor are applicable to all persons who become concerned parties to the agreement after its conclusion, from the day of their being qualified as such.

(B)To Individual Labor Contracts

As a matter of course, the conditions of employment laid down in a collective agreement constitute part of a labor contract concluded between an employer and a

worker, both of whom are subject to the collective agreement. If any provision of such a labor contract varies from the conditions of employment laid down by the collective agreement, under the Collective Agreement Law such provisions shall be null and void, and shall be replaced by the collective agreement. If the variance is permissible by the collective agreement or is purported to be for the benefit of the workers, in the absence of explictly banning provisions in the collective agreement, it shall remain valid.

(C)Validity after the Expiration of Agreement

In order to avoid the disturbance of labor relations, the Collective Agreement Law prescribes that, upon expiration of a collective agreement and before the conclusion of a new collective agreement, the provisions of the original collective agreement concerning labor conditions continue as part of the labor contract between the parties until otherwise provided by a labor contract.

An individual worker must abide by the collective agreement made in the labor contract, as long as the contract is in force. And these rights remain in force for 3 months after the temnination of the collective agreement.

(6). Administration of Agreement

According to the Collective Agreement Law, a collective agreement may provide for the payment of a fixed amount of compensation in lieu of damages by one contracting party to the other contracting party in the event of the former's failure to fulfill the obligations as set forth in the agreement. If a party to a collective agreement violates any provision of the agreement which does not relate to conditions of employment, except as otherwise provided by a collective agreement , the court may , upon petition of the affected employer or contracting party impose a fine.[1] If the violation is of a provision of the agreement which does relate to conditions of employment, the affected employer or contracting party may apply to the court for judicial compulsory execution.

2.How Does Collective Bargaining Actually Work in Taiwan

(1). The Basic Rights to Bargain, Organize and Act Collectively

In Taiwan the right of organization for workers is-- with the exception of who are employed in administrative or educational agencies of governments at various levels, or employed in military ammunition industries--fully recognized and protected in the constitution, the Labor Union Law, and relevant regulations. The right to bargain collectively is established for all organized workers in the Collective Agreement Law. The right to act collectively is, with the exception of the public sector, limitedly allowed by " The Law Governing the Handling of Labor Disputes". But, according to the "Measures for Handling of Labor Dispute During the Natiional Mobilization for the Suprression of Communist Rebellion", the right to strike is prohibited.

As long as the right to strike is prohibited, the membership of trade unions is not able to act collectively and effectively. Accordingly, the labor movement in Taiwan has become weak and impotent. The weaker the trade unions are, the less willing workers are to join unions. The less willing to join unions the workers are, the less powerful the labor movement is. It falls into a vicious cycle. On the one hand, workers are wondering if they are able to gain their economic interests through trade unions. But on the other hand, leaders of trade unions are also wondering if they are able to fight for economic interests without membership and workers' participation. So far, collective bargaining has not been very successful in Taiwan.

(2).The Coverage of Collective Bargaining

The coverage of collective bargaining can be stated quantitatively and qualitatively. There are no more than 500 enterprise level collective agreements in force and no more than 10 per cent of the labor force covered by them in 1984.[2] In addition, all of these agreements are within the secondary sector rather than the primary and tertiary sectors. There has not been any national agreement nor any industry-wide agreement. Nevertheless, these enterprises' agreements cover white-collar and blue-collar workers.

Evaluating the content of agreements is another way to assess the weight of collective bargaining in industrial relations systems. There are many indications of the qualitative impact of collective bargaining in contemporary industrialized society. Collective bargaining can be seen as a rule-making and conflict resolution process, a form of worker participation, a forerunner of labor legislation, an instrument of peace and stability, a reassertion of pluralism and a means of democratizing industrial life. The content of agreements in Taiwan is relatively lacking of these indications. Content is generally determined by the scope of negotiable issues, i.e., the definition by law or basic agreement of the areas liable to be jointly regulated by the parties. Employers are fearful of losing their management prerogatives. That always counterballances against union pressures to expand the scope of collective bargaining. The role of government freqently is ambivalent. The content of agreements is thus limited to "wages, hours, and other terms or conditions of employment'. Nevertheless, collective agreement clauses dealing with the following questions can occasionally be seen in Taiwan. That is:

(i).Job security,seniority, apprenticeship, training and the like;

(ii).Canteens,recreation, transportation and the like, relevant to workers' conditions of life;

(iii).Social security provisions like sick leave, maternity leave,taking out labor insurance policy, etc;

(iv).Other fringe benefits, including bonuses;

(v).Quality of working life, such as labor and management conferences;

(vi).Peaceful clauses including no strike and lockout, union security such as check-off clause to collect membership dues through payroll deduction, duration of the agreement and the like, relevant to the regulation of relations between the contracting

parties; and

(vii).Provisions regarding the adminstration of agreements (the utilization of labor dispute investigation or arbitration agencies.

(3).The Parties to Collective Bargaining

The process of collective bargaining requires two parties linked in a way to a collectivity of workers. While individual employers already meet this requirement, the bargaining agent on the workers' side necessarily supposes an organization representing such workers. Given the difficulties involved in discussing, concluding, and administering an agreement directly with a whole group of workers, their representation is normally entrusted to a union. Unions in the ROC are regarded as the natural bargaining agent and collective bargaining has, in turn, become one of the most important functions of a union. But with small membership, a weak degree of support of affiliates, and their unwillingness to engage in strke actions in cases of a deadlock (all of which do not constitute the basis of the union's bargaining power), the efficiency and the effectiveness of a trade union in conducting collective bargaining are insignificant.

On the employers' side, negotiations can be carried out by individual employers. Although the occurrences of industry-wide bargaining and multi-employer bargaining are relatively rare,the role of employers' organizations is becoming increasingly important as they frequently act as suppliers of information and advisors to individual employers in cases of enterprise-level bargaining. By contrast, the federations of trade unions are unable to play those roles very well because of internal weakness.

Finally, governments, in principle, limit their involvement in negotiations, acting as promoters, regulators, moderators, and conciliators to seek to influence collective bargaining. That is another reason why collective bargaining is unable to prevail in Taiwan today.

(4).The Level of Bargaining

According to the regulations of labor laws, collective bargaining may take place at diffrent levels: the enterprise level, the industry wide level, and the national level. Practically, it takes place only at the enterprise level. The industry-wide and the national bargaining do not exist now.

(5).The Bargaining Process

In Taiwan, the determination of the bargaining unit is simply the result of customary practice or tacit understanding based on the structure of trade unions and employers. No formal procedures of identifying an appropriate bargaining unit are set forth.

In respect to the employers' recognition of the workers' organization, with a

union's acquisition of a legal personality from its establishment and its exclusiveness within an enterprise, the union is now always recognized by the employer without any obstacle. The situation in the federation of trade unions is now the same as for the union in the enterprise.

Lacking a set of ground rules or procedures aimed at the orderly development of negotiation, if an employer is unwilling to show the reasons why certain demands cannot be accepted, to engage in meaningful discussions over all negotiable issues, or to make counterproposals, there is no punishment established for these behaviors. Irrespective of this lack, when open-minded employers and trade union begin negotiations, their use of diffrent tactics and techniques in order to minimize sacrifices and maximize possible advantages can always be seen.

The process of bargaining generally concludes with the registration of the agreement with the authority-in -charge

(6).Effects of the Agreement

In Taiwan, the Collective Agreement Law has determined that a collective agreement is applicable to all workers and employers in the bargaining unit, unless the agreement specifically provides to the contrary.[3]

In addition, the conditions of labor laid down in a collective agreement shall, as a matter of course, constitute part of a labor contract concluded between an employer and a worker both of whom are subject to the collective agreement. If any provisions of such a labor contract vary from the collective agreement, such provisions shall be null and void, and shall be replaced by the pertinent provisions of the collective agreement. If permissable by the agreement or for the benefit of the workers in the absence of express banning provisions in the collective agreement, the variances shall remain valid.

Since collective bargaining is now occurring only on the enterprise level, the effect of the extension of a collective agreement is merely effective on union members within the enterprise rather than employers and workers outside the enterprise.

(7).Duration of Agreements

The law attempts to prevent one-sided bargaining relationships in which the employer can succeed in fixing an excessively long duration likely to frustrate further collective bargaining. The period of validity of collective agreements, whether a fixed period or an indefinite period, is in principle set no more than three years and no less than one year. If an agreement is concluded for a fixed period, it may be for no more than three years and, if in excess thereof, is deemed to be concluded only for three years.

In the case of an indefinite period of agreement, either of the parties may terminate the agreement at any time after one year from the conclusion of the agreement. Notice of termination must be given to the other party in writing three months in advance.

(8).Adminstration of the Agreement

Generally speaking, in the ROC most substantive provisions of the agreement hardly require any adminstration as they are automatically incorporated into the individual contracts of employment. If there are disputes arising over the interpretation or application of certain clouses, they are always settled through reconciliation attached to the authority-in-charge.

3.The Alternatives to Collective Bargaining

As mentioned, collective bargaining actually has not functioned in Taiwan very well. But the conditions of employment of labor in Taiwan have improved year by year. The real wages, for example, have been raised from time to time and the monthly working hours were gradually shortened. Why? What alternatives to collective bargaining function there? The answers to these questions are as follows:

(1) The Relatively Competitive Labor Market

A number of factors--including the absence of active unions, absence of barriers to entry into any occupation or industry, and the presence of a relatively elastic supply of labor--have probably made the labor market in Taiwan much much competitive. Through the interaction of the demand and supply of the labor force, the equilibrium of demand and supply of the labor would decide the price of labor, i,e, wage rate, with few interventions of external factors.

With the expansion of exports, the increase in the demand of labor has increased wage rates (see Table 4-1) between 1977 and 1984. Although the correlation coefficient of the value index of exports to the index of wage growth in that period was not high, it is positive.

(2) Relative Reliance on Legislative Protection of Conditions of Employment

In Taiwan, many terms of employment, such as the payment of retirement pensions, the conduct of employee welfare activities, and the like, are prescribed by law. In western advanced countries, these will fall within the scope of collective agreement. It is difficult to ascertain whether the various governments in Taiwan have gone beyond their duties to intervene in labor and managements' affairs. If governments were doing so, it might be the result of unions' lacking independence and autonomy. In addition to government interventions and the machanism of the labor market, employees

are reluctant to get direct benefits from employers. It might be stated that the government's doing what labor and management should do is the main reason why collective bargaining functioned ineffectively and inefficiently in Taiwan.

The causes and results of the malfunction of collective bargaining are controversial. However, the impotence of unions has forced the government to pursue alternatives to collective bargaining in order to keep improving the workers' standard of living.

(3) Work Rules

Work rules establish the terms and conditions of employment whether or not collective agreements exist. In general, an employer draws up work rules and submits them to the authority-in-charge covering the following matters:[4]

a).Working hours, rest period, leaves, national holidays, special vacation with pay, and the rotation system for continuing operations;

b).Wage scales, calculation method, and fixed pay days;

c).Entension of working hours;

d).Allowance and rewards' arrangement for good performance;

e).Supervision of personel, application for leave, commandation, penalty and promotion;

f).Hiring, dismissal, release from duty with servance pay, departure from employment, and retirement;

g).Compensation and relief allowance for injury or sickness induced by occupational accidents;

h).Welfare measures;

i).Safety and health rules;

j).Ways for exchange of opinions between the employer and workers for strengthening mutual cooperation.

In work rules, if there is any provision which is compulsory or restrictive, which violates the relevant laws or regulations, or which is contradictory to other collective agreements applicable to the enterprise, the provision is null and void. Accordingly, workers' terms and conditions of employment can be guaranteed. Since drawing up work rules is mandatory, it is quite effective.

Notes:

1.The fine imposed does not exceed 500 yuan if the violator is an employer or 50 yuan if the violator is a worker. These fines are used to seek the welfare of workers (Article 19 of the Collective Agreement Law).

2.This figures are based on an estimate by the author.

3.Article 14 of the Collective Agreement Law.

4.Article 70 of the Labor Standard Law.

Table 4-1 Indices of Value Index of Export and Index of Wage Growth in 1977-1984 last year=100

Year	Value Index of Export	Index of Wage Growth
1977	114.6	120.2
1978	131.9	111.4
1979	123.7	121.1
1980	123.0	122.6
1981	116.5	118.7
1982	104.2	109.7
1983	116.4	106.3
1984	119.8	115.4

Source: Taiwan Statistcs Datebook, 1985.

R (Corelation coefficient of the Value Index of export to the Index of Wage Growthx) =+0.26.

Chapter V Workers' Participation in Taiwan

1.The Legal Framework for Worker Participation

Worker participation in Taiwan is enforced by some important Statutes and laws. These include the Collective Agreement Law, the Labor Standard Law, the Law Governing Safety and Sanitation of Workers, the Statute on Employee Welfare Funds, the Company Law, as well as their subordinate regulations. Among these are the Rule Governing the Convention of Labor and Management Conference and the Rule of Workers' Retirement Reserve Committees (put forth in the Labor Standard Law), the rule constituting the Workers' Safety and Sanitation Committee (put forth in the Law Governing Safety and Sanitation of Workers), and the rule constituting the Employee Welfare Committee (put forth in the Statute on Employee Welfare Funds). All of these laws relate to worker participation in development, profit sharing, and employee stock ownership plans (ESOPs).

The Collective Agreement Law, which applies to enterprises in which unions have been established, was discussed in the previous chapter. The others will be described in this chapter.

(1) The "Labor and Management Conference"

The "Labor and Management Conference", is somewhat like the work council in western countries. Any enterprise that employs 30 or more workers must set up this kind of organization. It is formed to coordinate the worker-employer relationship, promoting cooperation and increasing work efficiency.

(A)The Composition of the Conference

The "Labor and Management Conference" consists of 3-9 representatives of labor, and the same number of management. The exact number depends upon the number of workers. If the number of workers is more than 100, the number of representatives on each side should not be less than 5. The representatives of management, who must be familiar with the business operations and labor conditions of their enterprise, are appointed by the employer. Their tenure of office is three years and they are eligible for reappointment.

The representatives of labor--who must be over 20 years of age, a citizen of the ROC, and must have worked for the undertaking for at least 1 year--are elected by members of the union or the representatives of the union (if a union has been established), or directly by workers who are over 16 years of age (if there is no union in that undertaking). A certain proportion of seats are reserved for female workers: for example, if female workers are more than half of all workers, the seats reserved for them shall not be less than one third of total seats of labor. The tenure of office for representatives of labor is the same as for the representatives of management, and they are eligible for reelection.

(B).Convention of the Conference

The Conference is held monthly and is rotationally presided over by representatives of labor and management or co-presided over by both the representatives of labor and of management. The representatives of labor and management are responsible for expressing to the union and employer, respectively, their intention in convening the conference. The convention of the Conference may be made only by a two-thirds majority vote of a meeting attended by at least one-half of the representatives. If necessary, persons appointed by the employer may attend the meeting with no voting rights to answer the question prompting convention of the conference.

(C).The Scope of the Conference

The scope of a "labor and management conference", includes information, discussion, and suggestions, as follows:

a).Information Items

(i).Resolutions concluded in a previous convention, whether being implemented or not, are reported to members of the Conference in the current convention.

(ii).The employer or the specialist of the personnel department must inform the members of the Conference about labor turnover and hiring and separation of employees.

(iii).The employer informs the members of the Conference about the directions and the profit of the company.

b).Discussion Items

Subjects appropriate for discussion at the labor-management conference include:

(i).Coodinating the labor-management relations and promoting cooperation between the groups;

(ii).The terms of employment;

(iii).Planning labor welfare affairs, including their implementation and enforcement;

(iv).Improvement of working efficiency, such as promoting productivity, the introduction of new production methods, etc.

c).Suggestion Items

Any suggestions regarding the quality of working life or the promotion of mutual communication between labor and management may be made in the Conference.

d).The Effect of the Conference

The establishment sends all resolutions of the conference to the department and trade union concerned, files them with the authority-in-charge for the record, and begins implementation. The resolutions that cannot be implemented will be submitted to the next meeting for further discussion.[1]

(2).Participation in Workers' Safety and Sanitation

Workers are able to participate in assuring safety and sanitation standards through the workers' safety and sanitation committee. According to Article 12 of the Law Governing Safety and Sanitation, an enterprise having 100 or more workers in regular employ must set up an organization for the safety and sanitation of the workers, while an enterprise having less than 100 employees may have management personnel engaging in its own inspection.

The workers' safety and sanitation committee is formed in accordance with this law. Two-thirds of the committee's representatives are appointed by the employer and the remaining one-third of the representatives are elected by a general meeting of union members.

The main functions of the committee are as follows:
(a).To suggest the improvment of safety equipment and sanitation facilities;
(b). To promote self-inspection activities in the working place;
(c).To promote necessary training in safety and sanitation and in the prevention of accidents.[2]

(3).Participation in enforcement of workers' retirement reserve

According to Article 56 of the Labor Standard Law, an employer must allocate an amount of money monthly as a workers' retirement reserve. The reserve fund must be kept in a special account. This allocation for the workers' retirement reserve is under the supervision of the workers' retirement reserve committee.

The committee consists of 3-15 representatives of labor and management, depending upon the size of the establishment. The representatives of labor, who are elected in a general meeting of union members, may not be less than two-thirds of the total number of representatives if a union has been established, or directly by workers if there is no union in that business. The representatives of management are appointed by the employer. The tenure of office of the representatives is three years. They are eligible for reelection or reappointment, but the reelected representatives of labor shall be no more than two-thirds of the original group of labor representatives. The chairperson is appointed by the employer and the vice chairperson is elected by the representatives of labor. Any payment of retirement pensions to workers must be signed simultaneously by both the chairperson and vice chairperson.

(4)Paticipation In Employee Welfare Affairs

Workers may participate in welfare affairs by attending the "Employee Welfare Committee". According to the Statute on the Employee Welfare Fund, each and every public or private factory, mine or other enterprise must allocate money for an employee welfare fund, to provide for the conduct of employee welfare activities. The custody and use of the welfare fund is under the control of the "Employee Welfare Committee" that is

formed jointly by a labor union and the factory, mine, or other enterprise concerned. The numbers of representatives of the committee range from 3-15 depending upon the size of the undertaking. The number of representatives of labor, who are elected by general meeting of union members if a union has been established in the undertaking, or directly by workers if there is no union in the undertaking, may be no less than two-thirds of the total representatives of the committee. The rest of the representatives are appointed by employer. The tenure of office of the representatives of both labor and management is three years. They are eligible for reelection and reappointment. The chairperson of the committee is elected by the representatives.

The composition and functions of the "Employee Welfare Committee" are different from the "Labor and Management Conference", but they still have something in common. The labor and management representatives of both organizations are elected by the union and appointed by the employer, respectively. And the decisions of the "Labor and Management Conference" related to employee welfare affairs are implemented by the "Employee Welfare Committe".

The main functions of the "Employee Welfare Committee" are the following:

(a)To decide the annual budget of welfare activities;

(b)To implement various programs of employee welfare;

(c)To appoint the chief of the canteen and its related staffs;

(d)To file an annual budget and final financial statement with the authority-in-charge.

(5) Participation In Profit Sharing or Bonus

Workers may participate in profit sharing or bonus programs. Profit sharing is somewhat different from bonus plans because profit sharing is on a net profit basis: if there is no net profit, there is no profit sharing, However, bonuses are given regardless of the net profit of the enterprise; they are something like regular earnings at the end of the year.

According to Article 29 of the Labor Standard Law, after the close of a business year, if an enterprise has made a profit, besides paying taxes, offsetting losses, and apportioning dividends and reserves, rewards or bonuses must be paid to workers who have carried out work during the entire year without committing any fault. Although there is no punitive prescription on the violation of this provision, it legitimizes workers' asking for profit sharing. In addition, according to a regulation of Article 235 of the Company Law, the constitution of a company must prescibe the percentage of profit sharing with employees. These prescriptions affirm the practice of profit sharing.

(6). Participation In Stock Ownership

In the ROC, workers may participate in stock ownership plans. According to Article 267 of the Company Law, when issuing additional stocks, with exception of government-operated-companies which have received government exemptions, the company must preserve 10 percent to 15 percent of the additional stocks to be purchased by its employees. Article 240 of the Company Law also states that a company may issue

additional stock instead of apportioning dividends and bonus in cash. This decision may be made by one-half of a meeting attended by at least two-thirds of stockholders. These two prescriptions form the basic legal framework of employees' participation in stock sharing. Workers can possess stock to share the company's profit and may attend stockholders' meetings to participate in decision making.

2.How Do the Institutions of Workers' Participation Actually Function?

In Taiwan, the objectives of the institutions of workers' participation emphasize not only ethical and socio-political considerations but economic consideration as well. With industrialization proceeding in Taiwan, the younger generations are increasingly unwilling to accept authority in enterprises in which they have no share or influence on decision making. This is due to more widespread education and to the development of the students' critical faculties in higher levels of schooling, and also to new, participatory teaching methods which encourage initiative, creativity, and readiness for the collective responsibility required in small work groups.

The more developed the economy of Taiwan becomes, the more politically demanding the people are. Political democracy is incompatible with the absence of democracy in economic life. In other words, citizens cannot be regarded as sufficiently mature for political democracy while being denied democratic rights in economic life at the same time. In a recent legislators' election on December 6, 1986, two labor leaders who were representing the interest of labor and who were nominated by the ruling party lost their election. This incident might reflect that the members of unions expect more democracy not only in politics but in economic life. At this time the degree of democracy in economic life in Taiwan is not considered acceptable by workers.

Workers' participation is directly and indirectly related to increasing the efficency of the company. This kind of participation sometimes is not easily accepted by unions, because if you get the right to participate in management, you must simultaneously be responsible for what you do. Once you do things wrong, you may lose your legitimacy with an employer to propose the terms of employment.

In Taiwan, some of the institutions of workers' participation that are set up by different laws such as the "Labor and Management Conference", "Workers' Safety and Sanitation Committee", "Workers' Retirement Reserve Committee", and "Employee Welfare Comittee", focus their objectives on popular participation in development. Some of the institutions such as "profit sharing and bonus plans", and "stock ownership" are set up by laws for participation in company capital through financial participation and employees' shareholding. The rest of the institutions such as the "Quality Control Circle" and the "Employees' Suggestion Box" emerge from the needs of the employers and workers. Some of them are really participatory. But some exist in form only because they lack significant acheivement. How these insitutions actually work will be decribed below:

(1)The "Labor and Management Conference"

Workers can participate in decision making on the shop floor through this 'Conference'. The number of labor representatives in the "Labor and Management Conference" is the same as that of management. The implementation of the decisions of the "Labor and Management Conference" is not mandatory according to the Labor Standard Law, but the representatives of both sides must be responsible for reflecting the opinions of the groups they represent expressed in the Conference. The convention of the "Labor and Management Conference" may reach a decision only by two-thirds majority vote of a meeting attended by at least one-half of the representatives. Accordingly, the decisions must be reached by consensus; otherwise, it would not be easy to reach decisions. This institution emphasizes homogeneity in shop floor level.

Employees from every department may make proposals through their representatives to the "Labor and Management Conference", as can management personnel. The Conference representatives of labor and management discuss and reach decisions in democratic ways.

The beginning of enforcement of the Labor Standard Law is so recent (1984), it is difficult to appraise the performance of the "Labor and Management Conference" now. Before the enactment of the Labor Standard Law in 1984, the institution of the work council was set up by the Factory Law which was enacted in 1929. The composition and the scope of the work council is roughly similiar to that of the "Labor and Management Conference". According to the Factory Law, the work council has seven functions, as follows:

a)To investigate measures to promote work efficency;

b)To improve relations between the employer and the workers and to mediate any dispute between them;

c)To assist in the enforcement of the collective agreement, the labor contract and the work rules;

d)To confer about the measures for the extension of working hours;

e)To improve safety and health facilities in the factory;

f)To make a proposal for the improvement in the factory or the workshop;

g). To make plans for the workers' welfare.

Of these seven functions, only plans for the workers' welfare is often proposed and concluded. The rest of these items are rarely proposed or concluded.

(2).Participation in Workers' Safety and sanitation

Workers' participation in safety and sanitation affairs, which officially began from 1972 when the government in Taiwan promulgated the Labor Safety and Sanitation Law, is the other form of popular participation in company development. Through the "Labor Safety and Sanitation Committee" set up by the Law Governing the Safety and Sanitation of Workers, workers participate in safety and health affairs. Although the improvement of safety and of health facilities in the factory is within the scope of the "Labor and Management Conference" the Conference concentrates on principle only. The remaining details are discussed in the "Labor Safety and Sanitation Committee".

This Law also states that the provincial and city governments must set up an agency to inspect the safety and sanitation conditions. The law also prescribes that the company must set up a "Labor Safety and Sanitation Committee" to inspect its conditions of safety and sanitation regularly and voluntarily. Of the representatives of the Committee, one third represnt workers. They may make and discuss proposals, and reach decisions in the Committee. If the representatives of management intend to make decisions against the laws, the representatives of labor may report the employer's violation to the authority-in-charge.

Since these regulations address workers' safety and health and aim at reducing the frequency of industrial accidents, they are welcome in a business. From 1973 (the year after the enforcement of the Labor Safety and Sanitation Law) on, the rate of industrial injuries in Taiwan considerably declined (see Table 5-1). Although the rate of industrial injuries is still much higher than in advanced countries, the trend of decline is conducive to the success of workers' safety at the company level.

(3) Participation in Enforcement of Workers' Retirement Reserve

Workers' participation in the enforcement of the retirement reserve is difficult to appraise now because the period of its enforcement since 1984 is still too short. But an earlier system, which was something like the new retirement system, was enforced before 1984. Based on the record of the old retirement fund, it seems to be assumed that protection of the fund from misappropriation is effective. If workers want to use this fund as capital to invest more productively, that would be impossible, because the Labor Standard Law states that the workers' retirement reserve must be kept in a special account. Workers cannot invest it freely. These regulations are useful for workers, because they maintain the security of the fund.

Generally speaking, the degree of workers' participation in the enforcement of retirement reserve is relatively limited. It can be said that it is in form only.

(4).Participating in Employee Welfare Affairs

In Taiwan, worker involvement in employee welfare affairs is one of the most participatory aspects at the undertaking level. Due to mandatory contributions to the welfare fund and its irrelevance to the direct operation of business, the employer always leaves the lion-share of decision-making regarding employee welfare affairs to worker representatives. Accordingly, this kind of participation is quite common in Taiwan. Including welfare stations in private factories and mines, government-operated enterprises and labor unions, the number of welfare units increased from 407 in 1956 to 4,843 in 1984.

Employee welfare in Taiwan includes facilities and services such as: library, snackery, public bath, dormitory, recreation equipment, supply department, club, health clinic, correspondence service, supplementary education, scholarships for dependents, subsidizing , and the like.

(5)Participating in Profit Sharing or Bonus Plans

In recent years, profit sharing or bonus plans are relatively widespread in Taiwan. Since the levels of wages are decided by the labor market, the individual employer and employee hardly influnce the labor market because the labor market is nearly perfectly competitive in Taiwan (see Chapter 2). But bonuses are another story, because any employer can decide how much he or she wants to give his or her employees in terms of their performances and the quantity of profit in the fiscal year. The average bonus amounted from 2 to 3 months' pay in 1986. But the range of this kind of profit sharing is different from company to company, industry to industry. For example, the amount of bonus in computer manufacturing ranges from 2 to 10 months' pay, 1 to 4 months' pay in electronic appiances & housewares manufacturing, 1 to 2.5 months' pay in the food industry, 1 to 4 months' pay in motor vehicles manufacturing, 1 to 3.5 months' pay in insured corporations, and 1 to 6 months' pay in hotel estabishments. On the average, the bonus remained between 2 to 3 months' pay. But in foreign-invested companies, this kind of bonus is very institutionalized. Their bonus is almost always fixed at 2 months' pay level, and is paid regardless of the amount of profit.[3]

The system of bonus or profit sharing is quite welcome in Taiwan because it not only contributes a great amount to savings, but it also enables workers to have a fruitful Chinese Lunar New Year as Western people do at Christmas. But if the proportion of employees who participate in establishing bonus programs or the size of the bonus is scrutinized, it is disappointing, because both the establishment of the bonus program and the size of the bonus are wholly decided by the employer. If there are employees who have been participating in the distribution of the bonus, they are at the level of the management or supervisors.

(6). Employee Stock Ownership Plans (ESOP)

In the ROC, Employee Stock Ownership Plans have existed for a long time but are less popular than in the U.S. According to a 1980 survey held by the Ministry of the Interior of the ROC, there were 2,283 establishments that hired 100 or more employees that year. Of these establishments, 9.1 percent have implemented ESOPs. And these ESOPs covered 18.76 percent of the total number of emplyees involved in the survey.[4] Why are ESOPs not used effectively and widely in Taiwan? The main reasons uncovered by the survey were as follows:

(a) Most of families who owned enterprises were unwilling to separate the management of business operations from ownership of the enterprise because they were fearful of losing their management prerogatives.

(b)The employees in Taiwan were not familiar with the advantages of owning stock. They do not want to take a risk to purchase their company's stock. Even if they were familiar with the adventages of shareholding, however, the workers concerned generally have no more power than small stockholders at general meetings.

(c) Employees in government-operated enterpises cannot participate in ESOPs

because the law forbids it.

(d) ESOPs in Taiwan have not received favored tax treatment, since ESOPs are viewed as a common investment. There is no incentive encouraging employees to possess the stock.

(7). Quality Control Circle (QCC)

With the growth of economy, exports became the lion's share of the gross national product (GNP) in Taiwan. For international marketing, quality control became more important day by day. Whether employers or employees emphasize quality control, even this system is not obligated by law.

Quality Control Circles have been set up in vaious establishments especially in manufacturing industries. People present their performance of quality control between various departments of the company. Through discussions and presentations of performance of quality control, workers reach a consensus. Sometimes workers qualify to obtain a performance bonus in terms of good performance of quality control.

Qualty Control Circles (QCC) are not only effective in improving the quality of goods, but they are also effective in promoting employees' loyalty and in advancing mutual understanding between employer and employees. Although QCC in Taiwan are not as common as in Japan, QCC plays an important role in workers' participation in the decision-making of undertaking.

(8) Employee Suggestion Box

The employee suggestion box is not obligated by law either, but this system is popular in Taiwan. Most establishments have set up an employee suggestion box at the corners of the workplace and appoint qualified persons to handle what workers suggest. Some establishments even set up a series of incentive measures to encourage employees to make suggestions. This employee suggestion system, however, has defects (such as the lack of feedback to suggestions) that have made the system somewhat inefficient. Nevertheless, this system plays an important role in workers' participation in decision-making in the company.

3.Summary

With worker participation in Taiwan, there are some points worth of being summarized as follow:

1. The legal framework for worker participation in Taiwan is enforced by some important statutes and laws rather than by collective agreement. All of these laws relate to worker participation in (a) development of management including the " Labor-Management Conference" and Management of Retirement Reserve, (b) profit sharing or bonus, and (c) stock ownership.

2. Apart from the participation prescribed by laws in Taiwan, there are still some forms of worker participation initiated by the employer, such as the Quality- Control Circle and the Employee Suggestion Box.

3. In Taiwan, the younger generation is increasingly unwilling to accept authority in an enterprise in which they have no share or influence on decision making. They are gradually demanding for more democracy in economic life as well as in political life.

4. Generally speaking, worker participation in Taiwan is not widely practiced. With the exception of participation related to productivity such as the Quality Control Circle (QCC) and to employee welfare affairs, most participation exists in form only because it lacks of employers' support.

Notes:

1.This procedure is prescribed by the Rule Governing the Convention of Labor and Management Conference.

2.This is prescribed by the Rule Constituting Workers' Safety and Sanitation Committee.

3.Central Daily News, International Edition (printed in Chinese), January 5, 1987, California, P.2.

4.Jin-Fu Chen, The System of Employee Stock Ownership Plan and Bonus in Republic of China on Taiwan, Taipei: Chinese Cultural University Press, 1980, pp.87-89.

Table 5-1 The Rate of Industrial Injuries in Taiwan

unit : 0/00

Year	Total	Injuries	Disabilities	Fatal
1973	12.87	10.37	1.99	0.51
1974	11.94	9.44	1.97	0.53
1975	9.80	7.65	1.66	0.51
1976	9.57	7.33	1.77	0.47
1977	10.02	7.66	1.86	0.50
1978	8.77	6.59	1.73	0.45
1979	8.30	6.11	1.76	0.43
1980	7.80	5.69	1.65	0.46
1981	7.22	5.23	1.53	0.46
1982	7.27	5.45	1.40	0.46
1983	7.12	5.40	1.34	0.38
1984	7.24	5.40	1.43	0.41

Source: Yearbook of Labor Statistics Republic of China, 1985.

Chapter VI. Labor Disputes in Taiwan

1.The Legal Framework for Settling Labor Disputes[1]

The legal framework for the settlement of labor disputes in Taiwan is established by two important laws, namely, "The Law Governing the Handling of Labor Disputes" and " Measures for Handling of Disputes During the National Mobilization for the Suppression of Communist Rebellion." The former applies to any dispute involving conflicts between an employer and a union over rights and over interests, or between an employer and fifteen or more workers, excluding the labor disputes arising in state-operated enterprises.[2] The latter was applied as a special measure during the period of national mobilization, and only for the districts where the industries of mining, manufacturing, transportation, comunication, and public utilities are well developed. By law, mediation, arbitration, and decision-making procedures now structure the settlement of labor disputes in Taiwan.

A).Mediation

a).Initiation of Mediation

In the event of a labor dispute, the authority-in-charge may, upon a written application of either or both parties thereto, establish a mediation board. The same applies when it is deemed necessary by the authority-in-charge to put the dispute to mediation, even though application has not been made by either party. In this case, the authority will notify the parties in writing of the matters to be put to mediation.

b).Organization of Mediation

The mediation of a labor dispute is performed by a board composed of five or seven members, including one to three representatives appointed by the authority-in-charge,[3] and two representatives from each party to the dispute. The representatives appointed by the authority need not be limited to the officials of the authority-in-charge. They may be academics or professional individuals. The representatives of parties to a dispute must be elected or appointed by the bodies concerned within three days[4] after receipt of the notice from the authority-in-charge, and the names and addresses of such representatives shall be reported to the authority. In case of failure by any party to submit names and addresses of representatives within the above-mentioned time limit, the authority may, *ex officio* designate representatives on behalf of that party, in order to compete the formation of the mediation board.

Once the composition of a mediation board has been decided, the authority-in-charge will call a meeting of the board and appoint the chairperson of the board from among the representatives appointed by the authority-in-charge.

c).Mediation Procedure

When the mediation board has been organized, it must then, within two days after convocation, start to investigate the substance of the dispute, statements submitted by the parties to the dispute, the existant conditions of the parties to the dispute, and other matters deemed necessary to investigate. Unless there are special circumstances, the duration of investigation may not exceed seven days.

For the purpose of investigation, the mediation board may summon witnesses and require the concerned parties to testify before the board or submit a written statement. If the summoned witnesses or concerned parties failed to attend the meeting without justifiable reasons, or failed to submit a required written statement, they may be punished with a fine.

The mediation board may also conduct investigation or inquiries at concerned factories and firms, but members of a mediation board are obliged to keep confidential any secrets that come to their knowledge in conducting the investigation.[5]

If there is any false statement submitted by a witness in the investigation, he or she will be punished in accordance with the provisions of the Criminal Code concerning perjury.

d).Conclusion of Mediation

A mediation board will make a recommendation within two days from the completion of their investigation, unless the extension is agreed upon by both parties, or under special circumstances, the extension is necessitated.

A mediation is deemed a failure when the representatives of both parties to the dispute refuse to attend the meeting of the mediation board, thereby rendering the mediation impossible, and is deemed to have been successfully concluded only upon concurrence of both parties to the dispute and their signing of the mediation records or minutes. When conclusions have been reached, the result of the mediation is immediately reported to the authority-in-charge by the mediation board. The conclusions agreed upon under successful mediation are considered part of a contract between disputing parties, and when one of the parties is a labor union, as a collective agreement between parties.[6]

B)Arbitration

a).Initiation of Arbitration

No labor dispute may be referred for arbitration without having first gone through the mediation procedure. Both parties to mediation must agree to apply for arbitration forthwith. In other words, in the event of failure of mediation of a labor dispute, the dispute will, upon the application by either party thereto, be referred to an arbitration board.

A dispute arising in non-state-operated public utilities or communication

enterprises will be directly referred to arbitration. If such a dispute fails in mediation, involves a serious situation, and remains unsettled for more than ten days, the authority-in-charge may, if he considers it necessary, refer it to an arbitration board without application by the parties. This can be viewed as compulsory arbitration.

In applying for arbitration, the parties to the dispute file a written application form. If a labor dispute is referred for arbitration directly by the authority-in-charge, the authority will notify the parties in writing of the matters to be put to arbitration.

b).Organization of Arbitration

An arbitration of a labor dispute is performed by an arbitration board which has five members, consisting of two representatives appointed by the authority-in-charge, one representative from district court,[7] and one representative each from labor and management who are not directly concerned with the dispute.

With regard to the appointment of the representatives of labor and management, a provincial or municipal government has to draw up a list of twenty-four to twenty-eight candidates within this jurisdiction area considered as qualified for the appoinment to an arbitration board.[7] The list must be renewed every two years and submitted to the Ministry of the Interior to be recorded by the government concerned after approval thereby.

In the case of a dispute submitted to the authority-in-charge for arbitration, the non-governmental representatives shall be designated by the authority-in-charge from among the listed candidates,[9] but no person who has been a member of the mediation board may serve as a member of board arbitrating the same dispute.

The meeting of the arbitration board is called by the authority-in-charge and one of the representatives from such an authority will be appointed to be the chairperson.

c) Arbitration Procedure

Within seven days from receipt of the application, the authority-in-charge will call a meeting of the arbitration board either at the locality where the authority-in-charge is situated or at the place where the dispute is in progress. Within two days after convocation, the arbitration board then must start to investigate the substance of the written statement submitted by the parties, the existing conditions of disputing parties, and any other matters that should be investigated. The investigation will be finished in seven days, but an extension may be granted under special circumstances.

Like a mediation board, the arbitration board may summon witnesses, require the parties concerned to testify before the board or to submit written statements for the purpose of investigation.[10] It may also conduct investigation or inquiries, even at the

site of concerned factories and firms.[11] But every member of an arbitration board is asked to keep confidential any secrets that come to their knowlege while conducting the investigation.[12] The chairperson of an arbitration board may request the transfer of employees of his own agency or the district court to the board for such services as recording, filing, drafting, and all other related work.

d).Conclusion of Arbitration

Within two days from completion of the investigation, an arbitration board will reach a decision, by a majority vote of a board meeting attended by the whole of the members. An award contains the following items: (1) names, professions, and addresses of disputing parties; (2) the text of the decision; (3) the facts of the case and reasons for the decision; (4) the signature of the chairperson and all other members of the arbitration board; and (5) the date of decision. It must be prepared, served on both parties to the dispute, and submitted to the authority-in-charge for record. The parties are allowed to make a compromise at any stage of arbitration. If a compromise is reached, the content of the compromise is submitted to the arbitration board, and in this event, the arbitration is considered concluded. Once the arbitration is concluded, an award is made.

An award of the arbitration board is final and no party may take exception with it.[13] The content of an award has the effect of a contract between the parties to a dispute; when one of the parties is a labor union the award is part of a collective agreement between parties, and is applicable to the court for compulsory execution.[14]

C). Decision Procedure

a). A Special Measure

During a period of national mobilization, a city or county where the industries of mining, manufacturing, transportation, communication, and public utilities are well-developed may apply to the Ministry of the Interior for establishment of a "Labor Dispute Decision Committee" under its jurisdiction to expedite settlement of labor disputes, so that production may be kept in good order. A Labor Dispute Decision Committee is, therefore, only a special measure for the duration of the National Mobilization[15] in certain cities or counties.[16] Where no Labor Dispute Decision Committees are established, the labor dispute will still be handled in accordance with the procedures of mediation or arbitration described above.

b). Organization of a Labor Dispute Decision Committee

The "Labor Dispute Decision Committee" consists of nine to fifteen members appointed by a county or city government from officials in charge of social affairs, economic affairs, public security, food, and public health administration, and responsible persons of a county or city assembly, the chamber of commerce, the federation of labor unions, essential industrial associations, and industrial and craft unions, and other

relevant organizations in the locality concerned.

The committee member who is the official in charge of social adminstration functions as the chairperson of the "Labor Dispute Decision Committee", administrating its affairs. Three standing members may also be elected by members to handle the daily affairs of the committee. When a dispute arises between labor and management, the chairperson may also appoint responsible persons of the relevant industrial association and labor unions to be *ad hoc* members of the Committee.

c).Functions of the "Labor Dispute Decision Committee"

The main functions of the "Labor Dispute Decision Committee" are as follows:

(1)To handle matters relating to adjustment of wages;

(2)To handle matters relating to prompt settlement of important labor disputes; and

(3)To handle matters relating to the settlement of labor disputes involving public transportation, communication, utilities, and public enterprises.

To perform these functions, the Labor Dispute Decision Committee may hold a meeting at any time it considers necessary. When calling a meeting , it may, at a moment's notice, ask both labor and management to dispatch their representatives[17] to attend the meeting. A Labor Dispute Decision Committee is authorized and obligated, in accordance with the provisions of the relevant laws and ordinances applicable in the locality concerned, to inspect the operational conditions of enterprises and living conditions of workers. On the basis of such an inspection the committee may make proper adjustments so that the livelihood of workers may be stabilized, production maintained, and dispute prevented.[18]

d).Effect of Decision

The Labor Dispute Decision Committee may reach a decision only by a two-thirds majority vote of a meeting attended by at least one-half of the members. An agent appointed by a member to attend the meeting has no right to vote, but attendance at the meeting by parties is not a necessary condition for the decision. A decision of the Labor Dispute Decision Committee is final and binding. Therefore, if a party involved in a dispute does not submit to the decision, the authority-in-charge may resort to compulsory execution,[19] and where the case is serious, punishment of offenses against National Mobilization.[20]

D).Limitation on Acts of Disputing Parties

a).State-Operated Enterprises

The terms and conditions of labor at state-operated enterprises are prescribed by the government and not subject to the Law Governing the Handling of Labor Disputes. Therefore both mediation and arbitration procedures are not applicable to labor disputes

arising in stated-operated enterprises. They may only be referred to Decision Procedure handled by the Decision Committee. According to Article 7 of the National Mobilization, suspension of business, strike, or slowdown on account of any labor dispute, is strictly forbidden before such a dispute has been brought to the Labor Dispute Decision Committee for decision. Although Article 7 of the National Mobilization does not explictly state that workers may or may not go on a strike after such a dispute has been brought to the Labor Dispute Decision Committee for decision, it would be presumed that there is no strike going on after the decision of the Committee because the decision is final and binding. If any party involved in a dispute does not submit to the committee's decision, the authority-in-charge may resort to compulsory execution. Once the decision is made, no party can use the cause of the dispute as justification for going on strike, because that would be illegal.

b).Non-State-Operated Enterprises

According to Article 36 of the Law Governing the Handling of Labor Disputes, employers or workers of non-state-operated public utilities or communication enterprises are not allowed to suspend business or call a strike on account of any labor dispute. In the case of non-state-operated enterprises other than public utilities or communication, this restraint is only for the duration of mediation or arbitration.[21]

The workers or a labor union may not commit any of the following acts:

(1) Shutting down a shop or a factory; (2) Taking without permission or damaging foods and appliances of a shop or factory; (3) Forcing other workers to strike. And the employer is not allowed to dismiss workers in the course of mediation or arbitration. When any party acts contrary to these restrictions, the authority-in-charge, a mediation board, or an arbitration board may restrain him or her from commiting such acts.

Upon a disobedience of such restraint a fine is imposed, and if any criminal offense is involved, it shall be dealt with in accordance with the criminal code.

2.How Do The Institutions of Labor Dispute Resolution Function ?

As mentioned before, in the ROC the institutions for settlement of labor disputes including disputes over rights and disputes over interests are structured by mediation, arbitration, and decision procedures. The court, of course, still has jurisdiction over a dispute over rights as a civic case. Eventually, only a few of these legal means have been widely used in the past decades. Almost all of the disputes were resolved by the extralegal means of reconciliation attached to the authority-in-charge. For example, in 1984 there were 1,154 cases of disputes in which 9,761 persons became involved. Almost all of these cases stemed from disputes over rights, including 24 percent of cases caused by wrongful severance,23 percent by dismissal, 21 percent by

non-payment of wages, 8 percent by injury compensation, 3 percent by business arguments, 2 percent by claims for allowance, 0.4 percent by reduction of wages, 19 percent by other problems. The exception were 5 cases involving claims for arranging wages which were disputes over interest. Of these 1,154 cases, 1,119 (97 percent) were resolved through reconciliation attached to the authority-in-charge. Only 35 cases (3 percent) of the total cases were not resolved after the reconciliation. Few of these unresolved cases finally resorted to litigation as civil cases rather than to mediation, arbitration, decision procedure or letigation. Why did people who got involved in labor disputes pursue settlement through extralegal means rather than legal means--the mediation, arbitration, decision procedure and letigation? After several years of observation, I propose the following reasons:

(1).There are defects in current institutions

According to the Law Governing the Handling of Labor Disputes, only disputes between an employer and a labor union or between an employer and 15 or more workers may be submitted for mediation or arbitration. In other words, disputes between an employer and 14 or less workers may not be submitted for settlement through these processes. Labor disputes happened more frequently in small and medium enterprise than in big enterprise, due to the former's generally inferior conditions of employment. The small and medium enterprises, which constitute a relatively large porportion of total number of establishments in Taiwan, usually employ less than 15 workers. In addition, workers in small and medium enterprises do not qualify to organize an industrial union in their undertaking. Accordingly, workers in those firms are hardly eligible to apply to a mediation and arbitration board for settling disputes between them and their employer. No serious disputes over rights or disputes over interests in which huge people got involved have happened in Taiwan in the past three decades, so the mediation board and arbitration board have not actually functioned before. Groups of less than 15 relied on extralegal means for settlement of disputes whether disputes over rights or over interests, or resorting to litigation in court for dispute over rights.

(2). Suing for settlement in court is too expensive, time consuming, and unpredictable in outcome

Resorting to litigation might be useful for settlement of disputes over rights. But the use of these legal means still has its limitations because it is too expensive ,time consuming and unpredictable in outcome. Labor disputes over rights as well as civil cases can be decided in court. Pursuing a case through the district court and the high court to the supreme court would cost workers lots of money, including lawyers' fees and other legal fees, and lots of time, at least several months. Besides, in litigation a worker who gets involved in the case must present evidence proving his or her rights having been violated. That is a difficult thing to do because a worker usually reaches his or her agreement with an employer regarding the terms of employment by oral promise rather than by written contract. Accordingly, it is hard to predict whether he or she will ultimately win the suit.

The longer the litigation, the more intolerable the situation becomes for the worker. Since labor cannot be stored, workers have to work in order to earn their living. It is difficult for them to attend court and to work at the same time. In addition, Chinese citizens traditionally thought that entering into a court is shameful, so they don't want to get involved in a lawsuit if they can avoid it. Thus they tend not to view litigation as a best means for settling a dispute, and prefer to rely on extralegal measures.

(3).Labor laws were not included in the scope of the training of judges

Labor laws were not included in the scope of the training and examination of judges, so judges at various levels have no expertise in labor laws. This lack of expertise is another reason why people do not rely on suing for settlement of disputes.

(4).Reconciliation is accessible and free

In Taiwan, the authority-in-charge at various level is always available to both both parties involved in disputes without any charge. Under the reconciliation process conducted by the authority-in-charge, both workers and employers are easily persuaded to admit to problems and to agree to a compromise to solve the dispute.

Due to a number of drawbacks in the current institutions of labor dispute resolution in Taiwan, the future amendment of the Law Governing the Handling of Labor Disputes is likely to emphasize the establishment of a labor court system.

3.Summary

1. The institutions for settlement of labor dispute in Taiwan are constituted by two important Laws, the "Law Governing the Handling of Labor Dispute" and "Measures for Handling of Disputes During the National Mobilization for the Suppression of Communist Rebellions"

2. By law, the voluntary and compulsory mediation, voluntary and compulsory arbitration, and decision making procedures now structure the settlement of labor disputes in Taiwan. Mediation and arbitration are normal procedures while the decision making procedure of the Labor Dispute Decision committee is attempted prior to the mediation or arbitration procedure and applied only as a special measure in a particular period of national mobilization.

3.The mediation and arbitration procedures are only applied on the disputes in which employer and 15 or more workers involved. Most of small firms that usually hire workers less than 15 persons are almost unqualified to apply the mediation and arbitration procedure. But the court still has its jurisdiction over dispute over rights as a civil case whether it is a collective dispute or individual one even though it is thought as timeconsuming and the result are unpredictable.

4.Compulsory mediation and arbitration is legally adopted and easily initated by both authority-in-charge and one of the disputing parties without consent of both sides. Eventually, voluntary mechanism of settlement of labor disputes will be in form only.

5.Current adoptation of decision-making procedure with its defects not only malfunctions itself but the application of mediation and arbitration procedures. This situations in conjunction with defects of other legal means (mediation, arbitration, decision making procedure and litigation) has made reconciliation attached to the authority-in-charge (extralegal means) prevalent in Taiwan.

Notes:

1.With regard to the framework, see Chen Chi-sen, Laws Governing the Settlement of Labor Disputes in the Republic of China, " Private Investments and International Transactions in Asian and South Pacific Countries" New York: Metthew Bender & Company Inc., 1975.

2. The terms and conditions of labor at state-operated enterprises are prescribed by government, and are not subject to the provision of this law.

3. If more than one county or city are involved in the same labor dispute, the representatives to be appointed by the authority will be appointed by the provincial government. If more than one province or municipality are involved, they are appointed by the Minstry of Interior, in the case of central government.

4. An extension is possible, when the authority-in-charge deems it necessary.

5. According to Article 40 of the Law Governing Handling of Labor Disputes, in violation of this obligation, the member of an arbitration board shall be punished with a fine not exceeding 100 yuan; but if any criminal offense is involved, it shall be dealt with in accordance with the criminal code.

6. The term "collective agreement" as used in the collcetive agreement law refers to a written contract, concluded between an employer or an incorporated organization of employer on the one hand and an incorporated organization of workers on the other hand, for the purpose of specifying labor relations.

7. According to Article 2 of the Law of Organization of the court, courts are divided into three grades, namely, district courts, high courts, and the supreme court.

8. To create a list of candidates in the province, every government of Hsien (i.e.county) or city convenes a meeting which chooses two to six candidates for recommending to the Provincial Government for approval. To the meeting, every organization of labor and employer under the juridiction may send one to three representatives. By formation of a list of candidates in the municipality, the candidates recommend by the meeting, representatives of all organizations of labor and employer

under its jurisdiction.

9. A list of candidates is divided into two parts, one for candidates representing the employer, and the other for candidates representing labor.

10. In the event of failure to attend the meeting without justifiable reasons, or failure to submit written statements or submitting false statements, the parties or witnesses shall be punished with a fine not exceeding 100 yuan.

11. In the event of refusing to answer questions or to be investigated without justifiable reasons or making false statements, the person shall be punished with a fine not exceeding 100 yuan.

12. The provisions of articles 23 through 28 for mediator apply *mutatis mutandis* to arbitratior; see no. 4.

13. Any party who refuses to fulfill the award shall be punished with a fine not exceeding 200 yuan or with detention not exceeding 10 days.

14. The content of a compromise between parties may not be considered as an award of the arbitration board, so it is not applicable to the court for forcible execution (Decision of Judicial Yuan, Dec. 28, 1950).

15. Taiwan Area, including Province Taiwan and Municipality Taipei and Kaushiong, has been declared to be under Martial Law since 1949; but recently, the National Government has pronounced that the Martial Law will be abolished in the years to come.

16. The Labor Dispute Decision Committees established now in the Taiwan Area are:
(1) Taipei Municipality;
(2) Kaushiong Municipality;
(3) Taipei County;
(4) Kee-Lung City;
(5) Tau-Yuan County;
(6)Tai-Chung County;
(7)Tai-Chung City.

17. The representatives dispatched to attend the meeting have an opportunity only to state opinions, but no right to participate in the decision making of the committee.

18. The functions of the committee are not restricted only to handle the labor disputes already happened, but also to prevent the arising of disputes.

19. Compulsory execution here means forcible execution by adminstrative authority in accordance with the Law of Adminstrative Compulsory Execution, and differs from an

award of arbitration board which apply to court for judicial Compulsory execution (Adminstration Yuan Ordinace NO. 1860. March 22, 1954).

20. According to Article 5 Of this statute, whoever commits these offenses shall be punished with imprisonment for not more than seven years; in addition thereto, a fine not more than 7,000 yuan may also be imposed.

21. The notice of mediation or arbitration by the authority-in-charge to the parties is deemed as the beginning of a mediation or arbitration.

Table 6-1. Labor dispute in Taiwan in 1984

Cause of dispute (case)	Number
Total	1,154
Dismissal	263
Wrongful severance	273
Claim for arranging wages	7
Arrears of wages	243
Reduce wages	5
Claim for allowance	23
Injury compesation	90
Business argument	35
Other	215
Persons involved dispute	
Total	9,753
Staffs	635
Workers	9,128
Result(case)	
Reconciliation	1,118
Resultless	36

Source: Yearbook of Labor Statistics, ROC, 1985.

Chapter VII Three Country Comparison

Since the United States and Japan are the biggest trading partners of the Republic of China on Taiwan, there have naturally been close ties among them in various areas, including bilateral investment and cultural exchange. There are many of interactions among these three countries. These interactions, of course, include the field of industrial relations.

Japan and the United States are industialized countries. They have largely free enterprise systems. Government regulation of business and labor take to a large extent the same form. But they have developed their industrial relations systems with different forms, although the United States has implemented U.S. labor movement style in Japan to democraticize the Japanese labor movement right after World War II. Japan and the ROC embody older societies and they have undergone fedualism for several thousand years. Historically and culturally, Japan and the ROC have many similarities. These similarities may influence the functioning of industrial relations in the two countries. American economic aid, which was stopped in 1965, contributed tremendously to the restructuring of Taiwan's economy and its training of manpower. Many persons who were trained in the United States now are posed at key positions and deeply influence the government's policy-making in a number of fields including industrial relations.

Through a three country comparison, we may learn from various countries' experiences. Comparative findings might be used for normative, or even polemical, purposes in order to support or oppose certain aspects of a country's domestic industrial relations policy. An examination of the industrial relations systems of Japan, the U.S.A, and Taiwan--including unionism, collective bargaining, workers' participation and the resolution of disputes--at least reveals a number of differences and similarities.

In the years imediately following the Second World War, the United States assisted the reconstruction of Japan. As an occupying power, the United States government, while using a strongly American style of trade unionism to democraticize Japan, incorporated certain of Japan's cultural and historical charateristics. As a result, the Japanese industrial relations system is not totally modelled after the American system.

As the Japanese trade union movement developed, each company would have only one union indigenous to it. Industrial relations within an enterprise is the most important part of the Japanese indusrial relations system. But Japan took a more diverse approach different from that of the United States and Taiwan, establishing four national labor centers representing fifferent ideologies exist.

In the United States, the American Federation of Labor and Congress of Industrial Organization (AFL-CIO) trade union model tended toward a more diverse approach at the undertaking level. But basically, there is only one national labor center, the AFL-CIO, even though there are still some independent national federations of labor unions not

affiliated with AFL-CIO.

In Taiwan, the current industrial relations system seems to function inefficiently and to be dominated by employers. It can be assumed that in the near future, with the highly internationalized labor movement, Taiwan's labor relations structure is likely to change to some extent. There is, therefore, an interest in Taiwan in comparing its system to other advanced countries.

1.Background of Current Industrial Relations

(1). Trade Union Structures

The trade union structures in Japan, the USA, and Taiwan are basically characterized by business unionism. In Japan, most trade unions, except the federations, are organized on an enterprise basis. In Taiwan, apart from craft unions and federations, almost all industrial unions are organized on an enterprise basis. But from the national labor movement point of view, Japan's seems to be a system of plural unionism while the USA and Taiwan reflect unified unionism.

In Japan, it is difficult to find a sense of unity in the trade union movement. There are four labor bodies vying for support. From mulitiple unionism, however, the four national centers have moved toward closer unity by participating in the Spring Wage Offensive or *shunto*[1] when almost 80 percent of private sector collective agreements are concluded. Nevertheless, a common labor voice does not exist in Japan and this has been seen by some as the reason for the strongly conservative nature of the national government.

In the United States, most of the unions are both geographically and industrially concentrated. Most national and local unions are affiliated with the AFL-CIO. Transportation, construction, and manufacturing industries tend to be highly organized. More than half of all government employees are also members of unions or associations. On the contrary, trade and service industries tend to be less organized because women, who are the primary employees in these industries, tend not to join unions.[2]

In Taiwan, one can find a unified labor movement. There is only one national labor center, the Chinese General Federation of Labor Unions. All national, regional, and local unions are affiliated with it directly or indirectly.

(2)The Number of Unions and Their Membership

There is a similarity among the three countries in terms of low union density--the small portion of the labor force who join unions. About one fifth of the labor force in each country are union members. The organized workers are about 18 percent of the labor force in Taiwan (1984)[3], 22 percent in Japan (1982)[4] and 18 percent in the United States (1982).[5]

In Japan in 1982, there were about 74,000 trade unions. Contrary to the AFL-CIO model, the enterprise union approach, which means each unionized company has a separate union, was acceptable to employers and was the quickest means of establishing a trade union movement in Japan. The enterprise unions covering blue-collar and white-collar employees do form federations, usually on an industry basis. The federations in turn are affiliated with one of the national centers.

In Japan at that time, there were about 12 million union members, about 90 percent of whom were members of enterprise unions. The unions have been attempting to increase their membership. but it has been found that younger workers do not exhibit much interest in joining trade unions. It is also alleged that employers have attempted to prevent unions from being formed.[6]

The main labor body in United States is the AFL-CIO. In 1982, there were 96 national unions affiliated with the AFL-CIO, with 66 national unions unaffiliated (as are most professional employee associations). In 1983, AFL-CIO affiliates included a total of 13,758,000 members and 69 percent of total union and association members.[7]

Due to deteriorated economic conditions, there has been a rapid pace of mergers of national unions to consolidate resources. Between 1978 and 1982, for example, the number of national unions affiliated with the AFL-CIO declined from 108 to 96, primarily through mergers.[8] There are in the United States some 71,000 local unions in the U.S., most of which are affiliated with national unions.[9]

In Taiwan, the only labor body is the Chinese General Federation of Labor Unions. For several decades, it has been the sole spokesman for organized labor in Taiwan.

In 1984, there were 1,924 trade unions in Taiwan and 1,370,592 union members. Of the organized workers, 52 percent were craft workers and 48 percent were industrial workers. The main reasons why the membership and the number of industrial unions has not tremendously increased yet are: the attempt of employers to impede the formation of indutrial unions; the unwillingness of younger workers to organize and join unions; and government's forbidding the unionization of government administrative and educational agencies or of the military ammunition industry.

(3).Employers' Organization

Although employers' organizations may not be direct-bargaining institutions, they can still play an important role in industrial relations by helping to achieve a degree of cohesion among employers through their coordinating and advisory functions. In Japan, the influential Federation of Employers' Associations (Nikkeiren) draws up wage-bargaining guidelines which are often worked out by bodies where the major undertakings that will apply them are represented.[10] Another organization of firms that is very influential in expressing a management viewpoint on the development of national economic policy in Japan is the Federation of Economic Organization (Keidenren).

There are no comparable organizations of employers in the United States, where there are several competing employer associations, each seeking to speak for various elements of the business community. Employers in the United States--particularly in the manufacturing sectors where enterprise-level bargaining and large corporations predominate-- have felt less need for association with other employers for negotiating purposes.[11] Employers have pursued more independent policies and their attitude towards unions remains at best one of grudging tolerance, if not of open hostility.[12]

In the USA the mainstream of the labor movement was content to confine its challenge to employers to the economic sphere. There has also been an absence of any socialist party alliance. Therefore, no serious political challenge was posed and employers' influence was manifest as a threat to specific employers in specific times and places rather than as a general threat to employers as a class.[13] Many employers fought unionism with every weapon at their command. Employers were also not required by the government to recognize unions as the legitimate representaives of the working class. Certainly, employers were not propelled into joining associations since, by the time they were required by legislation to bargain with unions, United States' manufacturing was itself organized into sufficently large company units, which enabled employers to be self-sufficent and not to require association bargaining.[14]

In Taiwan, employers' organizations have been organized to plan for improvement and development of an industry or commerce, to promote the common interests of its members, and to provide a coodinating and advisory function. They play a less important role in industrial relations. But in expressing a management viewpoint on the development of national economic policy, the Chinese General Federation of Industrial Association and the Chinese General Federation of Commercial Chamber are very influential in Taiwan.

(4).The Relationship of Trade Unions to Politics

Labor movements which emerge against the backdrop and carry-over of feudalistic traditions of an earlier age--systems that denied workers access to economic opportunity or political power, and which engendered a feeling of isolation and oppression[15]-- tend to become highly political in order to help effect a radical change in social order.[16] Historically, workers in Japan and Taiwan were relatively more influenced by feudalistic tradition than American workers were. Accordingly labor movements in Japan and Taiwan have close ties with political movements.

In Japan, trade unions have striven to increase their influence within the political system through support of political parties. Political activity has been an important concern of the Japanese trade union movement, so much so that it has often been characterized as political unionism. The main labor centers tend to support the socialist opposition parties. The largest central federation, Sohyo, has linked itself almost insepearably with the Japan Socialist Party (JSP) in a Marxist orientation. The second largest federation, Domei, is anticommunist and aligns itself with the Democratic Socialist Party (DSP). The Shinsanbetsu supports all non-Communist reform parties.

And The Churisuroren and the remaining independent unions are generally apolitical.[17] However, the long standing disagreement among the four main labor centers has prevented the immediate emergence of a coherent and unified political approach.[18]

In terms of its relationship with political parties, the labor movement in the United States has not had a stable, organized relationship or bargaining relationship related to specific political circumstances. The absence of feudalistic social and political structure prior to the onset of industrialization has been said to help account for the United States, "exceptionalism", in the form of a weakened socialist consciousness and the lack of strong political party-union ties. Also, a complex ethnic (immigrant) labor force composition and racial cleavage, which impeded collective action on a class basis, contributed to this situation. Another factor is the earlier and more vigorous industrialization process which occurred in the USA, favoring greater support for the laissez-faire economy and the values which sustain it, with a correspondingly reduced role for the state and politics. As Dunlop has explained,

> A national industrial relations system formulated with labor organizations which are an adjunct to a successful nationalist movement, which has secured independence, may be expected to show some characteristics different from one in which national independence antedated the union movements or in which the union movements played a minor role in nationalist movement. The relations between the labor organization and the government or the party of independence, and hence the status of these actors--may be expected to be quite different in these two types of situations[19]

In the USA, the distinctive features of unionism include 'job consciousness and job control, business unionism, an overwhelming emphasis upon economic struggle and collective bargaining, as opposed to broad political reform of the society and the economy'.[20] The important concept of 'business unionism' relates to the securing of pragmatic, job-related goals in the form of improvement in the economic and social; there is an interest in conditions of members, rather than concern with social reorganization.[21]

The AFL-CIO maintains a Washington staff to present labor's position to Congress and to the adminstrative agencies of the federal government by lobbies. Its state organizations usually maintain close contact with local political organizations.[22] The effectiveness of any lobby depends not so much on the cogency of its ability to deliver votes, money, or both to party organizations or candidates but on the endorsement of the Committee on Political Education (COPE)-- a subsidiary body of the AFL-CIO.[23]

Accordingly, American unions have relied very heavily on collective bargaining rather than political activity as the means of achieving their ends, so they do not have an open and permanent affiliation with one political party. Nevertheless, almost all American unions engage to some extent in efforts to influnce elections and decisions in national, state, and local politics. For the most part, however, union leaders have supported the Democratic Party in the last several decades, and in particular have

supported the northern liberal wing of the Democratic Party. This position is in part an application of the old rule that labor should support its friends and oppose its enemies, since the northern Democrats have typically fought legislation that would restrict or regulate unions, while Republicans and Southern Democrats have generally supported such legislation.[24]

In participating in politics in Taiwan, the leaders of the single national labor body -- the Chinese General Federation of Labor Unions (CGFLU) --tend to support the ruling party Kuomintang. In general, the members of the CGFLU are affiliated with Kuomintang by individual commitment. There is not a group affiliation of CGFLU with Kuomintang or other political parties in Taiwan. From time to time, the labor movement in Taiwan has had close ties with political movements.

(5)The role of the state in the industrial relations system

In terms of the relationship of union activity to the state and political system, the United States and Japan can be seen as organized, or controlled, or supporting pluralism, while Taiwan can be seen as repressed due to the integration of labor into economic planing.

It is believed that government plays an important role in mordern industrial relations systems. Although various governments have different approaches, government always acts as a third-party regulator by promoting a legal framework which establishes general ground-rules for union-management interaction, particularly in the procedures for collective bargaining. As a means of supporting and underpinning collective bargaining -- or as a supplement to it--governments make statutory provisions relating to minimum conditions of employment, including health and safety and, in some countries, wages and working hours. Governments function as a machinery for conciliation, mediation, and arbitration, with a view to facilitating the settlement of industrial disputes, as a direct or primary participant, as a major employer within the public sector, and as a regulator of incomes to modify or neutralize the results of collective agreements.[25]

In Japan, the autonomy of the participating groups has long been emphasized as one of the major principles of its industrial relations system. Especially in the field of industrial relations, the Japanese government has always been very careful to refrain from intervention. The only exceptions are labor inspections to enforce the minimum standards set by the Labor Standard Law, the implementation of other protective labor laws, and police intervention in criminal cases arising from labor disputes.[26]

In the United States the law has been markedly influential in shaping the industrial relations system, particularly in regulating the contours and tactics of bargaining, although less reliance has been placed on legislation to fix substantive employment conditions.[27] Its unionism not only remained confined largely to skilled workers for an extensive period of time but it also continued as a purely industrial force without any serious ties to political parties.

The government in Taiwan, in contrast to the Japanese and U.S. governments, takes a leading role in labor-management affairs. It relies heavily on labor legislation to intervene in industrial relations. Apart from minimum standards for employment conditions, the government intends to use compulsory mediation and compulsory arbitration institutions to settle labor disputes, to set up a mandatory vocational training system in public and private sectors, to improve workers, skills through the Vocational Training Law, to prohibit union and management from going on strikes and lockouts, etc. It emphasizes its industrial policy on the harmony of collectivizational capital and labor. But how to evenly share the power in the industrial relations system without the right of the workers to strike as an ultimate economic weapon is always a controversial issue. The relatively reasonable rationale is that the weakness of Taiwan's economic structure, which has strongly relied on international trading, cannot afford frequent strikes and lockouts.

2.Collective Bargaining

Collective bargaining is one kind of workers' participation. In the U.S., it is viewed almost as "alpha and omega of trade unionism" and as being virtually synonymous with the prevailing system of industrial relations.[28] Not only the workers' participation in decision-making, but the settlement of labor disputes and grievance procedure, are regulated by the content of the collective agreement rather than by legal enactment. This is because in the United States well-entrenched and self-centerd craft unions oringinally relied upon autonomous employment regulation and opposed state intervention, fearing that it would weaken their strength and solidarity.[29]

In addition, the U.S. preference for collective bargaining over legislative enactment was also enhanced by high pay-off, in part a result of a long-term scarcity of labor which strengthened workers' market power together with rising productivity and real wages. At the same time, a split between federal and state levels of government under the U.S. political system, as well as the willingness of the courts to declare unconstitutional legislation which was felt to hinder inter-state commerce, made it more difficult to obtain effective protective legislation.[30]

In Japan, most of the issues of terms and conditions of employment are decided by collective bargaining. And, in 1982 nearly 90 percent of the organized labor force were covered by collective agreements, with the exception of government employees who are not eligible to bargain collectively.

In contrast, collective bargaining in Taiwan is less meaningful. Due to the limitation of the right of workers to strike, collective bargaining cannot effectively function despite the right to bargain collectively that is guaranteed by the Labor Union Law. By now, less than 10 percent of the total organized labor are covered by collective agreements and most of them are employees of public enterprises. In addition, most of the terms of employment of the agreement were nearly the same as the minimum standard prescribed by the Labor Standard Law (see Chapter IV). So collective bargaining

in Taiwan can be viewed as being in place in form only.

(1).Bargaining Structure

Bargaining structures may be broadly classified in terms of the level at which negotiations are mainly conducted. Single enterprise or firm bargaining rather than industry-wide, multi-employer bargaining, or economy-wide is relatively commonly found in the U.S., Japan, and Taiwan.

With regard to the degree of centralization of union internal government, and given the close correlation with it of collective bargaining structure, collective bargaining in Japan, the U.S., and Taiwan can be identified as having a decentralized bargaining structure.

In Japan, bargaining structure is very decentralized, taking place essentially at the enterprise level with the enterprise union, with some local issues dealt with at plant and division level.[31] And the bargaining structure of Taiwan is roughly the same as Japan. Although there are labor organizations at the enterprise level, the local level, the industrial level, and the national level, collective bargaining mostly takes place at the enterprise level. The local (including regional, perfectural, and district level) labor organizations and industrial federations usually serve to co-ordinate policy and faciliate the exchange of information--they have no power to control their affiliates.

By contrast, the national centers in Japan do play an important part in wage determination through the Spring Wage Offensive. Most unions join the fight and all the national centers participate to some entent in this national event.[32] In Taiwan, however, the Chinese General Federation of Labor Unions seems only to participate in adjusting basic wage scales and making other suggestions about the legal enactment of minimum labor standards to provide universal benefits common to the working class as a whole.

In the U.S. and Japan, the enterprise-level bargaining which has predominated labor relations issues have long been handled by the management of individual undertakings themselves. Because employers can increase their profits when they have greater control over the labor process it has been suggested that in the U.S. internal "job ladders" of promotion and wage benefits were developed by managements within some large firms as a deliberate control strategy to counter unionism and increase the dependence of workers on their companies. Similarly, the emphasis in large-scale Japanese companies has been on the creation of organization-oriented, bureaucratic policies (emphasizing job security, seniority-based promotion, incremental pay scales, etc.) Such practices as lifetime employment and seniority wage systems have been related to Japan's unique cultural traditions and carry-over to modern industry of patterns of social relationships and obligations which characterized feudal Japan.[33]

In addition, in order to alleviate bottle-necks in the supply of skilled labor at that time, each enterprise or factory in Japan assumed the responsibility for training recruits for the emerging mass-production industries. Therefore, training became

internalized within the structured organization of the firm itself and, to reduce turnover, an internal labor market system of workforce allocation and promotion, along with a wage structure, was developed. Employees, therefore, had a vested interest in remaining with their firm since job mobility was restricted. Employers also wished to retain skilled labor to recoup their investment in training costs. In the collective bargaining process, they did not want outside intervention from representatives of more broadly-based trade unions since such interference could be inimical to the preservation of paternalistic employee relations within the undertaking.[34]

In the United States, the industrial relations settlement has been left up to the private parties and government intervention has been avoided. American labor laws are designed chiefly to promote collective bargaining and to ensure the fairness of union representation. These circumstances inhibit uniformity of action on a national level.[35] Although there are a number of important multi-company, national labor-management contracts now in force in the U.S., such as railroads and basic steel, and although some companies negotiate nationally or regionally, most contracts are fundamentally negotiated with a single employer for a single plant.[36]

In spite of the enterprise approach in Japan, the federations of unions coordinate negotiations during the Spring Wage Offensive. Normally, the first settlement is made by the steel industry or automobile industry and followed by other private heavy industries. This becomes the pattern for all other industries. Today it involves most of the 175 industrial federations and nearly 10 million union members. The Spring Wage Offensive is, so to speak, the national wage-decision mechanism.[37] Wage collective bargaining in the private sector takes place during the Spring Wage Offensive, when collective agreements are concluded for approximately 80 percent of the work force. The remaining 20 percent follow the pattern. Settlement for employees in crown corporations are reached later in the fall by collective bargaining or by arbitration.

In Japan, collective bargaining has its special characteristics. The scope of collective bargaining, for example, is always overlapped with that of workers' consultation. Both bargaining and consultation are carried out by the same union, even though different people may represent the union in each case. In general, collective bargaining is used to deal with problems that are supposed to not be suitable for consultation which is, after all, a form of confrontation including dismissal, transfer, and promotion, change in production, sales or other management policies, the introduction of new methods, technology or facilities, the abolition of certain plants or work divisions, and so on.[38]

A variety of bargaining structures exists in the U.S.. For example, the construction industry tends to be locally owned and operated so that collective bargaining in this industry is always localized. In the auto industry, a single union represents most of the industry's workers in bargaining on an employer-by-employer basis with a small number of giant employing enterprises. Although this is the main focus of bargaining in the auto industry, resulting contracts are supplemented by localized plant-wide agreements. In the steel industry, industry-wide bargaining between an employer's association and a

single union is the basic pattern. In the appliance manufacturing industry, bargaining often is on a plant-wide basis with separate representation and bargaining for participating skilled workers or classes of workers.[39]

(2).Union security

In Japan and Taiwan the most commonly held view is that the right to organize means only a positive right to organize and the negative right, that is , the freedom to refrain from joining a union, is not guaranteed. So union security is recognized as having full effect with regard to the unorganized.[40]

In Japan, a union security arrangement frequently takes the form of union shop clauses, since others such as the closed shop, the agency shop, and the maintenance of membership are very rare or almost unknown.

In the United States it is illegal collectively to agree on union membership as a precondition of engagement of a worker--yellow-dog contract--but legal to agree on union membership as a term of the contract of employment itself.[41]

In Taiwan, closed shop is now permitted to be set forth in collective agreement by the Collective Agreement Law with some limitations. Union shop has been mandated by the Labor Union Law at the enterprise level if the industrial union has been organized in the said enterprise. Many scholars in labor law have suggested that the said presciptions be modified in future amendments.

(3).The extension of the effect of a collective agreement

The other specific characteristic of collective bargaining in Japan is the extension of the effect of a collective agreement. According to the provision of the Trade Union Law, there are two kinds of extension of the effect of collective agreements. One is the general binding force in the plant and the other is that in the locality. The former is recognized automatically when three-quarters of the employees of a similar kind in a plant or work place come under the application of a collective agreement and the effect of the agreement is extended to cover the rest of employees of a similar kind in the plant or work place. The latter is recognized by the decision of the Labor Minister of the Governer of the prefecture who are requested by one or both of the parties to a collective agreement to extend the effect of an agreement which applies to the majority of similar workers in a certain locality to the remaining workers of the same kind locality and their employers.[42]

In the United States and Taiwan, the governments are not empowered by law to extend the effect of collective agreement. In the United States, the absence of statutory authority to extend collective bargaining agreements to non-signatory parties is rooted in the United States industrial relations structures.[43]

(4).Unfair labor Practice

In Japan, only a bona fide union on the labor side and an employer or employers' organization on the employer side are qualified to be a party to collective bargaining. Although it adopted its unfair labor practices law from American law, Japanese law is different in that it does not , in general, specify issues for bargaining which are compulsory or mandatory. Unlike the present American system, Japanese law does not recognize unfair labor practices on the labor side. This has caused some resentment among the employers who blame the one-sideness of law in favor of labor.[44] In Taiwan, current labor legislation has no similar prescription about unfair labor practice.

(5)The duration of collective agreement

In Japan and Taiwan, the maximum length of a collective agreement is three years, and an agreement in which a term of validity exceeding three years is provided for is still regarded as a three-year term. In practice, in Japan today most agreements, especially wage agreement, are still concluded for one year because of the practice of the Spring Wage Offensive.

In the United States in the early years under the National Labor Relations Act, one year contracts were the norm in labor-management relations. The recent trend has been toward longer contracts. Information compiled by the Federal Mediation and Conciliation Service for Fiscal Year 1980 indicated, for example, that in the private sector of the economy, 63.6 percent of collective agreements renewed that year were for three years' duration. And, of the major industrial groupings, only the construction industry tends toward shorter contracts.[45]

(6). The shortcoming of collective bargaining and its remedy relief

A large proportion of the labor force is still not covered by collective agreements. Accordingly, the unorganized workers cannot get benefits from collective bargaining. Given the similar general trends, in recent years in the United States a good deal of regulatory legislation in the areas of equal pay, employment discrimination, and pensions has been actively sought by unions and enacted. This legislation protecting minorities has been used to modify union-management seniority and job opportunity arrangements, often against union wishes.[46] It would appear that as a means of obtaining their objectives the focus of the United States unions may be shifting away from an overwhelming reliance upon collective bargaining, with its restricted and diminishing coverage, towards increasing support for the method of legal enactment. This legislation was seen as being able to provide universal benefits common to working class as a whole.[47] In Japan, the role of the goverment is expected to grow[48] in protecting not only organized workers but all the other members of society against the unequal distribution of welfare and of danger to life and physical well-being in such fields as safety and environmental protection.

3.Workers' Participation

In the U.S., Japan, and Taiwan, work councils or committees, or joint consultations, or the like, are still by far the most common bodies established for associating workers with decisions in the undertakings. And in the U.S. and Japan they have been set up, not by national agreements, but by collective agreements in particular industries or directly between the management of an undertaking and its workers as represented by their union, or the employer on his own initiative.[49] In Taiwan, this body, namely the "labor-management conference", has been set up by legislation.

In Japan, workers' participation includes participation in management, shop-floor level participation, and participation in national policy making. At the enterprise level, participation machinery consists of two different systems: the first is collective bargaining and covers matters such as wages, working hours, and employment security (mentioned above); the other consists of a worker-management consultation committee dealing with other working conditions.[50] The latter participation is mainly utilized to increase productivity and focuses on the individual worker through quality control circles and Jishu-kanri activities. By emphasizing the role of the individual worker, and by allowing creativity on the job, the Japanese system has fully extended individual worker participation.

In financial participation, capital accumulation through profit-sharing or by shareholding is relative unknown in Japan. Instead, the Japanese have developed a unique form of capital accumulation by means of a negotiated bonus system. The bonus system, which is negotiated by the unions, makes two payments each year. The amount of the bonus varies from industry to industry, with the average being the eqivalent of five months pay. Some industries pay the equivalent of nine months pay. This system is a subtle form of the profit-sharing. The better the financial condition of a company, the higher the bonus and, conversely, under poor conditions bonuses are low.

In Taiwan, at the enterprise level, employees' shareholding and profit sharing have existed for several decades but they just can be seen as employers' means to promote employees' loyality. Employees still cannot participate in decisions regarding scales and criteria for financial participation.

In Japan some big firms have seats for workers' representatives on their management bodies and others are considering such an arrangement. It is a common practice for ex-leaders of the undertaking's trade union, if they have shown themselves to be able in trade union affairs, to be promoted later to a high rank in management.

At the national level, Japan has several deliberation councils as advisory bodies to various ministers. In many cases, these councils are of a tripartite nature, consisting of representatives of workers' and employers' organizations and third parties, ie. learned and experienced persons or specialists.[51] Participating in Tripartism to discuss industrial relations issues has been established by the Industry and Labor Round Table as a forum for discussion of significant industrial relations issues. High-level cabinet members, including the Prime Minister, participate in the meetings. A similar body was also established for public sector organizations.[52]

In the U.S. the separation of powers which is central to the American political system has influenced workers' participation attitudes. American unions traditionlly have cherished their adversarial posture because it has enabled them to act as watchdogs over management on the workers' behalf. There is no easier way for an American union to lose its members' support than to be seriously suspected of collaboration with management, as could well occur were a union member to be seated on the board of directors.[53]

Some attempts to have employee sharing in corporate gains to improve employer-employee relations have been made in the United States, such as: (i)Employe Stock Ownership Plans; (ii)Scanlon Plans; and (iii)Work Redesign.[54] These attempts are all focusing on the improvement of productivity.

In United States, no work councils or workers directors generally exist. Given the limited extent of statutory law the principal method for determining wages and conditions remains collective bargaining.[55]

4. The Resolution of Labor Disputes

(1). The Stability of Industrial Relations

In the area of industrial conflict, the United States can be considered a high conflict country while Japan, as a medium conflict country and Taiwan as in which official conflict is non-existent.

As Michael Poole has observed, the disparate measures of strike used in comparative analysis yield four dimensions.[56] The United States' strike was duration dominant. Japan's strike was non-characteristic dominant. If there any dominant characteristic existed in Japan, that would be the short duration of strikes. Since Taiwan has had no official strike for three decades due to the prohibition of the government, it is hard to distingish which type of strike dominates in Taiwan.

The short duration of strikes is one of the characteristics of Japanese industrial relations; as matter of fact, in Japan, one-hour or two-hour strikes are very common and the majority of strikes continue for one or two days at the most, so a strike which lasts for a week will be regarded as a very long strike. Japanese workers, having experienced lengthy strikes more than 20 years ago, have tended to opt for quick, highly visible ones. Strikes in Japan are designed to attract the employer's attention and unions are always in comparatively poor financial position . A strike is regarded as a demonstration of feeling rather than as a weapon with which to press the management after negotiations have reached deadlock.[57] So the disputes have been more predictable and perhaps more orderly. Strikes tended to be concentrated during the Spring Wage Offensive and in Autumn lump sum bonus negotiations.[58]

In the United States, greater reliance on bargaining by unions makes the

union-management process and the collective agreements produced by the process more complex and conflict-prone. As a consequence, the collective bargaining stakes are higher in the United States, the collective agreement is more complex, and union-management conflict is more likely.[59]

(2).The Mechanism of the Resolution of Labor Disputes

(a) Reconciliation, mediation, and arbitration

In Japan, strike action is regarded by the majority of unions as a final tactic to be adopted only when negotiations have broken down, but its existence and guarantee by the Labor Union Law have reinforced the settlement of labor disputes.

In Japan, labor-management relations are clearly under the jurisdiction of the national government. It is mainly a task of the Ministry of Labor as well as the labor administrative organs of the prefectures, and not of the Labor Relations Commissions, to advise and assist employers and workers in efforts to improve labor-management relations and to prevent them from disputes in advance. Labor Relations Commissions including Central Labor Relations Commission and Prefectural Labor Relations Commissions in private sectors are established under the Trade Union Law to use conciliation, mediation, and arbitration for the adjustment of labor disputes and the the examination of unfair labor practices.

The Central Labor Relations Commission is established as an extra-ministerial board of the Ministry of Labor, and the Prefectural Labor Relations Commissions are external organs of the prefectures. Both the Central Labor Relations Commission and Prefectural Labor Relations Commissions are composed of members representing the workers, the employers and the public interest(neutral members).[60] In conducting their business, the independence of Labor Relations Commissions from government control is fully guaranteed.

In the Japanese public sector there is a body named the Public Enterprise Labor Relations Commission functioning similarly to the one in the private sector. It can submit the matter under dispute to the Commission. Civil servants, employees of the public enterprises, and workers employed in the electric power and coal mining industries are restricted in the right to strike by several laws.[61]

In Japan, conciliation, mediation, and arbitration are in general undertaken at the request of one or both the parties concerned. Although the conciliator has no power to stop a strike or lockout which is taking place or is anticipated, he may sometimes request the parties to refrain from taking such actions during the conciliation procedure in order to faciliate concessions through peaceful negotiation between the parties.[62] In addition, the Japanese have tended to use high-level neutral individuals, usually academics, as conciliators, mediators, and arbitrators.

In the United States, there are three types of third-party interventions: mediation,

fact-finding (only in the public sector) , and arbitration. There is no practical distinction between conciliation and mediation and the terms are used interchangeably. Mediation is a process in which a neutral third party attempts to assist the principals toward agreement. The 1913 legislation that created the United States Department of Labor did signal the source from which most American mediation and conciliation services would spring in terms of the establishment of the United States Conciliation Service as a part of the Department of Labor. After then, the creation of the National Mediation Board with jurisdiction over disputes in the railroad and airline industries in 1934, the Federal Mediation and Conciliation Service by the amendment of the National Labor Relations Act in 1947, the Atomic Energy Labor- Management Relations Panel in 1949, as well as the Federal Labor Relations Act of 1978 with jurisdiction over Federal sector labor relations, constituted current Federal Labor Mediation functions.[63]

At the state level, the decentralized nature of the government creates policies and practices regarding mediation which vary. Twenty-three state, urban and territorial agencies have labor mediation functions with full or part-time mediation staff serving the private and/or public sectors. While five function in disputes in both inter- and intra-state commerce, their jurisdictions and activity vary widely. Eight other states empower state officials to appoint or serve as mediators. Eighteen of the states recognize the right of public employees in those states to organize and to bargain collectively with employees at state, county and municipal levels and provide mechanisms, including mediation, for the settlement of labor disputes which preclude the right to strike. But in most instances, mediation services are provided by independent state government agencies.[64]

In the private sector of labor-management relations in the United States, arbitration has become the almost universal method for attaining a final and binding resolution of at least some categories of disputes arising out of the interpretation or application of the collective agreement. [65]

Mediation is voluntary in the private sector in the United States. But it is mandatory in the health care industry and in National Emergency Disputes; that is , the parties have a legal duty to participate in mediation efforts.[66] Arbitration is an impasse resolution method. It hears the position of both parties and decides on binding settlement terms.[67] For mediation and arbitration, the Federal Mediation and Conciliation Service always maintains a national list of qualified neutrals who are avilable to serve as labor arbitrators. The persons so listed are not government employees. They are privately retained by the disputing parties.[68]

In the United States, fact-finding involves study by a neutral party of the issues in a dispute and rending of a public recommendation of what a reasonable settlement right to be.[69] Fact-finding requires the use of neutrals with no connection with either side who act on behalf of the public.[70] It has been used in two major types of disputes. The first type is one covered by the Taft-Hartley emergency disputes requirements. The second is in railroad dispute.

(b)The adjudication procedure of the labor court

Since there is no system of labor courts in the United States, Japan, and Taiwan, the ordinary courts, which are not specialized in labor problems, have to handle collective labor relations-- a subject which by its nature is not well suited to the traditional legal approach.[71]

Courts in Japan are frequently required to settle cases because of the preference of Japanese for settling disputes by reconciliation, but also because of the very nature of industrial disputes. In 1974, for example, less than one third of the civil cases brought to Court in the field of industrial relations were settled by decision, while the rest ended up being settled by a compromise in Court or outside court.

In Japan, there is a Labor Commission system (mentioned above) which deals with unfair labor practices and dispute settlement in a semi-judicial way. This raises difficult problems with regard to the overlapping jurisdictions of the Commission and the Courts in certain fields.[72]

Notes:

1. *Shunto* was started in 1955. Eight industrial unions, concerned with the timing of negotiations attempted to carry out a mutually helpful exchange of information and data; however, they did not present a unifirm wage demand. By1960 about 4 million organized employees were involved. Today some 75% of organized labor formally take an active part in *shunto*. See Thomas J. Nevins, Labor Pains and the Gaijin Boss, The Japan Times Ltd., 1984, p.4.

2. G.Lodge and Karen Henderson-- Towards Industrial Demoncracy-- Europe, Japan, and The United States, Benjamin C. Roberts, ed. (New Jersey: Allanheld, Osmun & Co. Publishers, Inc.) pp.242-243.

3. Yearbook of Labor Statistics, ROC(government publication), 1985.

4. In 1982, Japanese unions' membership was 12,526,000 in a labor force numbering 57,740,000. The percentage of organized workers was 20%, . See International Encyclopeadia of Labour Law and Industrial Relations--Japan (1985 supplement), (The Netherlands: Kluwer Law and Taxation Publishers,) p.22 & p.44.

5. Daniel Quinn Mills, "Labor-Management Relations" (1986), 3rd edition, New York: McGraw-Hill, p.57

6.Minister of Supply and Services, Canada (government publication), "Japanese Way

-- Contemporary Industrial Relations", 1982, p.88.

7.Mills, "Labor-Management Relations , p.59.

8.Mills, "Labor-Management Relations , p.60.

9. Mills, "Labor-Management Relations , p.68.

10. R. Bean, Comparative Industrial Relations (1985), New, York: St. Martin's, Press, p.49.

11. Bean, Comparative Industrial Relations , p.49.

12. Bean, Comparative Industrial Relations , p.55.

13.R. T. Adams, (1981), "A Theory of Employer Attitudes and Behavior Towards Trade Unions in West Europe and North America", G. Dlugos and K. Weirermair (eds), Management Under Differing Value System, (De Gruter, New York), p.286.

14. Bean, Comparative Industrial Relations , p.57.

15. D.C. Bok and J.T. Dunlop, Labor and the American Community, (New York : Simon & Schuster), pp.423-425.

16. Bean, Comparative Industrial Relations (1985),p.25.

17. H. Okamoto. Towards Industrial Demoncracy--Europe, Japan, and The United States. Edited by Benjamin C. Roberts. (New Jersey: Allanheld, Osmun & Co. Publishers Inc., 1984), p.194.

18. Minister of Supply and Services, Canada, "Japanese Way -- Contemperary Industrial Relations", p.92.

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23. Albert Rees, "The Economics of Trade Unions", p.172.

24. Albert Rees, "The Economics of Trade Unions", p.172., pp.170-171.

25. Bean, Comparative Industrial Relations , pp.100-101.

26 R. Blanpain (ed.), International Encyclopeadia of Labour Law and Industrial Relations--Japan (1985 supplement), p.47.

27. R. Blanpain(ed), International Encyclopeadia of Labour Law and Industrial Relations--Japan (1985 supplement), Kluwer Law and Taxation Publishers, The Netherlands, p.47.

28. Bean, Comparative Industrial Relations p. 70.

29. Bean, Comparative Industrial Relations , p.117.

30. Bean, Comparative Industrial Relations , p.117.

31. R. Blanpain, Comparative Labour Law and Industrial Relations, (The Netherlands: Kluwer Law and Taxation Publishers,1982), p.142.

32. International Encyclopeadia of Labour Law and Industrial Relations--Japan (1985 supplement), p.118.

33. R. Dore , British Factory Japanese Factory: The Origins of National Diversity in Industrial Relations, (Berkerley: University of California Press), p.375.

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36. G. Lodge and Karen Henderson--United States of America, Towards Industrial Demoncracy--Europe, Japan, and The United States. p.242.

37. H. Okamoto--Japan. Towards Industrial Demoncracy--Europe, Japan, and The United States. p193.

38.International Encyclopeadia of Labour Law and Industrial Relations--Japan (1985 Supplement), pp.121-122.

39. R. Blanplan, International Encyclopeadia of Labour Law and Industrial Relations--USA, Kluwer Law and Taxation Publishers, p.235.

40. International Encyclopeadia of Labour Law and Industrial Relations--Japan (1985

supplement), p.104.

41. National Labor Relation Act of 1935, s.8 (a)(3) and (b) (2) under which the "pre-entry closed shop" is forbidden.

42.International Encyclopeadia of Labour Law and Industrial Relations--Japan (1985 Supplement), p.126.

43. Bean, Comparative Industrial Relations , p.107.

44. International Encyclopeadia of Labour Law and Industrial Relations--Japan (1985 supplement), p.122.

45. Blanpain, International Encyclopeadia of Labour Law and Industrial Relations--USA, p.241.

46. Benjamin Martin and Everett M. Kassalow, "Labor Relations in Advanced Industrial Societies--Issues and Problems", Washington D.C.: Carnegie Endowment for International Peace, 1980), p.49.

47. Bean, Comparative Industrial Relations, p.118.

48. International Encyclopeadia of Labour Law and Industrial Relations-- Japan, P.47

49. Blanpain, Comparative Labor Law and Industrial Relations, P.246.

50. ILO, Labor-Management Relationsd Series No 52-- Industrial Relations in Asia, pp.112-113.

51. ILO, Labor-Management Relations Series No. 52, 1976, p.113.

52. ILO, Worker's Participation, Labor-Management Relations Series No. 59, 1982, p.111.

53. G. Lodge and Karen Henderson--United States of America, Towards Industrial Demoncracy--Europe, Japan, and The United States. pp.247-248.

54. G. Lodge and Karen Henderson--United States of America, Towards Industrial Demoncracy--Europe, Japan, and The United States. Edited by Benjamin C. Roberts. Allanheld, Osmun & Co. Publishers Inc.pp.255-257.

55. Blanpain, Comparative Labour Law and Industrial Relations, p.145.

56.These dimensions, are, (a).frequency- the number of work stoppages in a given unit of analysis over a specified time period; (b). breadth-the number of workers who participate in work stoppages; (c).duration- the length of stoppages, usually in man-days of work lost; and (d). impact- the number of working days lost through stoppages, see

Michael Poole, Industrial Relations: Origins and Patterns of National Diversity, Boston: Routledge & Kegan Paul, 1986, pp.128-132.

57.International Encyclopeadia of Labour Law and Industrial Relations--Japan (1985 supplement), p.133.

58. H. Okamoto --Japan. Towards Industrial Demoncracy --Europe, Japan, and The United States, p.197.

59. Martin and Kassalow, "Labor Relations in Advanced Industrial Societies--Issues and Problems",1980, p.50.

60. Taishiro Shirai, "Conciliation procedures and practice in Japan: a description of institutions and their functions", Labor-Management Relations Series, No.62, 1983, p.67.

61. ILO, Labor- Management Relations Series, No. 52, 1976, p.115.

62. Shirai, "Conciliation procedures and practice in Japan: a description of institutions and their functions", Labor-Management Relations Series, No.62, 1983, p.71

63. Kenneth E. Moffett, "The mediation experience in the United States", Labor-Management Relations Series, No.62, 1983, p.109,.

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65 Blanplan. International Encyclopeadia of Labour Law and Industrial Relations--USA, p.264.

66.. Blanplan. International Encyclopeadia of Labour Law and Industrial Relations--USA p.308.

67. John A. Fossum. Labor Relations, (Texas: Business Publications Inc., 1985), p.325.

68. Fossum. Labor Relations, pp308-309.

69. Charles M. Rehmus, " The Fact Finder's Role ", The proceedings of the Inaugural convention of the Society of Professionals in Dispute Resolution, October 1973. pp.33-34.

70. Jean T. McKelvey, "Fact-Finding in Public Employment Disputes: Promise or Illusion?" Industrial and Labor Relations Review, July, 1969, p.529.

71. International Encyclopeadia of Labour Law and Industrial Relations--Japan (1985 supplement), p.101.

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Chapter VIII Summary and Conclusion

1. Summary

Regarding the chracteristics of the industrial relations system in the Republic of China on Taiwan, a number of points are worth noting.

Historically, political turmoil, social unrest, and ecnomic instability made the ROC unable to set up a powerful industrial relations system and effectively enforce it before 1949. After moving its institutions into Taiwan in 1949, the government strongly focussed its policies on political, economic and financial affairs, and relatively neglected social affairs and industrial relations until the early 1980's when it promulgated the Labor Standard Law.

Under the guidance of the Principle of People's Livelihood, the ROC' government sought harmony among the economic interests of the different classes and emphasized capital-labor rapprochement. Accordingly, the government got deeply involved in the establishment of the industrial relations system, enacting legislation to directly prescribe how employers and employees may act in the system.

The National General Federation of Labor Unions (NGFLU) and the National General Federation of Industrial Associations (NGFIA), respectively, are the voices of the employers and employees in accordance with the laws. But they have rarely made obvious contributions in the promotion of industrial relations over the years.

With the exception of administrative or educational agencies of various levels and military ammunition industries, workers' right to organize is guaranteed by the Labor Union Law. The organized workers are only 18 percent of the total labor force or 29 percent of the total employees.

Only laborers who are organized have the right to bargain with their employer or their counterpart of employers' organization and to conclude a collective agreement. Currently, the workers covered by the collective agreement are not more than one tenth of the total employees.

Collective bargaining is not common in Taiwan. The reason in part is the prohibition of the use of economic weapons such as strikes or lockouts that made it more difficult to resolve the impasse of the bargaining. In addition, because the current system of the settlement of labor disputes has several defects, disputes arising from interpretations rely on reconciliation by the authority-in-charge. In recent years, improvement in the terms and conditions of employment was due to the government's legislative protection, the highly competitive labor market, and changing work rules, not to collective bargaining and workers' participation.

According to the prescription of the Collective Agreement Law, collective

bargaining may take place at the national, industry, regional, or enterprise level. At this time, however, collective bargaining takes place to a limited degree, and only at the enterprise level.

Due to employers' fear of losing their management prerogative, the scope of the collective agreement is limited. The employer's superiority in tactics and techniques in the negotiation process minimizes workers' gains in terms or conditions of employment.

The process of bargaining generally concludes with the registration of the agreement with the authority-in-charge. Only following the registration do they become effective.

Since a union's being set up is exclusive, there cannot be two unions simultaneously existing in the same jurisdctional area. A collective agreement is applicable to all workers and employers in the bargaining unit, including both current members and those who join after the conclusion of the agreement. Since there are not many collective agreements concluded, accordingly, collective bargaining in Taiwan essentially exists in form only.

If there are disputes arising over the interpretation of certain clauses, they are always settled through reconciliation conducted by the authority-in-charge.

Workers' participation mainly involves participation in development, profit sharing, and employees' stock ownership plans. In Taiwan, the resolutions of the "labor and management conferences" are not mandatory. The extent of participation is still limited. The effects of participation in workers' safety and sanitation, in enforcement of workers' retirement reserve, in employee welfare affairs, are also limited.

In Taiwan, mediation and arbitration are the normal procedures for settlement of labor disputes, and the decision procedure of the Labor Dispute Decision Committee is applied only as a special measure in a particular period of national mobilization. They exist simultaneously, but the committee decision procedure may be attempted prior to the mediation or arbitration procedure.

Collective labor disputes with 15 or more workers involved, including both disputes over interests and disputes over rights, are handled by a mediation board, an arbitration board, or a decision committee. Disputes between employers and 14 or less workers, industries that are well developed, are resolved only by a decision committee. In other words, employer-employee disputes involving14 or less workers which happens in an area in which industries are not well developed will be unresolved under current institutions. But at any rate, the court still has jurisdiction over any dispute over rights as a civil case[1] whether it is a collective or individual matter.

Compulsory mediation and arbitration is legally adopted, because mediation and arbitration may be initiated by the authority-in-charge in almost any case he or she

deems necessary, and may be initiated by only one disputing party, without consent of both parties.[2] As a matter of fact, voluntary mediation and arbitration exists in form only.

Disputes arising in state-operated enterprises are not subject to mediation and arbitration procedures. They may only be referred for the decision procedure handled by the Decision Committee, when the disputes happen in an area in which industries are not well-developed and occur during a period of national mobilization.

Lockouts and strikes as means for responding to labor disputes are strictly prohibited during the period of national mobilization, and even in normal times on most occasions, because of the adoption of compulsory mediation and arbitration.

The prompt settlement of labor disputes is strongly desired. Therefore the Mediation Board, the Arbitration Board, and the Labor Dispute Decision Committee have strong powers for investigation and decision-making.

The future reformations of the current institutions of the settlement of labor disputes that have been announced by the ROC government in 1986 include: (i)The merger of the decision procedure into the normal mediation and arbitration procedure; (ii) The establishment of a labor court to take care of labor disputes over rights; (iii) The permissability of union representation for an individual worker in a dispute with his or her employer over interest.

Through a three-country comparison, one may observe that in Japan, the U.S.,, and Taiwan most collective bargaining proceeds at the enterprise level. An internal labor market in conjunction with subcontracting characterizes contemporary Japanese enterprise unionsm. There is no political party based solely on working-class support in the U.S., while Japanese and Taiwanese unions strongly support the political parties.

In Japan participation machinery mainly consists of collective bargaining and worker-management consultation committee while it consists of almost only collective bargaining in the U.S. and of some less effective forms of participation described by laws in Taiwan. Worker participation in management may include participation at the shop-floor level, enterprise level, and national level in Japan while it only includes participation at the shop-floor level and enterprise level in the U.S. and Taiwan .

Industrial conflict in Japanese is characterized by the short duration of strikes due to the stronger societal pressure towards consensus and the shortage of funds with which to suppport strikes, while the U.S. it is characterized by the type of duration dominant and in Taiwan by the non-existence of official conflict due to the prohibition of the law.

In terms of the mechanism of the settlement of labor disputes, Japan adopts preventive labor disputes under the jurisdiction of various governments and remedy conciliation, mediation, and arbitration by the Labor Relations Commissions at national

and prefectural levels. The U.S. adopts three types of third-party interventions: mediation, arbitration, and fact finding (only in the public sector). Taiwan adopts mediation, arbitration, and decision-making procedure with extra-legal reconciliation conducted by authority-in-charge prevailing.

The Japaneseand the U.S. governments are not much involved in the functioning of labor relations. Collective bargaining still plays an important role in the decision of terms and conditions of employment, and its practice has changed very little in last two or three decades in Japan and the U.S.. But collective bargaining plays a less important role in industrial relations in Taiwan. Workers rely considerably on the labor protection laws and competitive market mechanisms to achieve the improvement of working conditions.

2.Conclusion

One reason for the malfunctioning of the industrial relations system in Taiwan is that political pressure made labor, collectively, act less liberal. Also, economic weakness-- dependence of economic development on international trading, due to a paucity of natural resources and insufficicency of domestic demand-- usually gave the improvement of workers' standard of living less priority than the accumulation of capital.

Historically, the political, economic, and social situation in Taiwan has changed tremendously. The ROC on Taiwan has been viewed as a newly industrialized country. The political environment has become more liberal. Social structure has become more diversified and complicated. From the standpoint of industrial relations, it is time to review the current industrial relations system and explore a new approach that is politically, economically, socially, and culturally compatible with Taiwan's environment and that can keep pace with the industrialized countries at the same time.

Workers' participation, which is one kind of industrial democracy cannot be suppressed while political democracy becomes more liberal. With the abolishment of the martial law in the months to come, it can be anticipated that workers' right to act collectively will be allowed in the near future. By then, it is believed that workers' rights to organize, to bargain, and to act collectively will be more effective.

Note:

1.Referring disputes over rights to the court after the failure of mediation may also become a main point of reformation.

2.According to the government's reform, the initiation of arbitration from disputing parties is to be based on the consent of both parties.

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