To: Mr Peterson

1- Pls. do a check on this with the translation we have on file.
2- Check the differences with Salter since he worked with Hare (I believe) in writing the proposed R-iss the amendments.

WRBn
7/26/45

~~1 Nov 48~~
~~1 Nov 48 or before Diet recesses, if prior To 1 July~~
~~1 Oct 48~~
15 Oct 48

GOVERNMENT SECTION
Civil Service Division

MEMORANDUM

19 April 1948

TO : Brigadier General Courtney Whitney, Chief
Government Section

FROM : Mr. Blaine Hoover, Chief
Civil Service Division

SUBJECT : Law #169

1. Local Autonomy Law (Law 169) as amended and promulgated 12 December 1947 provided, "The Law specially provided Concerning the Officials of the Ordinary Local Public Bodies shall be enacted not later than April 1, 1948."

2. This Law was amended April 1,1948 to provide, "The Law Specially Provided concerning the Officials of Ordinary Local Public Bodies shall be submitted to the Diet, not later than May 1, 1948."

3. A proposed civil service law for prefectural, municipal and other local public bodies has been drafted by the Civil Service Division.

4. We consider the submission of this law or any other sound civil service law inadvisable under present conditions.

5. We desire your instructions relative to procedure.

BH/hm

Annexed D

Allowance Bureau
Ministry of Finance

17 March, 1948

Addressed to: Officials concerned SCAP, GHQ

Subject : LAW CONCERNING SALARY AND OTHER PAYS GRANTED TO GOVERNMENT WORKERS

The Law concerning Salary and Other Pays granted to Government Workers, draft is hereby submitted for your examination.

12

March 20, 1948

Law concerning Salary and Other Pays granted to Government Workers (Law No. ----, 1948)

Government service officials and those treated as such, unclassified officials, junior clerks, auxiliary workers, and craft workers who are regularly employed by the Government exclusive of workers whose pay is specifically provided by the other law, Prime Minister, President of the Supreme Court and those attestated as in the Constitution, Article 7, (to be referred to hereinafter as government workers), shall all be granted a total monthly salary and other pays averaging 2,920 yen retroactive to 1 January, 1948.

The method and principles of determining the pay of government workers and all other matters recommended in the First and Second Reports of the Temporary Wage Committee shall be used in fixing their individual pay under the 2,920 yen average wage.

The specific salary ranges by occupation and othdr components of pay shall be separately prescribed by law.

Supplementary Provisions

Article 1.

The present Law shall be effectuated on the very day of its promulgation.

Article 2.

Pending the establishment of the new pay system as described

in paragraph 2 above, government workers shall receive an average total monthly salary of 2,508 yen retroactive to 1 January, hereinafter referred to as Interim Total Pay.

Article 3.

The components of Interim Total Pay shall be Interim Base Pay, Interim Family Allowance, and Interim Area Allowance.

Article 4.

The amount of Interim Base Pay for all government workers shall be computed by multiplying the total of their present Base Pay, Provisional Increased Pay, and Temporary Addition of the Provisional Increased Pay (hereinafter referred to as Effective Base Pay) by one of the appropriate rates described below based on the number of duty hours in their regular schedule:

Schedule A - 150 percent. Average weekly regular duty hours are at least 41.5 and less than 44 hours.

Schedule B - 160 percent. Average weekly regular duty hours are 44 and less than 48 hours.

Schedule C - 170 percent. Average weekly regular duty hours are 48 hours or more.

The procedures for payments of the Interim Base Pay shall be the same as those provided in the Ordinance concerning Salary of Government Service Officials (Imperial Ordinance, No. 192, 1946). Provided, however, that employees who have heretofore been paid their Base Pay twice a month may continue to be so paid for the interim period.

Article 5.

The Interim Family Allowance shall monthly be 225 yen per

family dependent.

The procedures for payment of the Interim Family Allowance shall be the same as those provided in the Ordinance concerning Temporary Family Allowance (Imperial Ordinance No. 221, 1942.)

Article 6.

The Interim Area Allowance shall be paid to all government workers who serve in designated high cost of living area.

These allowances shall be 10 to 30 percent of the Interim Base Pay plus the Interim Family Allowance.

The designation of high cost of living areas and allocation of appropriate rate of Interim Area Allowance to those areas shall be determined by Minister of Finance.

The Interim Area Allowance shall be issued as provided in the Supplementary Provision, Article 4, Paragraph 2.

Article 7.

If government workers are absent from their work without proper authorization, their Interim Base Pay inclusive of the Interim Area Allowance for it (to be referred to hereinafter as the Interim Base Pay) shall, despite of the regulations of Article 4, Paragraph 2 and Article 6, Paragraph 4, be reduced by deducting for each hour of absence at the basic hourly rate.

The basic hourly rate shall be computed on the Interim Base Pay by the same method used in calculating basic hourly rate for overtime purposes as described in the administrative regulations issudd pursuant to Law No. 167, 1947 (Law concerning Compensations granted to Public Servants under the Labor Standard Law and Other Laws.)

In such an instance as in the preceding paragraph, the reduction shall be madefrom the pay of later period, if the Interim Base Pay have already been paid out for the current month.

Article 8.

Former Effective Base Pay, Temporary Family Allowance under the Ordinance concerning Temporary Family Allowance (Imperial Ordinance No. 221, 1942,) and Temporary Area Allowance under granted to workers who serve in the Area of Transportation difficulties,) and Temporary Allowance under the Law No. 140, 1947 (the Law concerning Temporary Allowance granted to Government Workers) already receivodby workers for the period of 1 January, 1948 and after shall be regarded as part payment.of the Interim Total Pay granted under the present Law.

Differential between former pays as described in paragraph 1 of this article and the Interim Total Pay as described in Articles 2 and 3 shall be taxable in accordance with the provision of Income Tax Law, 38, Paragraph 1 - 5.

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
Government Section

16 June 1948

MEMORANDUM FOR : Brigadier General Courtney Whitney
Chief, Government Section

SUBJECT : Public Employees and the Right to Strike

For your information and reference:

1. TRADE UNION LAW - #51 of 1945 provides:

"Article 4. Police, firemen and employees of penal institutions shall be denied the right to organize or to join trade unions.

"As regards other government officials, subordinate officials and municipal officials, and those employed by the state or public bodies, separate regulations may be made by ordinance for the application of the present Act, provided that this rule shall not apply to the prohibition of their organizing a trade union or of their joining such as members."

2. THE LABOR RELATIONS ADJUSTMENT LAW - #25 of 1947 provides:

"Article 38. Police officers, firemen, those employed at prisons and officials and employees engaged in the work of the national, prefectural and municipal government administration or judiciary, exclusive of public enterprises, shall be disallowed to resort to acts of dispute."

3. The proposed provision of the National Public Service Law covering this subject matter is as follows:

"Article 98. Personnel of the service in the performance of their duties shall comply with laws and orders and faithfully observe the orders of their superiors on matters pertaining to the performance of their

official duties. They shall be permitted to join or refrain from joining associations or other employee organizations, and through such organizations to designate representatives for purposes of consultation or cooperation with proper authorities relative to conditions of employment and for other lawful purposes including social and welfare activities except that police, firemen, and personnel of the Maritime Safety Board (Coast Guard) and penal institutions shall be denied the right to organize trade unions or to join trade unions. Personnel of the service shall not strike or engage in delaying or other dispute tactics against the public of Japan represented by the National Government as employer or resort to delaying tactics which reduce the efficiency of governmental operations. Any person in the service who shall resort to strike or any or all of the unlawful tactics herein prescribed shall lose all rights to employment by the National Government acquired and possessed by him under this law or otherwise at the time of such strike, dispute or delaying tactics."

BH/hm

BLAINE HOOVER
Chief, Civil Service Division

File mes

CIVIL SERVICE DIVISION
Government Section

16 March 1951

MEMORANDUM FOR : Major General Courtney Whitney
Chief, Government Section

SUBJECT : Local Public Enterprise Labor Relations Law
(Draft)

1. The subject draft law, prepared by the Labor Ministry (presumably with the advice of Labor Division, ESS) but not yet approved by the Cabinet, raises questions of the utmost importance for the future of the civil service system in Japan. The pattern established in this case may be expected to be followed in the treatment of employees of all the governmental enterprises of an industrial or semi-industrial character, both national and local. For example, there is reason to believe that it will constitute a precedent for employees of the Telecommunications Ministry, the Ministry of Postal Affairs, and the Forestry Agency. In addition, it will undoubtedly establish the pattern for treatment of skilled, semi-skilled, and unskilled laborers employed by the national and local governments. The bill seems to me to be fundamentally defective in several respects.

2. The bill purports to deal with labor relations, but in fact it establishes a complete and independent personnel system. It proposes that labor relations in the various local publicly-owned utilities shall be established on a purely industrial basis, except for the right to strike, which is specifically denied. With that one exception, employees are granted full rights of collective bargaining, even to the extent that provisions of a collective agreement may supersede regulations of a local public body. This seems to me contrary to the principle of popular sovereignty, since duly constituted agents of the people as a whole may be overruled in part by a private body. I do not see how such provisions can be reconciled with the principles laid down by General MacArthur in his letter of 22 July 1948.

3. The law specifically provides that all employees of publicly-owned utilities shall be exempted from the provisions of the Local Public Service Law. This provision has the effect of removing an important body of employees from the general civil service and, perhaps even more important, it constitutes a precedent for the removal of much larger groups of employees in the future.

4. There is no provision in the draft law providing for personnel administration on a merit basis and, thus, there is no safeguard of the efficient operation of the utilities.

5. There is no restriction placed upon the political activity of these employees nor is there any provision affording them protection against political coercion. The way is thus opened for the introduction of the spoils system and for the politicalization and debasement of an important segment of the public service. It will constitute an invitation to corruption and a deterrent to the development of party politics on a sound basis.

6. The issues involved are similar to those which were presented to General MacArthur in 1948, resulting in his letter of July 22. That letter, however, by granting exception to the employees of the National Railways and of the Monopoly Corporation, provided some ground for doubt concerning the policy of this Headquarters with respect to coverage of the public service laws. The letter made it clear that General MacArthur did not desire the exclusion of large bodies of employees who obviously should be included. Furthermore, his exception of the railway and monopoly employees was a specific exception not applicable by its terms to other groups of employees with whom certain similarities might be adduced. I believe that further major exceptions would be destructive of the civil service system which has been created with such difficulty under the leadership of this Headquarters. Therefore, I believe that the Japanese Government should be advised that no general exceptions from the public service laws should be made for large groups of employees but, rather, that the general principles of merit system legislation, as embodied in the National Public Service Law and the Local Public Service Law, should be followed in the treatment of all public employees, with such special provisions concerning labor relations and other matters as may be appropriate because of the special nature of the activities involved. Such advice would be consistent with American civil service practice, and would tend to preserve one of the major Occupation reforms.

Maynard Shirven

MAYNARD N. SHIRVEN
Chief

MNS:ger

21 Mar:

Instructed by Gen. Whitney (per F.R.) to negotiate with Govt and endeavor to obtain a law in accordance with sound civil service principles.

MNS

Files

Put with Union Law 5-25-49

@eneral Headquarters
SUPREME COMMANDER FOR THE ALLIED POWERS

OUTGOING MESSAGE ESS/LAB WFM/CHW/VB/FENW/rfo

19 May 1949

FROM: SCAP

TO: DEPT OF ARMY.....PRIORITY

For SAOAS. Reurmsg W 87917 this radio in four parts.

Part 1. Major changes contemplated in Trade Union Law follow:

a. Present law requires all unions regardless of legal status to register with Government. Under amendment only those unions desiring to become juridical persons are required to register.

b. Present law denies benefits of law to unions not registered with the Government. Under amendment all unions complying with the law are accorded benefits of the law, but only registered unions can enjoy the benefits of a juridical person.

c. Amendments provide that both for registration and for participation in the formal procedures established by law, union constitutions must include provisions ensuring annual secret elections for officers and members of standing committees, equal treatment for members, election of national officers directly by members or by delegates elected directly by members, and strike votes only by the members or delegates elected directly by the members.

d. Amendments specifically prohibit domination or interference by employers in formation or administration of labor organization.

e. Amendments clarify and strengthen restrictions against support of unions by employers, but permit employers to contribute to recreation, welfare, or similar funds and provide minimum office space for unions and permit union representatives to confer or negotiate during working hours without loss of pay.

f. Present law makes no provision for closed shop. Amendments permit closed shop if agreed upon by union and employer.

g. Amendments provide that "in no rpt no event shall acts of violence be construed as appropriate acts of trade unions."

h. Amendments permit Central Labor Relations Committee to review legal rulings of prefectural committees, assume jurisdiction in disputes of national importance, and establish rules of procedure to itself and prefectural labor relations committees. This is designed to insure uniform approach to the law throughout Japan, preventing conflicting decisions, and expedite proceedings.

FROM: SCAP to DA

i. Amendments provide new procedure for speedy appeal from legal rulings of labor relations committees.

j. Penalties in present law have been revised to make them realistic and in line with present financial conditions.

Part 2. Major change contemplated in Labor Relations Adjustment Law follows:

a. Present law requires a 30-day cooling off period and compulsory mediation in designated "public welfare" industries (except for those covered by the National Public Service Law); viz., transportation, postal, telegraph, telephone, water supply, gas supply, electric supply, medical treatment, and public health work. Law also gives competent minister, with concurrence of a majority each of labor, employer, and neutral members of the Central Labor Relations Committee, power to designate for a period of one year additional industries as welfare industries wherein work stoppages would endanger public life or seriously affect the national economy. Although present designations are not changed, the proposed amendment assigns the function of additional designations to the Prime Minister with approval of the Diet.

Part 4. Revisions to Trade Union Law and Lab r Rela tions Adjustment Law have been cleared by SCAP, introduced to the Diet, and were passed by House of Representatives 13 May.

OFFICIAL:

R. M. LEVY
Colonel, AGD
Adjutant General

APPROVED:

W. F. MARQUAT
Major General, U. S. Army
Chief, Economic and Scientific Section

Copies to:
CinC
C/S
G-1
AG
GS
LS
ESS (Return)

Approved by Chief of Staff, 18 May 1949

CIVIL SERVICE DIVISION
Government Section

28 April 1949

MEMORANDUM TO: Mr. Blaine Hoover, Chief, Civil Service Division

SUBJECT : Amendment of the Trade Union Law

1. Yesterday the Civil Service Division received a copy of the proposed Bill "For Amending, in Toto, the Trade Union Law (Law No. 51, 1945)".

2. Article 16 of the supplementary provisions of the National Public Service Law provides that "the coverage of the Trade Union Law (Law No. 51 of 1945)...and any ordinances, rules, or orders issued under the provisions of these laws shall not apply to any personnel of the regular service as defined in Article 2 of the National Public Service Law (Law No. 120 of 1947)." As in the case of the existing Trade Union Law, the proposed amended Trade Union Law does not contain a provision to exclude its applicability to personnel of the regular service.

3. Mr. Okabe of the National Personnel Authority assures us that Article 16 of the supplementary provisions of the National Public Service Law will retain full effect despite the proposed amendment in toto of the Trade Union Law. He says that on this point, there is no doubt whatsoever.

4. It is suggested, however, that it would be advantageous to include in the newly amended Trade Union Law a provision which would specify its inapplicability to not only personnel of the regular service of the National Government, but also to personnel of the special service. This would give the necessary protection against strikes by personnel engaged in work relief projects who are proposed to be members of the special service. Addition of the following item to Article 2 would accomplish the foregoing purpose: "(5) Which admit to membership and represent personnel of the regular and special service of the National Government."

5. Although this may be the opportune time to include a provision excluding personnel of the Local Public Service from the jurisdiction of the Trade Union Law, it is suggested that such exclusion await the passage of the Local Public Service Law.

6. Your attention is called to the requirement in Paragraph 19 of Article 19 that personnel of the Central Labor Relations Committee's Business Bureau shall be appointed by the Labor Minister "with approval

of the Chairman" of the committee. This is not in strict conformity with Article 55 of the National Public Service Law.

GORDON PETERSON
Chief, Organization Branch

GP:rj

TRADE UNION LAW.

The Diet hereby enacts the law for amending, in toto, the Trade Union Law (Law No. 51, 1945)

Contents.

Chapter 1. General Principles (Article 1-4)

Chapter 2. Trade Unions (Article 5-13)

Chapter 3. Trade Agreement (Article 14-18)

Chapter 4. Labor Relations Committees (Article 19-27)

Chapter 5. Penalties (Article 28-33)

Supplementary Provisions.

Chapter 1. General Principles.

(Purpose)

Article 1. The purposes of the present law are to elevate the status of workers by promoting that they shall be on equal standing with their employer in their bargaining with the employer; to protect the exercise by workers of autonomous self-organization and association in labor unions so that they may carry out collective action including the designation of representatives of their own choosing to negotiate the terms and conditions of works, and to encourage the practice and procedures of collective bargaining resulting in trade agreements governing relations between employers and workers.

2. The provisions of Article 35 of the Criminal Code (Law No. 45, 1907) shall apply to collective bargaining and other acts of a trade union which are appropriate, being performed for the attainment of the purposes of the preceding paragraph; provided, however, that in no event shall acts of violence be construed as appropriate acts of trade unions.

(Trade Unions)

Article 2. Trade unions under the present law shall be those organizations, or federations thereof, formed autonomously and substantially by the workers for the main purpose of maintaining and improving the conditions of work and for raising the economic status of the workers, provided that this rule shall not apply to those:

(1) Which admit to membership officers, workers at the supervisory post having direct authority to hire, fire, promote or transfer, workers at the supervisory post having access to confidential information relating to the employers' labor relations plans and policies so that their official duties and obligations directly conflict with their loyalties and obligations as members of the Trade Union concerned and other persons who represent the interest of the employer.

(2) Which receive the employers' financial support in defraying the organizations' operational expenditures. Provided that this shall not prevent the employer from permitting workers to confer or negotiate with him during working hours without loss of time or pay; or to the employer's contribution for welfare funds; or benefit and similar funds which are actually used for payments to prevent or relieve economic misfortune or accident; or to the furnishing of minimum office space.

(3) Whose object are confined to mutual aid work or other welfare work.

(4) Which principally aim at carrying on political or social movement.

(Workers)

Article 3. "Workers" under the present Law shall be those who live by wages, salaries or other remuneration assimilable thereto regardless of the kind of occupation.

(Police and firemen)

Article 4. Police and firemen employed in local public organization shall not be able to organize or to join a trade union.

Chapter 2. Trade Unions.

(Treatment of an organization which has been formed as a Trade Union)

Article 5. Unless the Trade Union has submitted evidence to the Labor Relations Committee and proved that it is in compliance with the provisions of Article 2 and Paragraph 2 of this Article, the trade union shall not be eligible to participate in the formal procedures provided in this Law and the Labor Relations Adjustment Law(Law No. 25, 1946) and to avail itself of the remedies provided therein. Provided, that, nothing herein shall be construed so as to deny any individual worker the protection accorded by Clause 1. of Article 7.

2. The constitution of the trade union shall include provisions provided for in each of the following clauses:

(1) Name.

(2) Address of the main office.

(3) Members of a trade union besides a federated trade union (hereinafter referred to as "local union") shall have the right to participate in all affairs of the trade union and the right to be rendered equal treatment.

(4) In no event shall any one be disqualified for union membership because of race, religion, sex, social status or family origin.

(5) The officials of a local union shall be elected by secret ballot directly by the members, and the officials of a federation or a national union may be elected by the members of the local union or by delegates elected directly by secret ballot of the members of the local union.

(6) General meeting shall be held at least once every year.

(7) Financial report showing all sources of revenues and expenses, names of main contributors and present financial status shall be made public to the members at least once every year, together with certification of its accuracy by a professionally competent auditor appointed by the members.

(8) No strike action shall be started without the decision made by secret ballot either directly by a majority of members voting or directly by a majority of delegates voting directly elected by secret ballot by all members.

9) No constitution of a local union shall be revised except by a majority vote of the members. No constitution of a national union or a federation shall be revised except by a majority vote of the members of the local union or of the delegates directly elected by secret ballot by all members.

(Power to negotiate)

Article 6. Representatives of a trade union or those to whom the powers thereto are delegated by the trade union shall have the power to negotiate with the employer or the employers' organization on behalf of the members of the trade union for conclusion of a trade agreement or on other matters.

(Unfair labor practices)

Article 7. The employer shall be disallowed to do the following practices:

(1) To discharge or give discriminatory treatment to a worker by reason of his being a member of a trade union, for his having tried to join or organize a trade union or for his having performed proper acts of a trade union; or to make it a condition of employment that the worker must not join or must withdraw from a trade union. Provided, however, that this shall not prevent an employer from concluding a trade agreement with a trade union to require, as a condition of employment, that the workers must be members of the trade union if such trade union represents a majority of the workers in the particular plant or working place in which such workers are employed.

(2) To refuse to bargain collectively with the representative of the workers employed by the employer without fair and appropriate reasons.

(3) To control or interfere with the formation or management of a trade union by workers or to give financial support to it in defraying the trade union's operational expenditure.

Provided, however, that this shall not apply to prevent the employer from permitting the workers to confer or negotiate with him during working hours without loss of time or pay or to the employer's contributions for welfare funds; or benefit or similar funds, which are actually used for payments to prevent or relieve economic misfortune or accident or to the furnishing of minimum office space.

y)

Article 8. No employer shall claim indemnity from a trade union or member of the same for damages received through a strike or other acts of dispute which are proper acts.

(Use of funds for other purposes)

Article 9. When a trade union intends to use for other purposes the funds specially set up for mutual aid and other welfare work, it shall obtain the resolution of the general meeting of the union.

(Dissolution)

Article 10. The trade union shall be dissolved in the following cases:

(1) Occurrence of the circumstances requiring the dissolution as provided in the constitution of the trade union.

(2) Resolution for the dissolution adopted by the general meeting of the trade union with majority of three fourths or more of the total membership or of the affiliated unions.

(Trade union which is a juridical person)

Article 11. A trade union which has received certification of a Labor Relations Committee that it is in compliance with the provisions of this Law shall acquire the status of juridical person by registering at the place where its main office is located.

2. The matters necessary for registration other than were provided in this Law shall be fixed by a cabinet ordinance.

3. As regards the matters which require registration for a trade union, they shall have no effect against any third person unless a registration has been effected.

(Mutatis mutandis application)

Article 12. The provisions of Articles 43, 44 (except the cases provided for in Article 3 of this Law), 50, 52 - 55 and 57 of the Civil Code (Law No. 89, 1896) and of Article 35, 36, and 37-2 of the Law on Procedure of Non-Contentious Cases (Law No. 14, 1898) shall be applied mutatis mutandis to a trade union which is a juridical person.

2. The provisions of Articles 72-83 of the Civil Code and of Articles 136, 137 and 138 of the Law on Non-Contentious Cases shall be applied mutatis mutandis to a trade union which is a juridical person and which has dissolved according to the provision of Article 10 of this Law.

(Exemption from taxes charged on juridical persons)

Article 13. Trade unions which are juridical person shall be exempted from income tax and taxes charged on juridical persons in accordance with the provisions of a cabinet ordinance.

Chapter 3. Trade agreements.

(Taking effect of trade agreement)

Article 14. The trade agreement between a trade union and the employer or the employers' organization concerning conditions of work and other matters shall take effect when the agreement is put in writing and signed by both of the parties concerned.

(Term of trade agreement)

Article 15. Trade agreements shall include a provision fixing a definite termination date and shall in no event continue in effect for a period exceeding three years.

2. Upon the expiration of the termination date provided in it, no trade agreement shall continue in effect against the wish expressed by either one of the parties concerned; provided, however, that this provision shall not be construed to preclude provisions in a trade agreement which provides that the effect of the trade agreement is renewed unless either one of the parties concerned expresses opposition in advance.

(Validity of the Standards)

Article ~~15~~ 16. Any provision of an individual labor contract contravening the standards concerning conditions of work and other treatment of workers provided in a trade agreement shall be void. In this case, the invalidated part of the individual contract shall be replaced by the provisions of the standards. The same rule shall apply to the part which is not laid down in the individual labor contract.

(General binding power)

Article 17. When three-fourths or more of the workers of similar kind normally employed in a factory or other working place come under application of one trade agreement, the remaining workers of similar kind employed in the same factory or other working place shall ipso facto be bound by the same agreement.

(General binding power in locality)

Article 18. When a majority part of the workers of similar kind in a certain locality come under application of one trade agreement, the Labor Minister or the Prefectural Governor may at the request of either one or both of the parties concerned with the said trade agreement and according to the resolution of the Labor Relations Committee take the decision to extend the compulsory application of the trade agreement (including the part revised under provisions of Paragraph 2) to all the remaining workers of the same kind employed in the same locality and their employers.

2. In case the Labor Relations Committee deems, in making the decision of the preceding paragraph, the trade agreement in question contains inappropriate provisions, the committee may amend those provisions.

3. The decision under paragraph 1 shall become effective by public notification.

Chapter 4. Labor Relations Committees.

(Labor Relations Committees)

Article 19. Labor Relations Committees shall be set up consisting of equal number of persons representing employers, workers and public interest.

2. The Labor Relations Committee shall consist of the Central Labor Relations Committee, the Maritime Central Labor Relations Committee, Prefectural Labor Relations Committees and Local Maritime Labor Relations Committees.

3. The staffs of a Labor Relations Committee as provided in this Law shall be regarded as staffs engaged in official business under laws and ordinances.

4. Matters relating to Labor Relations Committees other than those laid down in this Law shall be fixed by a Cabinet Ordinance.

5. The Central Labor Relations Committee shall be under the jurisdiction of the Labor Minister.

6. The Central Labor Relations Committee shall be composed of seven members representing employer (hereinafter referred to as "employer members"), seven members representing labor (hereinafter referred to as "labor members") and seven members representing the public interest (hereinafter referred to as "public members").

7. The Labor Minister shall appoint the employer members in accordance with the recommendations of the employers' organizations, the labor members with the recomendations of trade unions and the public members with the agreement of the employer members and the labor members.

8. Incompetent and quasi-incompetent perscns and one who has been sentenced to penal servitude or imprisonment and still under the

[redacted] execution of the sentence cannot be a member. When a member shall have become disqualified as a result of this provision, he shall automatically be retired.

9. As to appointment of the public members, three or more of them shall not belong to the same political party. When a public member shall have by his own actions disqualified himself as a result of this provision, he shall automatically be retired.

10. In case the Labor Minister recognizes that a member of the Central Labor Relations Committee cannot perform his duties by reason of mental and physical defects or that a member has violated his duties in performing his functions or is guilty of misconduct as a member, the Labor Minister may discharge the said member with the approval of the Central Labor Relations Committee.

11. The term of office of the members shall be one year, provided that substitute members filling a vacancy shall remain in office during the remaining term of the predecessor.

12. The members may be re-appointed.

13. The members shall continue to perform their duties until their successor has been appointed.

14. Members shall receive such salaries, allowances and other pays as are fixed separately by laws and compensation for expenses necessary to perform their duties as fixed by a Cabinet Ordinance.

15. There shall be chairman in the Central Labor Relations Committee.

16. The chairman shall be elected by all members from among the public members.

17. The chairman shall preside over the businesses of the Central Labor Relations Committee.

18. When the chairman has been prevented from performing his duties or the chair has become vacant, a new chairman will be elected in accordance with the provision herein.

19. A Business Bureau shall be established in the Central Labor Relations Committee to handle the administrative affairs of the Committee, and the Business Bureau shall have a Director and necessary staffs appointed by the Labor Minister with approval of the chairman.

20. The provisions of this Article shall be applied mutatis mutandis to the Prefectural Labor Relations Committees; provided that appointment and discharge of the members shall be made by the Governor and the Committee shall be composed of five employer members, five labor members and five public members; and two or more of the public members shall not belong to the same political party.

21. As regards the seamen covered by the Seamen's Law (Law No. 100, 1947), the functions of the Central Labor Relations Committee, the Prefectural Labor Relations Committee, and the Labor Minister or the Prefectural Governor as provided for in this Law shall be performed respectively by the Maritime Central Labor Relations Committee, the Maritime Local Labor Relations Committee and the Transportation Minister; and the provisions concerning the Central Labor Relations Committee and the Prefectural Labor Relations Committee shall be applied mutatis mutandis to the Maritime Central Labor Relations Committee and the Maritime Local Labor Relations Committee; provided, however, that "Prefectures" shall read as "Areas under the jurisdiction of the Maritime Transportation Bureaus".

(Function of the Labor Relations Committees)

Article 20. In addition to provisions under Articles 5, 11, 18 and 27, the Labor Relations Committees shall have authority to perform conciliation, mediation and arbitration of labor disputes.

(Open proceedings)

Article 21. When the Labor Relations Committee deems it necessary for the public welfare, the proceedings of a Labor Relations Committee may be made public.

2. The meetings of the Labor Relations Committee shall be called by the Chairman.

3. The Labor Relations Committee shall be disallowed to open a meeting and to make a decision unless at least one employer member, one labor member and one public member be present.

4. Decisions shall be made by a majority of the members present, and in case of a tie the decision shall be made by the chairman.

(Authority of compulsion)

Article 22. When the Labor Relations Committee deems it necessary for carrying out its work, the Labor Relations Committee may require the attendance or presentation of reports of the employer or the employers' organization or the trade union or others concerned or it may require the presentation of necessary books and documents or it may also have its members or staffs of the Labor Relations Committee (hereinafter simply called "staff") inspect factories and other working places concerned or inspect the conditions of business, books and papers and other objects.

(Duty to keep secret)

Article 23. The members and those who were members as well as the staff on those who were on the staff of a Labor Relations Committee shall be disallowed to disclose any secret information obtained in performing their functions.

(Function which are carried out only by the public members)

Article 24. Only the public members of the Labor Relations Committee shall participate in the adjudication of cases arising under Article 5, 7, 11 and 27 and Article 42 of the Labor Relations Adjustment Law; provided, however, that this shall not preclude labor members and employer members from participating in hearings held prior to a decision.

(Functions of the Central Labor Relations Committee)

Article 25. The Central Labor Relations Committee shall have authority to perform the functions prescribed under the provisions of Articles 18, 20, 26, and 27. The Central Labor Relations Committee may assume initial jurisdiction in all cases of conciliation, mediation, arbitration, and adjudication of cases which cover two or more prefectures or which present issues of national import.

2. The Central Labor Relations Committee may review the adjudications of the Prefectural Labor Relations Committee pursuant to the provisions of Article 5, 7 and 27 with full authority to reverse, accept, or nolify such adjudications, or it may reject appeal for review. Such review shall be initiated by the Central Labor Relations Committee or by appeal of either party from the adjudication of the Prefectural Labor Relations Committee.

(Authority of establishing rules)

Article 26. The Central Labor Relations Committee shall have authority to formulate and promulgate rules of procedures for the Prefectural Labor Relations Committee, as well as rules of procedures for its own proceedings.

(Orders etc. of the Labor Relations Committee)

Article 27. Whenever a complaint is filed that an employer has violated the provision of Article 7 with a Labor Relations Committee, the Labor Relations Committee shall make an immediate investigation and if it is deemed necessary shall have a hearing of the issues on the merits of the complaint. Such investigation and hearing shall follow the Rules of Procedures prescribed by the Central Labor Relations Committee in accordance with the provision of the preceding Article; and at such hearing, sufficient opportunity to present evidence and cross-examine the witnesses shall be given to the employer concerned as well as the complainants.

2. At the conclusion of the hearing provided for in the preceding paragraph, the Labor Relations Committee shall make a finding of facts and issue its order in accordance therewith either granting in full or in part the relief sought by the complainants or dismissing the complaint. Such findings of facts and such order shall be in writing, and a copy thereof shall be served on the employer concerned and the complainants. Such order shall be in full force and effect from the date of service. Proceeding under the provisions of this paragraph shall be in accordance with the Rules of Procedures prescribed by the Central Labor Relations Committee as provided for in the preceding Article.

3. In case the employer received the order of the Prefectural Labor Relations Committee according to the provision of the preceding paragraph, he may within a period of 15 days file a request for review by the Central Labor Relations Committee. However, such request shall not have the effect of staying the order and itshall remain in full force and effect until such time the Central Labor Relations Committee decides to start review in accordance with the provision of Article 25.

4. In case the employer elects not to request a review by the Central Labor Relations Committee or in case the Central Labor Relations Committee issues the order [redacted], he may within a period of 30 days from the date of service of the order file his petition according to the provision of the Exceptional Law for Administrative Suit Cases (Law No. 81, 1948).

5. In the event the employer files his petition with the court according to the provision of the preceding paragraph, the court with which the petition is filed may, on appeal from the Labor Relations Committee concerned, issue order by its decision requiring the employer concerned to comply in full or in a part with the order of the said Labor Relations Committee pending final judgement by the Court, or it may reverse or modify the decision.

6. In the event the employer requests a review by the Central Labor Relations Committee according to the provisions of Paragraph 3, the period granted for recourse to the court under the provision of Paragraph 4 shall commence to run from the day on which the Central Labor Relations Committee either refused to accept the appeal concerned or otherwise made final action.

7. In the event the employer does neither request for review by the Central Labor Relations Committee of the order of the Prefectural Labor Relations Committee concerned or does not file his petition within the period under Paragraph 4, the order of the Labor Relations Committee concerned shall be fixed. In this case, if the employer does not comply with the order of the Labor Relations Committee, the the Labor Relations Committee shall inform of it to the District Court [redacted] in the place where his domicile is located. The worker may also inform of it.

8. In case all or a part of the order of the Labor Relations Committee is sustained by the fixed judgement of the Court based on the petition under Par. 4, the Central Labor Relations Committee cannot review the order of the Prefectural Labor Relations Committee.

9. The Provisions of this Article shall not preclude a trade union or worker from requesting a review by the Central Labor Relations Committee according to the provision of Article 25 or from filing petition with the Court.

10. The provisions of Paragraphs 1 and 2 shall be applied mutatis mutandis to the procedures of review by the Central Labor Relations Committee.

Chapter 5. Penalties.

Article 28. In case of violation of the order of the Labor Relations Committee when all or a part of the said order has been sustained by the fixed judgement of the court in accordance with the provisions of the

preceding Article, those who commit such violation shall be liable to imprisonment not exceeding one year or to a fine not exceeding one hundred thousand yen, or to both.

Article 29. Those who contravene the provision of Article 23 shall be liable to imprisonment not exceeding one year or to a fine not exceeding thirty thousand yen.

Article 30. Those who contravene the provisions of Article 22 and fail to present reports or make false reports or fail to submit the books or papers or contravene the provisions of the same Article and fail to present themselves or refuse, obstruct or evate the inspection under the provision of the same Article shall be liable to a fine not exceeding thirty thousand yen.

Article 31. When the deputy, co-habitant, employees or others engaged for work of a juridical person or a person contravene the provisions of the first portion of the preceding Article, in connection with the business of a juridical person or of a person, the said juridical person or [redacted] person shall not be immune from penalty on the ground of not having given order for such contravention.

2. The provisions of the first portion of the preceding Article shall apply to the directors, managers or other officers who execute the business of the juridical person in case the employer is a juridical person and to the legally fixed deputy in case the employer is a minor or a person adjudge incompetent, provided that this rule shall not apply to a minor the has the same capacity as an adult in the performance of business.

Article 32. In case an employer has violated the order of the Court under the provision of Paragraph 5 of Article 27, he shall be liable to a fine not exceeding one hundred thousand yen (if the order concerned requires for positive action, the total amount of money made by multiplying one hundred thousand yen by the number of days of noncompliance may be assessed as a fine.) The same rule shall apply to the case when an employer has violated the order of the Labor Relation Committee which has become fixed according to the provision of Paragraph 7 of Article 27.

Article 33. The liquidator of a trade union which is a juridical person who has violated any of the provisions of the Civil Code which is set out in Article 12 of this Law and violation of which are made punishable by Article 84 of the Civil Code shall be subject to the same fine of the same extent of amount as provided for in the said Article of the Civil Code.

2. The provisions of the preceding paragraph shall be applied mutatis mutandis to the representative of a trade union which is a juridical person when such representative failed to register changes in the matters registered concerning the said juridical person as provided in ordinance as set out in Paragraph 2 of Article 11 of this Law.

Supplementary Provisions.

1. The date of enforcement of this Law shall be within thirty days from the day of promulgation and shall be fixed by a Cabinet Ordin

2. Any trade union which is at the time of the enforcement of this Law a juridical person shall be regarded as a trade union which is a juridical person in accordance with the provisions of this Law. However, it shall get, within a period of sixty days from the date of enforcement of this Law, the certification of the Labor Relations Committee that it is in compliance with the provision of this Law.

3. Any persons who are the members of the Labor Relations Committee at the time of the enforcement of this Law shall remain at their post except in case they are discharged according to the provision of this Law; and the Director and other staffs of the Business Bureau of the Labor Relations Committee shall be regarded as to have been appointed according to the provision of this Law and remain at the same grade and get the same salary, except no official announcement otherwise is issued in accordance with laws and ordinances.

4. As regards the dealing of the issues pending at the Labor Relations Committee at the time of the enforcement of this Law, the provisions of the former Trade Union Law (Law No. 51, 1945) before amendment shall be applied.

5. As for the application of penalties for acts committed before the enforcement of this Law, the former rule shall apply.

6. A part of the Public Corporation Labor Relations Law (Law No. 257, 1948) shall be amended as follows:

In Article 3, "Trade Union Law (Law No. 51, 1945) (the provisions of Article 11, 12, and 24 - 37 are excepted)" shall be substituted by "Trade Union Law (Law No. __, 1949) (Provisions of Articles 7, 8 and 18-33 are excepted)".

In Article 37 "Articles 28-31 and 34-37 of the Trade Union Law" shall be substituted by "Paragraph 1 of Article 21, Articles 22, 30 and 31".

Paragraph 3 of Supplementary Provisions shall be amended as follows:

"The functions of the Labor Relations Committee provided for in Articles 5, 11 and Paragraph 2 of Supplementary Provisions of the Trade Union Law shall be performed by the Labor Minister".

7. "In other laws, "Trade Union Law (Law No. 51, 1945)" shall be substituted by "Trade Union Law (Law No. ___, 1949)".

CIVIL SERVICE DIVISION
Government Section

23 March 1949

MEMORANDUM FOR: Mr. Blaine Hoover, Chief, Civil Service Division

SUBJECT : Bill for the Partial Amendment to the Public Corporation Labor Relations Law

The proposed bill named above merely delays the effective date of the Public Corporation Labor Relations Law to June 1, 1949. This is consistent with the proposed delay in the effective date of the Japanese National Railways Law and (we are advised verbally) of the Japan Monopoly Public Corporation Law. I see no objection to the bill as proposed.

GORDON W. PETERSON
Organization Specialist

GWP:jb

Mr Peterson 996 9/7/48

These copies were furnished to CSD by Robt. Amis of ESS/LD. They are objections to certain parts of the NPS Law amendments given to them by certain groups of Japanese.

Thot you might be interested.

WPBn

File 9/20/48 Labor Standards Law

Thanks
Jap.

Mr Salter 9/7/48

Attached ~~enclosure~~ is a set of copies of that material furnished us by Robt. Amis of ESS/LD. You can keep this for your files if you need them.

WPBn

Explanation of the Relation of N.P.S. Law Revision Draft and Labor Standard Law

1. Matters pertaining to the collective bargaining, right to strike, and the reorganisation of Governmental enterprise are included in the General's letter, and nothing pertaining to minimum labor standard is included in it.
2. But according to the suggested draft to revise the N.P.S. Law, (Article 17, Supplementary Provision) the Labor Standard Law is to be excluded from application to the Government employee.
3. If the labor standard of the government employee is not intended to be established lower than the existing minimum labor standard, it has no meaning to exclude the Labor Standard Law from the application to the government employee.
4. Government Section is supposed to be going to establish better labor standards for Government employees than for the general workers. So it is supposed there are some mistakes in the draft of N.P.S. Law. to exclude the Labor Standard Law from application to the government employee.
5. There is one Article in the Labor Standard Law which stands flatlyagainst the General's letter. That is Article 2, which stipulates that working conditions should be decided by the worker and employer on equal basis.

   This article should be revised as far as the Government industry is concerned. But for that purpose, only minor revision of Labor Standard Law will do.
6. In case the Labor Standard Law is to be excluded from application to government employee, it will cause many evils as its result. The proportion of the Government enterprise to the private enterprise is much higher in this country than in other countries. The kinds of Government enterprises in this country are numerous. Some Government enterprise such as telephone and telegram industry

or tobacco manufacturing has no competition in private industry. But the Government railway is, in many district, in competitive position with the Local trains. The Government hospitals are giving hard pressure to the private hospitals. With regard to these and many other competitive industries, the legal minimum standard should be equal both to the Government and private industries, lest unfair competition should be caused by the different labor standard.

7. In this country when the Old Factory Act was enacted in 1911, it covered the tobacco factories of Finance Ministry, locomotive factories of Transportation Ministry, and every other Government factory in the same level as the private factories to prevent unfair competition. (Art. 25 of Old Factory Act). The old miners employment and relief regulation (Art. 42) based on the Mining Act also covered the Government owned mines.

8. Besides the prevention of unfair competition, there is one other reason that the Old Factory Act covered the governmental factories. It is a technical reason that it is almost impossible to draft a different minimum standard which is applicable to every governmental factory other than the general minimum standard. The safety and sanitation regulations, and womens' and minors' regulations which are applicable both to the government monopolized industry and to government railway are sure to coincide with the general minimum Standard for Safety and Sanitation, or for women and minors.

9. As for municipal industries, it is suppcsed that the application of Labor Standard Law is to be excluded in the same way as for Governmental industry.

(The Potsdam Ordinance regulates both the governmental and municipal industry in the same Article) Many villages and towns have their own co-operative factories for processing vegetables, fruits, and corn. Many fishing villages have their own co-operative mills to dispose of their marine products. All of these factories and mills have been covered by the Old Factory Acts. If they are to be excluded from the coverage of the Labor Standard Law, and if these municipal bodies are allowed to establish their own respective labor standard, it will become impossible to maintain a national labor standard in general.

10. Under the Old Factory Act, inspection function to enforce the Law was reserved to each competent Ministry which carry on the Government industries. As for the municipal industries, they have been inspected just the same as the private industries. As for the enforcement of the Old Factory Act, the Government had established a government employers' conference within the Public Welfare Ministry to instigate the observance of the Law. But as the conference had no power to co-erce each ministry to observe the Law, the Old Factory Act was not observed in the least by the Government industry. And it was utilized always as good excuse by bad employers for evading the obligation of the Law. This time, all the Governmental and municipal enterprises are going to be excluded both from the application of the Labor Standard Law and its inspection function. The bad employers will be glad to utilize the working condition of these public industries as their excuse for not abiding with the Law.

11. In this way the Labor Standard Administration in Japan are to be doomed to deteriorate in the same way as the Old Factory Act.

12. The Havana Charter which was adopted by more then 60 countries of the world last March, include the principle (chapter II., Article 6) that every participant of International Trade Organization should maintain Fair Labor Standard within its territory. The Asiatic Labor Conference last Autumn had adopted in India an invitation decision to Japan. The same invitation was adopted by the I.L.O. this Summer at U.S.A. But these invitations can not necessarily be interpreted as an expression of friendly good will to Japan. Quite contrary to that, these decisions may be interpreted to have been adopted from the suspicion that Japan may restore her imperialistic foreign trade based upon sweat system. By the revisions of M.F.S. Law, is not Japan going to give full evidence to these suspicions?

GENERAL MARITIME BUREAU

Ministry of Transportation

Tel.(23)1131-1139
GMB No. 1124 (Ss)

Tokyo, 23 August 1948

TO : LABOR DIVISION, E.S.S., G.H.Q., SCAP

FROM : DIRECTOR-GENERAL, GENERAL MARITIME BUREAU,
MINISTRY OF TRANSPORTATION.

SUBJECT : Opinion on the Proposed Revision of the National Public Service Law.

The National Personnel Authority showed us their draft of the bill to revise the National Public Service Law. The following is the opinion of the General Maritime Bureau, Ministry of Transportation on the aforementioned draft.

In Article 17 of the supplementary provisions of the bill to revise the National Public Service Law, "the Mariners Law (Law No. 100 of 1947)" should be deleted for the following reasons. It is deemed proper, however, to take a step so that Article 2 of the Labor Standard Law which is applied to mariners by virtue of Article 6 of the Mariners Law shall not apply to public-employed mariners.

1. The Japanese seamen have hitherto been put under poor working conditions. The Mariners Law provides for the minimum standards for their working conditions for the purpose of improving their economic status up to the new higher one based on the modern rationalism. This is the same with the public employees as with private workers.

2. The Mariners Law merely provides for the minimum standards for the working conditions of seamen and, unlike the Trade Union Law and the Labor Relations Adjustment Law, has nothing to do with labor disputes etc.

3. The Mariners Law has adopted the purport of international labor

conventions (as well as their drafts) in a wholesale way. It is a pre-requisite to the reconstruction of Japan as a peaceful and cultural nation and as a member of the international community. Moreover, most of the international labor conventions (and their drafts) are to be applied to the public employees too.

4. So fer as the Government enforces the Mariners Law which causes all the private enterprises to strictly observe the minimum standards for working conditions, it is unreasonable to lower the working conditions of public employees below those standards. On the other hand, if the working conditions of public employees are, de facto, fixed above those standards provided for in the Mariners Law, there will be no need to except the public employees from being covered by the same law.

5. As the provisions for the duties and authorities of shipmaster and the discipline on board are, together with the provisions concerning working conditions, designed to ensure the safety of human life and vessels, the law should, as a matter of course, be applied to the public employees too.

6. The provisions of Article 2 of the Labor Standard Law which is applied by virtue of Article 6 of the Mariners Law conflict with the nature of public employees.

/s/ T. YAMAGUCHI

for T. Akiyama
Director-General
General Maritime Bureau
Ministry of Transportation.

Economic and Scientific Section
Labor Division

9/1/48 would suggest elimination of §19 of supp prov. in view of this. MS

CWH/SDC/crl
30 August 1948

MEMORANDUM FOR RECORD

SUBJECT: Discussion of Proposed Amendments to National Public Service Law

1. Pursuant to informal arrangements between the Chief, Civil Service Division, GS, and the Chief, Labor Division, ESS, conferences between division representatives were held on 23 and 24 August 1948. In attendance were:

Mr. W. P. MacCoy, Civil Service Division, GS
Mr. M. Salter, " " " "
Mr. S. D. Collett, Labor Division, ESS
Mr. R. T. Amis, " " "
Mr. S. Romer, " " "
Mr. L. Appel, Law Division, LS

M. SALTER

2. The primary purpose of the conferences was to present in detail the analysis of the Labor Ministry, Japanese government, arrived at from a study of the draft "Bill for Partial Amendment of the National Public Service Law" in relation to the operation of the existing basic labor laws in Japan, notably the Employment Security Law (Law No. 141 of 1947), the Trade Union Law (Law No. 51 of 1945), the Labor Standards Law (Law No. 49 of 1947), the Mariners Law (Law No. 100 of 1947), and the Laborers Accident Compensation Insurance Law (Law No. 50 of 1948). The contentions of the Labor Ministry had already been presented to the National Personnel Authority.

3. Following were the principal points advanced:

a. Proposed amendments to the Employment Security Law

(1) Article 44, as amended (by Article 19, Supplementary Provisions, Bill for Partial Amendment), would read as follows: "No person, organization, or agency <u>other than the National Government</u> shall be allowed to conduct a labor supply project, or to use labor supplied by such a project, except as provided in the Article 45."

(a) It was pointed out that the phrase "labor supply project" as used in the foregoing article refers to the "labor boss" system; that the proposed amendment would, in effect, authorize the Japanese government to operate or utilize labor supply projects while all organizations, including the government, are at present precluded from so doing with the sole exception of bona fide labor unions under the specific circumstances set forth in Article 45 of the Employment Security Law; and that if the intention of the proposed amendment were to prevent unions of government workers from operating labor supply projects or union hiring halls, then Article 45, rather than Article 44, should be amended to that effect.

(2) Article 5, paragraph 4, as amended (by Article 19, Supplementary Provisions, Bill for Partial Amendment), would read as follows: "The labor recruitment under this Law consists of canvassing or recruiting of workers by employers <u>other than the National Government</u> directly for their own use or through the agency of other persons commissioned by employers."

(a) It was pointed out in this connection that the phrase "labor recruitment" is used only in Chapter III in the Law, the heading of which clearly excludes the Japanese Government from its application; that the phrase "labor recruitment" as used in the Law refers to the nefarious activities of private recruiting agents which the legislators sought to abolish; and that the exclusion of the National Government from the scope of this phrase affirmatively implies that the government is authorized to use such recruiting agents.

(3) Article 1, as amended (by Article 19, Supplementary Provisions, Bill for Partial Amendment), would read as follows: "This Law is designed to contribute for the security of employment <u>other than the regular service as defined in Article 2 of the National Public Service Law</u> and the progress of the national economy by providing public employment services which, in cooperation with other public and private bodies concerned, will provide people with opportunities to get suitable jobs and work towards the best possible organization of industrial and other employment."

(a) It was pointed out that the effect of the proposed amendment would be to close the door in advance to the use of public employment security facilities by the National Personnel Authority for the purpose of recruitment and placement of government workers; that Article 1 merely expresses the broad aim of the Law so that if it were left unamended, the National Personnel Authority would possess full discretion in determining whether or not to make use of Public Employment Security Offices; and that it would be desirable to "leave the door open" in view of the fact that there are approximately 2½ million government workers in Japan, many of whom are employed in industrial enterprises.

(4) Article 9, as amended (by Article 18, Supplementary Provisions, Bill for Partial Amendment), would read as follows: "In order to maintain an effective Employment Security Office system, all personnel responsible for the administration of this Law, whether in national, branch, prefectural or local offices shall be appointed and hold tenure on the basis of ~~special~~ qualifications and experience as determined by the ~~Labor Minister~~ <u>National Personnel Authority.</u>

~~"All personnel responsible for the administration of this Law shall be in a single system for the purposes of calculating seniority and for promotion and reassignment of personnel.~~

"<u>Prior to application of the National Public Service Law (law No. 120 of 1947)</u>, the Labor Minister shall appoint all personnel in the national and branch offices. Second class officials in the prefectural and local offices shall be appointed by the Labor Minister upon recommendation of the prefectural governor. Third class officials and other personnel in the prefectural and local offices shall be appointed by the prefectural governor."

(a) It was pointed out that if the effect of the proposed revision would be to embrace all personnel engaged in administering the Employment Security Law within a national system under the National Personnel Authority, the Labor Ministry would probably not object; further, that if the Labor Minister were permitted to continue to function with respect to personnel matters until the National Personnel Authority assumes responsibility, that no "vacuum" would be created as the Labor Ministry had initially feared.

b. The Trade Union Law

(1) Article 17, Supplementary Provisions, Bill for Partial Amendment, provides that "the coverage of the Trade Union Law . . . shall not apply to any personnel of the regular service." It was pointed out that the Labor Ministry deemed it highly important that provision be made under the revised National Public Service Law for the following matters:

(a) Prevention of discriminatory treatment of workers on account of their trade union connections or activity. This guarantee for workers in private enterprise is set forth in Article 11 of the Trade Union Law.

(b) Provision for the registration of newly formed employees' organizations with the National Personnel Authority as well as for notification of dissolution to the Authority.

(c) Appropriate provision in the rules of the National Public Authority for the presentation of employee grievances during working hours.

c. The Labor Standards Law and related protective labor legislation.

(1) The Labor Standards Law and the Mariners Law are likewise made inapplicable (by Article 17, Supplementary Provisions, Bill for Partial Amendment) to the personnel of the regular service.

(a) It was pointed out that historically a dual system of minimum labor standards for government and for private enterprise had proven highly unsatisfactory. The "self-enforcement" of labor standards in the governmental sphere was so lax and ineffective that private employers refused to comply with the Factory Act on the ground that the government was not itself observing the required standards. The technical difficulties of setting up a new and separate system, including basic safety standards for governmental enterprises, was also emphasized.

(b) It was pointed out that basic labor standards for government workers should be fixed at a level at least as high as those of private workers; and that this consideration was particularly important in view of the fact that the Japanese Government is engaged in numerous enterprises which have an exact non-governmental counterpart.

(c) Clarification was sought on the status of seamen employed by the Civil Merchant Marine Committee; these seamen are employed by private concerns which are subsidized by the government. It was also

pointed out that the general question of working standards and conditions in maritime pursuits are closely related to safety of navigation and hence assume an unusual degree of importance.

(d) It was pointed out that accident compensation for government workers should be comparable to the rate pertaining in private employment and that it was questionable whether the government could afford to pay a higher rate of benefits at the present time.

d. It was pointed out that under the proposed amendment to Article 2 of the National Public Service Law, jurisdiction over Occupation Force workers would apparently vest in the National Personnel Authority and that surveillance of this group would henceforth be the responsibility of the Civil Service Division, GS; and that confirmation of this new state of affairs should be given so that the Labor Ministry and the Labor Division, NSS, may discontinue their activities on this score and be relieved of responsibility.

4. The outline in paragraph 3, above, covers the principal points advanced to participating members in the conference from the Civil Service Division, GS, by participating members from the Labor Division, NSS.

5. Concurrence on paragraph 4, above:

Labor Division, NSS:

R. T. Amis R Tca

S. Romer SR

S. D. Collett SDC

Civil Service Division, GS:

W. P. MacCoy _____

M. Salter _____

Law Division, LS:

L. Appel L.A. _____

C. W. H.

Copies to:
W. P. MacCoy
M. Salter
L. Appel

CIVIL SERVICE DIVISION
Government Section

14 June 1948

MEMORANDUM FOR: Mr. Blain Hoover--etc.

SUBJECT : Proposed Revision of Labor Legislation Effecting National Government Employees.

1. It is recommended that the following Articles be added to the Supplementary Articles of the National Public Service Act:

Article ~~17~~ 18. Notwithstanding the provisions of the Trade Union Law (Law 51 of 1945), the Labor Relations Adjustment Law (Law 25 of 1946), the Labor Standards Law (Law 49 of 1947), and the Mariners Law (Law 100 of 1947) and Employment Security Law (Law 141 of 1947) these laws and ordinances based upon these laws, in so far as they ~~include~~ functions covered by this law, ~~are defined as not applying~~ to any national government organs or personnel of the service.

Article ~~18~~ 19. The following amendments shall be made to the Employment Security Law (Law 141 of 1947):

In Paragraph 1, Line 4, of Article 9, delete "determine" and substitute therefor "recommend."

After the word "minister" delete period (.) and add "to the National Personnel Authority."

Delete all of Paragraph 2 of Article 9.

2. The following laws have provisions which involve government employees of the national, prefectural and municipal level:

The Trade Union Law (Law 51 of 1945), 21 Dec. 1945

The Labor Relations Adjustment Law (Law 25 of 1946), 20 Sept 1946

The Labor Standards Law (Law 49 of 1947), ~~and~~ 5 April 1947

The Mariners Law (Law 100 of 1947).

CIVIL SERVICE DIVISION
Government Section

7 June 1948

MEMORANDUM FOR: Mr. Blaine Hoover, Chief, Civil Service Division.

SUBJECT : Proposed Revisions to Labor Legislation.

1. Attached hereto are proposed revisions to labor legislation removing from the provisions of such legislation all governmental employees. The Laws to be revised are:

The Trade Union Law, # 51 of 1945

The Labor Relations Adjustment Law, #25 of 1946 } handled as separate amdt. eliminating any inherent

The Labor Standard Law, #49 of 1947 } modified amdt till NAA

The Mariners Law, #100 of 1947 } enters the effect

The Employment Security Law, #141 of 1947 separate + deleting all gov't from its jurisdiction

MACDONALD SALTER
Compensation Specialist

MS:mvb
Encl. 1

PROPOSED REVISIONS TO:

Trade Union Law - #51 of 1945

Article 4, Paragraphs 1 and 2, delete all and substitute therefor

"This Law and any ordinances, rules, or orders issued thereunder, shall not apply to employees of the national, prefectural, municipal, town, or village government agencies and similar public agencies or to employees of government enterprises included in the regular service under the provisions of Article 2 of the National Public Service Law (Law 120 of 1947)."

Labor Relations Adjustment Law - #25 of 1947

Article 38, Paragraph 1, delete all and substitute therefor:

"This Law and any ordinances, rules, or orders issued thereunder, shall not apply to employees of the national, prefectural, municipal, town, or village government agencies and similar public agencies or to employees of government enterprises included in the regular service under the provisions of Article 2 of the National Public Service Law (Law 120 of 1947)."

The Labor Standard Law - #49 of 1947

Article 8, Paragraph 1, Item 16, delete all. Renumber item 17 to become item 16.

Article 33, Paragraph 3, delete all.

Article 40, Paragraph 1, line 2, delete "17." and substitute therefor "16.".

Article 56, Paragraph 2, Line 3, delete "17." and substitute therefor "16.".

Article 112, delete all and substitute therefor:

"This Law and any ordinances, rules, or orders issued thereunder, shall not apply to employees of the national, prefectural, municipal, town, or village government agencies and similar public agencies or to employees of government enterprises included in the regular service under the provisions of Article 2 of the National Public Service Law (Law 120 of 1947)."

The Mariners Law - #100 of 1947

Article 120, delete all and substitute therefor:

"This Law and any ordinances, rules, or orders issued thereunder, shall not apply to employees of the national, prefectural, municipal, town, or village government agencies and similar public agencies or

to employees of government enterprises included in the regular service under the provisions of Article 2 of the National Public Service Law (Law 120 of 1947)."

Employment Security Law - #141 of 1947

Supplementary Provisions: Add the following paragraph:

"This Law and any ordinances, rules, or orders issued thereunder, shall not apply to employees of the national, prefectural, municipal, town, or village government agencies and similar public agencies or to employees of government enterprises included in the regular service under the provisions of Article 2 of the National Public Service Law (Law 120 of 1947)."

CIVIL SERVICE DIVISION
Government Section

4 June 1948

MEMORANDUM TO: Mr. Blaine Hoover, Chief, Civil Service Division.

SUBJECT : Proposed Amendments to Labor Legislation.

1. Among the labor legislation reviewed to date there appears to be five Laws, the provisions of which establish standards, patterns, or methods for the conduct of personnel affairs of governmental employees not consistent with the National Public Service Law. These Laws should be amended to remove from their jurisdiction all governmental employees.

2. While specific amendments could be made to these Laws by the deletion or insertion of words or the deletion or insertion of paragraphs, a general provision added as an additional paragraph to the Supplementary Provisions of each law might more clearly, directly, and without equivocation, remove from the provisions of these laws matters pertaining to personnel administration of all levels of governmental employees. The following paragraph is recommended as an amendment to each of the laws listed below:

> "This Law, and any ordinances or rules issued thereunder, shall not apply to employees of the national, prefectural, municipal, town or village government agencies and similar public entities."

3. The Laws to be amended are:

The Trade Union Law, Number 51 of 1945, — just above paragraph.
The Labor Relations Adjustment Law, Number 25 of 1946, — 1) 11 2) delete art 38.
The Labor Standard Law, Number 49 of 1947, — art 8(1) out. 33(3) out 40(1) becomes 16 17 becomes 16 (17 becomes 40)
The Mariners Law, Number 100 of 1947, 120 rewrite
The Employment Security Law, Number 141 of 1947. 112 rewrite

4. There is some question as to whether the provisions of the Employment Security Law are intended to apply to governmental activities but since the provisions of this law might, under pressure, be interpreted to include, in certain instances, government employment, it would seem advisable to include this law among those to which the above amendment should be made.

MACDONALD SALTER
Compensation Specialist

MS:mvb
Enc. Attachments A and B

ATTACHMENT A

Labor legislation which excludes governmental employment:

1. Laborer's Accident Compensation Insurance Law - No. 50 of 1947.

   Art. 3, Par. 3 "This law shall not apply to undertakings directly managed by the state, by government officials or public officials or undertakings that employ only the members of a family living in the same household, or seamen who come under the application of the Seamen's Law."

2. Labor Ministry Establishment Law - No. 97 of 1947

   Supplementary Art. 2. No change required.

3. Amendment to Seamen's Insurance Law - No. 103 of 1947

   No change required.

4. Unemployment Allowance Law - No. 145 of 1947

   No change required.

5. Unemployment Insurance Law - No. 146 of 1947

   Art. 7 "The employees of the national, prefectural, municipal, town or village government agencies or others of the similar kind shall be excluded from coverage under this law, irrespective of the preceding Article, according to the provisions of Cabinet Order, provided they are eligible for pension, retirement allowance or other benefits of a similar kind according to laws, ordinances, orders, etc. in case they are out of jobs, which are substantially equal as a minimum to the benefits provided under this law."

6. Amendment to Health Insurance Law - No. 200 of 1947

   No change required.

7. Amendment to Seamen's Insurance Law - No. 235 of 1947

   No change required.

ATTACHMENT B

Note: a. Underlining indicates addition to the original law.

b. Parenthesis indicates deletion from the original law.

Proposed specific amendments to labor legislations:

1. Trade Union Law

Article 1. The aim of the present Act shall be to raise the status of workers and thereby contribute to economic development through the guarantee of the right (of organization and the encouragement of collective bargaining) to bargain and act collectively with due recognition to the sovereign power of the State and any public body in the conduct of its affairs.

Article 4. Police, firemen, and employees of penal institutions shall be denied the right to organize or to join trade unions.

As regards other government officials, subordinate officials, and municipal officials, and those employed by the state or public bodies, the sovereign right of a government agency is recognized and separate regulations may be made by ordinance for the application of the present act, provided that this rule shall not apply to the prohibition of their organizing a trade union or of their joining such as members.

Article 10. Representatives of a trade union, or those to whom the powers thereof are delegated by the union, shall have the power to negotiate with the employer or employers organizations on behalf of the union or its members for conclusion of a trade agreement or on any other matters, provided that any agreement involving those employed by the state or other public body may not exceed law or public policy.

Article 11. The employers shall be disallowed to discharge or give a discriminatory treatment to a worker for his being a member of the trade union, for having tried to form or join a trade union, or for having performed proper acts of a trade union unless any of the above stated acts by a public employee does interfere with the performance and accomplishment of his duties.

Article 15. Trade unions shall refrain from any abuse of laws and ordinances and shall always exercise their rights with due regard for the public welfare.

When a trade union /frequently/ violates laws and ordinances and disturbs peace and order the court may order dissolution of the union at the request of the Labor Relations Committee.

The necessary matters relating to procedure under the preceding paragraph shall be fixed by ordinance.

Article 21. Recognizing that cooperation between employer and employee, which should be based on mutual understanding, is absolutely

necessary for the accomplishment of any private or public activity, when a trade agreement is signed, the parties concerned shall mutually assume the obligation to cooperate in all sincerity for giving effects to the agreement for the enhancement of efficiency and maintenance of industrial peace.

Article 22. When a standard is fixed by a trade agreement concerning conditions of labor and treatment of workers (when a special organ exists for fixing such standards in accordance with the trade agreement, the standards fixed by that organ shall come under this provision and this rule shall apply to all the cases where the same terms occur hereafter) any provisions of a labor contract contravening the standard mentioned shall be void and invalidated part of the labor contract shall be replaced by provisions of the above mentioned standard. The same rule shall apply to the part which is not layed down in the labor contract.

The special organ referred to in the preceding paragraph of this Article will, in the case of the state or other public body, mean law, ordinance, order, or rules of the National Personnel Commission.

Article 23. When three-fourths or more of the workers normally employed in the factory, mine, or other places of employment, except the state or other public body, come under application of a trade agreement, the remaining workers shall ipso facto be bound by the same agreement.

Supplementary Regulations.

THE PROVISIONS OF ARTICLES 19, 23, 24, 25, 27, 28, 32, 35, 36, SHALL NOT APPLY TO THE STATE OR ANY OTHER PUBLIC BODY.

2. Labor Relations Adjustment Law - No. 25 of 1946

Article 2. The parties concerned with labor relations shall make special endeavors mutually to promote proper and fair labor relations, and fix by trade agreement, matters relating to establishment as well as management of regular agencies other than those engaged in public welfare work, to adjust differences consistently, and in case labor disputes occur, to endeavor to settle them autonomously in all sincerity.

Article 8. In this law, public welfare work shall mean the following work which provides the services essential to daily life of the general public:

a. transportation work;
b. post, telegraph or telephone work;
c. work for supplying water, gas or electricity;
d. medical treatment and public health work;
e. all governmental work

The competent minister shall have power to designate, other than the work in any item of the preceding paragraph, any work stoppage of which will seriously affect the national economy or seriously endanger the daily life of the general public for a specified period of time not exceeding one year, in accordance with the decision of the Central Labor Relations Committee.

For the decision of the preceding paragraph, the agreement of a majority in each instance of the members representing the employers, workers, and neutrals, shall be required.

Immediately after the discussion of the public welfare works pursuant to the provisions of the second paragraph, the competent minister shall be required to widely publicize the matters by appropriate means, such as the newspaper and the radio, in addition to the notice in the Official Gazette.

The provisions of this act shall not apply to public welfare work. This is not to be construed to deny the responsibility of employees and the state or other public bodies of promoting a means for a fair adjustment of labor relations and preventing or settling labor disputes and thereby contributing to the maintenance of efficiency and a better administration.

Article 18. Strike items 3, 4 and 5 and paragraphs 2 and 3.

Article 27. Strike the whole article.

Article 37. Strike the whole article.

Article 38. Police officers, firemen, those employed at prisons and officials and employees engaged in the work of the National Prefectural and Municipal Government (Administration) or judiciary (exclusive of public enterprises) shall be disallowed to resort to acts of dispute.

Article 39. In paragraph one change the word "two" to "one".

Article 40. The employer shall be disallowed to discharge or give discriminatory treatment to workers for having performed acts of dispute or for the testimony he made at the proceedings of adjustment of labor dispute under this law, provided that this shall not apply to public welfare work or when agreed to by the Labor Relations Committee.

3. Labor Standard Law - No. 49 of 1947

Article 8. Delete Items 11 and 16. Renumber the Items as follows:

Item 12 becomes Item 11
Item 13 becomes Item 12
Item 14 becomes Item 13
Item 15 becomes Item 14
Item 17 becomes Item 15

Article 33. Delete Paragraph 3.

Article 40. In certain occupations or enterprises which come under Article 8, Item 4, Item 5 and Item 8 to Item (17) 15 inclusive, in which it is essential to avoid the inconvenience to the public or the like or in which there is other special need, special ordinance concerning working hours of Article 32 and recess of Article 34 may be issued within the limit that is unavoidable.

Article 56. In Paragraph 2, substitute for reference to Item 17, by Item 15.

Article 62. In paragraph 4, substitute the reference Items 5, 7, 13, and 14 by 5, 7, 12, 13.

Item 99. In paragraph 3, delete the phrase "to the qualifications".

Item 106. The Labor Standard Inspector shall preserve secrecy with respect to his duties in accordance with the provisions of Article 100 of the National Public Service Law (Law 120 of 1947). (Must not reveal secret he learns in the course of his duty. This applies even after the inspector resigns from his position.)

Article 112. This Law, and Ordinances based upon this Law, shall not apply (are defined to apply) to government, prefectures, cities, towns, villages, and other corresponding bodies.

4. Mariner's Law - No. 100, 1947

Article 120. "This Law, the Labor Standards Law, and the ordinances issued thereunder, shall not apply to the State, Tokyo, Hokkaido, prefectures, cities, towns, villages and similar public entities."

5. Employment Security Law - No. 141 of 1947

Article 9. In order to maintain an effective employment security office system, all personnel responsible for the administration of this law, whether in national, branch, prefectural, or local offices, shall be appointed and hold tenure on the basis of special qualifications and experience as ~~determined~~ recommended by the Labor Ministry and in accordance with the provisions of the National Public Service Act (Law 120 of 1947).

All personnel responsible for the administration of this Law shall be in a single system for the purposes of calculating seniority and for promotion and reassignment of personnel.

Supplementary Provisions. The provisions of this law shall not apply to government employment.

CIVIL SERVICE DIVISION
Government Section

4 June 1948

MEMORANDUM TO: Mr. Blaine Hoover, Chief, Civil Service Division.

SUBJECT : Proposed Amendments to Labor Legislation.

1. Among the labor legislation reviewed to date there appears to be five Laws, the provisions of which establish standards, patterns, or methods for the conduct of personnel affairs of governmental employees not consistent with the National Public Service Law. These Laws should be amended to remove from their jurisdiction all governmental employees.

2. While specific amendments could be made to these Laws by the deletion or insertion of words or the deletion or insertion of paragraphs, a general provision added as an additional paragraph to the Supplementary Provisions of each law might more clearly, directly, and without equivocation, remove from the provisions of these laws matters pertaining to personnel administration of all levels of governmental employees. The following paragraph is recommended as an amendment to each of the laws listed below:

* "This Law, and any ordinances or rules issued thereunder, shall not apply to employees of the national, prefectural, municipal, town or village government agencies and similar public entities."

3. The Laws to be amended are:

The Trade Union Law, Number 51 of 1945,
The Labor Relations Adjustment Law, Number 25 of 1947,
The Labor Standard Law, Number 49 of 1947,
The Mariners Law, Number 100 of 1947,
The Employment Security Law, Number 141 of 1947.

4. There is some question as to whether the provisions of the Employment Security Law are intended to apply to governmental activities but since the provisions of this law might, under pressure, be interpreted to include, in certain instances, government employment, it would seem advisable to include this law among those to which the above amendment should be made.

MacDonald Salter

MACDONALD SALTER
Compensation Specialist

MS:mvb
Enc. Attachments A and B

* See attached sheet for expanded statement.

Noted
Recommendations
Will
discuss with
Vince 4/8

Substitute

PROPOSED REVISIONS TO:

Trade Union Law - #51 of 1945

Article 4, Paragraphs 1 and 2, delete all and substitute therefor

"This Law and any ordinances, rules, or orders issued thereunder, shall not apply to employees of the national, prefectural, municipal, town, or village government agencies and similar public agencies or to employees of government enterprises included in the regular service under the provisions of Article 2 of the National Public Service Law (Law 120 of 1947)."

Labor Relations Adjustment Law - #25 of 1947

Article 38, Paragraph 1, delete all and substitute therefor:

"This Law and any ordinances, rules, or orders issued thereunder, shall not apply to employees of the national, prefectural, municipal, town, or village government agencies and similar public agencies or to employees of government enterprises included in the regular service under the provisions of Article 2 of the National Public Service Law (Law 120 of 1947)."

The Labor Standard Law - #49 of 1947

Article 8, Paragraph 1, Item 16, delete all. Renumber item 17 to become item 16.

Article 33, Paragraph 3, delete all.

Article 40, Paragraph 1, line 2, delete "17." and substitute therefor "16.".

Article 56, Paragraph 2, Line 3, delete "17." and substitute therefor "16.".

Article 112, delete all and substitute therefor:

"This Law and any ordinances, rules, or orders issued thereunder, shall not apply to employees of the national, prefectural, municipal, town, or village government agencies and similar public agencies or to employees of government enterprises included in the regular service under the provisions of Article 2 of the National Public Service Law (Law 120 of 1947)."

The Mariners Law - #100 of 1947

Article 120, delete all and substitute therefor:

"This Law and any ordinances, rules, or orders issued thereunder, shall not apply to employees of the national, prefectural, municipal, town, or village government agencies and similar public agencies or

ATTACHMENT A

Labor legislation which excludes governmental employment:

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Art. 3, Par. 3 "This law shall not apply to undertakings directly managed by the state, by government officials or public officials or undertakings that employ only the members of a family living in the same household, or seamen who come under the application of the Seamen's Law."

2. Labor Ministry Establishment Law - No. 97 of 1947

Supplementary Art. 2. No change required.

3. Amendment to Seamen's Insurance Law - No. 103 of 1947

No change required.

4. Unemployment Allowance Law - No. 145 of 1947

No change required.

5. Unemployment Insurance Law - No. 146 of 1947

Art. 7 "The employees of the national, prefectural, municipal, town or village government agencies or others of the similar kind shall be excluded from coverage under this law, irrespective of the preceding Article, according to the provisions of Cabinet Order, provided they are eligible for pension, retirement allowance or other benefits of a similar kind according to laws, ordinances, orders, etc. in case they are out of jobs, which are substantially equal as a minimum to the benefits provided under this law."

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No change required.

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No change required.

ATTACHMENT B

Note: a. Underlining indicates addition to the original law.

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Proposed specific amendments to labor legislation:

1. Trade Union Law

Article 1. The aim of the present Act shall be to raise the status of workers and thereby contribute to economic development through the guarantee of the right (of organization and the encouragement of collective bargaining) to bargain and act collectively with due recognition to the sovereign power of the State and any public body in the conduct of its affairs.

Article 4. Police, firemen, and employees of penal institutions shall be denied the right to organize or to join trade unions.

As regards other government officials, subordinate officials, and municipal officials, and those employed by the state or public bodies, the sovereign right of a government agency is recognized and separate regulations may be made by ordinance for the application of the present act, provided that this rule shall not apply to the prohibition of their organizing a trade union or of their joining such as members.

Article 10. Representatives of a trade union, or those to whom the powers thereof are delegated by the union, shall have the power to negotiate with the employer or employers organizations on behalf of the union or its members for conclusion of a trade agreement or on any other matters, provided that any agreement involving those employed by the state or other public body may not exceed law or public policy.

Article 11. The employers shall be disallowed to discharge or give a discriminatory treatment to a worker for his being a member of the trade union, for having tried to form or join a trade union, or for having performed proper acts of a trade union unless any of the above stated acts by a public employee does interfer with the performance and accomplishment of ~~his~~ the duties. of the public position.

Article 15. Trade unions shall refrain from any abuse of laws and ordinances and shall always exercise their rights with due regard for the public welfare.

When a trade union /frequently/ violates laws and ordinances and disturbs peace and order the court may order dissolution of the union at the request of the Labor Relations Committee.

The necessary matters relating to procedure under the preceding paragraph shall be fixed by ordinance.

Article 21. Recognizing that cooperation between employer and employee, which should be based on mutual understanding, is absolutely

necessary for the accomplishment of any private or public activity, when a trade agreement is signed, the parties concerned shall mutually assume the obligation to cooperate in all sincerity for giving effects to the agreement for the enhancement of efficiency and maintenance of industrial peace.

Article 22. When a standard is fixed by a trade agreement concerning conditions of labor and treatment of workers (when a special organ exists for fixing such standards in accordance with the trade agreement, the standards fixed by that organ shall come under this provision and this rule shall apply to all the cases where the same terms occur hereafter) any provisions of a labor contract contravening the standard mentioned shall be void and invalidated part of the labor contract shall be replaced by provisions of the above mentioned standard. The same rule shall apply to the part which is not layed down in the labor contract.

The special organ referred to in the preceding paragraph of this Article will, in the case of the state or other public body, mean law, ordinance, order, or rules of the National Personnel Commission.

Article 23. When three-fourths or more of the workers normally employed in the factory, mine, or other places of employment, except the state or other public body, come under application of a trade agreement, the remaining workers shall ipso facto be bound by the same agreement.

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Article 2. The parties concerned with labor relations shall make special endeavors mutually to promote proper and fair labor relations, and fix by trade agreement, matters relating to establishment as well as management of regular agencies other than those engaged in public welfare work, to adjust differences consistently, and in case labor disputes occur, to endeavor to settle them autonomously in all sincerity.

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The competent minister shall have power to designate, other than the work in any item of the preceding paragraph, any work stoppage of which will seriously affect the national economy or seriously endanger the daily life of the general public for a specified period of time not exceeding one year, in accordance with the decision of the Central Labor Relations Committee.

For the decision of the preceding paragraph, the agreement of a majority in each instance of the members representing the employers, workers, and neutrals, shall be required.

Immediately after the discussion of the public welfare works pursuant to the provisions of the second paragraph, the competent minister shall be required to widely publicize the matters by appropriate means, such as the newspaper and the radio, in addition to the notice in the Official Gazette.

The provisions of this act shall not apply to public welfare work. This is not to be construed to deny the responsibility of employees and the state or other public bodies of promoting a means for a fair adjustment of labor relations and preventing or settling labor disputes and thereby contributing to the maintenance of efficiency and a better administration.

Article 18. Strike items 3, 4 and 5 and paragraphs 2 and 3.

Article 27. Strike the whole article.

Article 37. Strike the whole article.

Article 38. Police officers, firemen, those employed at prisons and officials and employees engaged in the work of the National Prefectural and Municipal Government (Administration) or judiciary (exclusive of public enterprises) shall be disallowed to resort to acts of dispute.

Article 39. In paragraph one change the word "two" to "one".

Article 40. The employer shall be disallowed to discharge or give discriminatory treatment to workers for having performed acts of dispute or for the testimony he made at the proceedings of adjustment of labor dispute under this law, provided that this shall not apply to public welfare work or when agreed to by the Labor Relations Committee.

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Article 33. Delete Paragraph 3.

Article 40. In certain occupations or enterprises which come under Article 8, Item 4, Item 5 and Item 8 to Item (17) 15 inclusive, in which it is essential to avoid the inconvenience to the public or the like or in which there is other special need, special ordinance concerning working hours of Article 32 and recess of Article 34 may be issued within the limit that is unavoidable.

Article 56. In Paragraph 2, substitute for reference to Item 17, by Item 15.

Article 62. In paragraph 4, substitute the reference Items 5, 7, 13, and 14 by 5, 7, 12, 13.

Item 99. In paragraph 3, delete the phrase "to the qualifications".

Item 106. The Labor Standard Inspector shall preserve secrecy with respect to his duties in accordance with the provisions of Article 100 of the National Public Service Law (Law 120 of 1947). (Must not reveal secret he learns in the course of his duty. This applies even after the inspector resigns from his position.)

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Article 120. "This Law, the Labor Standards Law, and the ordinances issued thereunder, shall not apply to the State, Tokyo, Hokkaido, prefectures, cities, towns, villages and similar public entitles."

5. Employment Security Law - No. 141 of 1947

Article 9. In order to maintain an effective employment security office system, all personnel responsible for the administration of this law, whether in national, branch, prefectural, or local offices, shall be appointed and hold tenure on the basis of special qualifications and experience as determined by the Labor Ministry and in accordance with the provisions of the National Public Service Act (Law 120 of 1947).

All personnel responsible for the administration of this Law shall be in a single system for the purposes of calculating seniority and for promotion and reassignment of personnel.

Supplementary Provisions. The provisions of this law shall not apply to government employment.

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
GOVERNMENT SECTION
Local Government Division

26 February, 1948.

MEMORANDUM FOR THE RECORD

SUBJECT: Proposals for Changes in Japanese Labor Legislation (Refer to Memorandum for the Record, Subject: Japanese Labor Legislation since 1 September 1945, dated 29 December, 1947.)

The reference mentioned in Subject, above, contains a general survey of current Japanese labor legislation. Contained therein are general and preliminary recommendations for amendment to decentralize authority from the Central Government to local public bodies, to eliminate overlapping and confusing areas of personnel administration, and to increase the separation of powers by assigning more authority to democratically elected or appointed boards and committees. These recommendations are more fully considered herein and detailed changes are proposed

1. Trade Union Law:

a. Paragraph 2, Article 4, is revoked.

b. So much of Paragraph 1, Article 5, as reads "administrative authorities" is amended to read "Governors of Prefectures in which union offices are located".

c. So much of Paragraph 2, Article 5, as reads "administrative authorities" is amended to read "competent Governors".

d. So much of Paragraph 1, Article 6 as reads "in accordance with the stipulations of ordinance" is revoked.

e. So much of Article 8 as reads "the administrative authorities" is amended to read "competent Governors".

f. Paragraph 2, Article 15, is amended to add the following:

"Such ordinance is subject to approval by the Central Labor Relations Committee."

g. So much of Paragraph 1, Article 16 as reads "at the place where" is amended to read "as directed by competent Governors".

33 A

h. Paragraph 2, Article 16, is amended to add the following:

"Such ordinances shall in no way impose extraordinary hindrances to accomplishment of recording ordinary and readily available facts."

i. Article 18 is amended to add the following:

"Such ordinance is subject to approval by the Central Labor Relations Committee."

j. So much of Paragraph 2, Article 19 as reads "Administrative authorities" is amended to read "competent Governors".

k. So much of Paragraph 1, Article 24, as reads "administrative authorities" is amended to read "competent Governors".

l. So much of Paragraph 1, Article 26, as reads "central members" is amended to read "representatives of the general public".

m. Paragraph 2, Article 26, is revoked.

n. So much of Paragraph 3, Article 26 as reads "and in case of a special need, special Labor Relations Committees may be set up for a given locality or to deal with special matters", is revoked.

o. So much of Paragraph 4, Article 26, as reads "by ordinance" is amended to read "by Governors in the case of Prefectural Committees and by ordinance in the case of the National Committee".

p. Paragraph 5, Article 26, is revoked, and the following is substituted therefor:

"Prefectural Labor Relations Committees shall be appointed by competent Governors, and the National Committee by the Labor Minister. Appointment of employer representatives will be made from a list of recommendations by employer's organizations, those of workers from a list of recommendations by Trade Unions, and those of the general public with agreement of representatives of employers and workers.

"Detailed procedures for appointment of Prefectural Labor Relations Committees and for submission of nominations by employer's and worker's organizations, as well as specific terms of office of members, will be prescribed by Governors; provided, however, that Prefectural Assemblies shall be competent to enact by-laws relating to appointment and nominative procedures not in conflict with this law.

"Matters relating to Prefectural Labor Relations Committees, other than those laid down in the present Law, shall be fixed by Prefectural by-laws.

"Detailed procedures for appointment of the National Labor Relations Committee and for submission of nominations by employer's and worker's organizations will be prescribed by ordinance."

q. So much of Paragraph 2, Article 27 as reads "administrative authorities", is amended to read "Governors in the case of Prefectural Committees and Labor Minister in the case of the National Committee."

r. So much of Paragraph 1, Article 32 as reads "administrative authorities" is amended to read "Governors, in the case of Prefectural Committees, and Labor Minister, in the case of the National Committee".

s. So much of Paragraph 2, Article 32 as reads "Administrative authorities" is amended to read"Governors or the Labor Minister".

t. Paragraph 2, Article 32, is further amended to add the following:

"Prefectural Assemblies may enact by-laws on matters dealing with labor conditions. Such by-laws, notwithstanding the role of Governor as a Central Government Official, shall preeminate over Prefectural Executive Orders on matters relating to labor conditions."

u. Supplementary regulations: Date of enforcement of these amendments shall be 60 days from date of passage by the Diet.

2. Labor Relations Adjustment Law:

a. Article 3 is revoked.

b. So much of Article 6 as reads "the parties" is amended to read "employers and workers".

c. So much of Article 7 as reads "the parties" is amended to read "employers and workers".

d. So much of Paragraph 2, Article 8 as reads "the competent Minister" is amended to read "in the case of industries located within their Prefectures, competent Governors".

e. Paragraph 2, Article 8 is further amended to insert the words "or local" following "national" and to revoke "central".

f. Paragraph 2, Article 8, is further amended to add the following:

"When an enterprise, a work stoppage in which would jeopardize national economy or public welfare in two or more prefectures, is threatened by a labor dispute, the Labor Minister, with approval of the Central Labor Relations Committee, may designate it as a public welfare work."

g. Paragraph 4, Article 8, is amended to insert "Governor or" following "competent".

h. So much of Article 9 as reads "or the administrative authority", is revoked.

i. Article 15 is revoked, and the following is substituted therefor:

"Matters concerning conciliation, other than those provided herein, shall be fixed by resolution of the Labor Relations Committee concerned."

j. So much of Clause 5, Paragraph 1, Article 18, as reads "or, in a case having great scope or involving work of a special nature and for those reasons seriously affecting the public welfare" is revoked.

k. Article 44 is revoked, and the following is substituted therefor:

"Members of Prefectural Labor Relations Committees, conciliators, and mediators appointed thereby, and those whose attendance is requested for mediation or conciliation of a labor dispute within the jurisdiction of Prefectural Labor Relations Committees shall be compensated in accordance with by-laws of Prefectures concerned. Compensation of members of Central Labor Relations Committees and conciliators, mediators, and other persons associated therewith, will be fixed by the Labor Minister after consultation with the National Civil Service Commission."

l. Supplementary regulations: Date of enforcement of these amendments shall be 60 days after date of passage by the Diet.

3. Labor Standard Law:

a. Article 6 is revoked.

b. Paragraph 2, Article 15, is revoked.

c. So much of paragraph 3, Article 15, as reads "In the case aforesaid" is amended to read "When the Labor Standard Committee determines that working conditions clarified under paragraph 1 of this article are different from the real fact."

d. Paragraph 2, Article 29, is revoked, and the following is substituted therefor:

"In fixing minimum wages, appeals may be made by workers or administrative officers to Local Wage Boards in the Prefecture in which the workers ordinarily reside. In addition, Local Wage Boards may initiate minimum wage investigations. During investigations, Wage Boards shall hold public hearings at which workers,

employers, administrative officials, and the general public may state their views. At the conclusion of investigations, the minimum wage will be decided by majority vote of members of the Wage Board. That wage will be reported, together with a transcript of the investigation, to the Central Wage Board which shall have veto power but which shall not have authority to change the recommended minimum wage. In returning a vetoed wage, the Central Wage Board will state its reasons for veto and its recommendations for change. Upon receipt of the report of a vetoed wage from the Central Wage Board, the Local Wage Board may reopen investigation. If its recommended new minimum wage is the same as that urged by the Central Wage Board, that shall become the official minimum wage, and it shall be so published by the Local Wage Board. An official minimum wage may also be set by re-passage of the original minimum wage recommended by the Local Wage Board with a two-thirds majority of the vote of the Local Wage Board."

e. Article 30 is revoked.

f. So much of Clause 3, Article 31, as reads "administrative office" is amended to read "Prefectural Labor Standard Committee".

g. So much of Paragraph 1, Article 33, as reads "administrative office" is amended to read "Prefectural Labor Standard Committee".

h. So much of Paragraph 2, Article 33, as reads "administrative office" is amended to read "Prefectural Labor Standard Committee".

i. So much of Paragraph 2, Article 34, as reads "administrative office" is amended to read "Prefectural Labor Standard Committee".

j. So much of Paragraph 2, Article 46, as reads "administrative office" is amended to read "Prefectural Labor Standard Committee".

k. So much of Paragraph 3, Article 53, as reads "administrative office" is amended to read "Prefectural Labor Standard Committee".

l. So much of Paragraph 1, Article 71, as reads "administrative office" is amended to read "Prefectural Labor Standard Committee".

m. So much of Article 73 as reads "administrative office" is amended to read "Prefectural Labor Standard Committee".

n. Paragraphs 2, 3 and 4, Article 97, are revoked, and the following are substituted therefor:

"Prefectural Labor Standard Offices and Labor Standard Inspection Offices shall be under the supervision of Governors concerned.

"Chiefs of such offices will be appointed by competent Governors. Other personnel will be employed and administered as part of the classified Prefectural Civil Service of Prefectures concerned. In the absence of an established Civil Service, rules governing employment and administration of these personnel will be devised by by-law or, in the absence thereof, by order of competent Governors."

o. Article 98 is revoked, and the following is substituted therefor:

"Committees of Labor Standard shall be established in the Bureau of Labor Standard and in the Prefectural Labor Standard Offices. Prefectural Committees will investigate and adjudicate complaints from either employers or workers relative to enforcement of this Law. Adjudication of complaints before such committees shall be required before bringing a dispute to Court.

"Committees may recommend changes in law or by-law to the Labor Minister or Governors for presentation to the Diet or to Local Assemblies. In addition, recommendations relative to administrative procedures may be submitted to administrative officers concerned.

"The Central committee will approve, by majority vote, all ordinances issued under this law, and local committees will approve all gubernatorial orders. In the latter case, if a Governor's order, issued pursuant to a ministerial ordinance, is not approved, and if, as a result thereof, a Governor receives a statement of charges from the Labor Minister, a new regulation, implementing only those points raised in the statement of charges, may be issued without ratification by the Prefectural Labor Standard Committee.

"Prefectural Labor Standard Committees shall be appointed by competent Governors, and the National Committee shall be appointed by the Labor Minister. Equal membership representation will be given to employers, workers, and the general public. Appointment of employer representatives will be made from a list of recommendations by employer's organizations, those of workers from a list of recommendations by Trade Unions, and those of the general public with agreement of representatives of employers and workers.

"Detailed procedures for appointment of Prefectural Labor Standard Committees and for submission of nominations by employer's and worker's organizations, as well as specific terms of office of members, will be prescribed by Governors; provided, however, that Prefectural Assemblies shall be competent to enact by-laws relating to appointment and nominative procedures not in conflict with this Law."

p. So much of paragraph 1, Article 99, as reads "Labor Standard Bureau, Regional Labor Offices" is revoked.

q. Paragraphs 2, 3, and 4, Article 99 are revoked.

r. Article 100 is revoked, and the following is substituted therefor:

"Chief of the Labor Standard Bureau shall supervise operation of that office. The Bureau shall conduct research relative to Labor Standards. In addition, it will serve as an information center and a clearing house for questions from Prefectural Labor Standard Committees. Informational bulletins and memoranda may be published and distributed to Prefectural Offices, committees, and boards.

"Chiefs of Prefectural Labor Standard Offices shall supervise operation of their respective offices. In addition, they shall direct and coordinate operations of Prefectural Labor Standard Committees, Appeal Boards and Workingmen's Accident Compensation, and Local Wage Boards, furnishing them with records and other information which they may desire, clerical and research assistance, office or conference space, and any other assistance necessary to their performance of assigned functions.

"Chiefs of Prefectural Labor Standard Inspection Offices shall, under supervision of Chiefs of Prefectural Labor Standard Offices, administer inspection, inquiry, approval, authorization, sanction, investigation, arbitration, and all other administrations based upon this Law. They will supervise inspectors assigned to their offices."

s. Supplementary regulations: These amendments shall take effect 60 days after enactment by the Diet.

4. Laborer's Accident Compensation Insurance Law:

Article 50 is amended to add the following:

"All ordinances issued under this law must be approved by majority vote of the Laborer's Accident Compensation Insurance Advisory Committee."

5. Employment Security Law:

Changes recommended in this law are so extensive as to justify repeal of the entire law and the substitution of a new law, somewhat as follows:

EMPLOYMENT SECURITY LAW

Article 1. This law is designed to contribute to employment security and progress in national economy by providing public employment services which, in cooperation with other public and private bodies, will provide workers and employers with opportunity to mutually adjust labor supply and demand.

Article 2. The Employment Security Bureau in the Ministry of Labor will conduct research relative to employment administrative procedures, recruitment practices, and vocational guidance and training methods. In addition, it will serve as an information center and clearing house for questions from Prefectural Employment Security Offices. Informational bulletins and memoranda may be published and distributed to Prefectural Employment Security Offices. The Central Employment Exchange will be organized as a section of the Employment Security Bureau.

Article 3. The Central Employment Exchange will serve as a national clearing house for adjustment of labor supply and demand. When an application by an employer for a worker has been on file in a Prefectural Employment Exchange for a period of 15 days and no suitable candidate has been referred, that application will be forwarded for consideration to the Central Employment Exchange. When an application for employment by a worker has been on file in a Prefectural Employment Exchange for a period of 30 days and no suitable position can be found, that application will be forwarded for consideration to the Central Employment Exchange.

Forms on which application for employment or workers will be submitted to the Central Employment Exchange will be prescribed by Cabinet Order.

Applications of workers will be coalated in the Central Employment Exchange with applications of employers, and when a worker is found to possess qualifications required, his application will be forwarded for consideration to the Prefectural Employment Exchange which submitted the employer's application. The Prefectural Employment Exchange, by direct action through the employer and the Prefectural Employment Exchange of origin of the worker's application, is responsible for completion of employment.

Final disposition of all cases referred by the Central Employment Exchange will be reported thereto on a form and in a manner prescribed by Cabinate Order.

Workers who are required to travel outside the limits of their home prefectures to be interviewed by employers to whom they have been referred by procedures described in the preceeding paragraphs, and workers who change domicile as a result of such procedures leading to employment, shall be entitled to reimbursement for actual expenses incurred. Those expenses will be paid by the Central Government after certification

by the Prefectural Employment Exchange of the place to which travel was performed or to which domicile was removed. Applications for reimbursement will be forwarded to the Central Employment Exchange for verification and forwarding to the competent disbursing official. Forms for such applications will be prescribed by Cabinate Order.

Article 4. Prefectural Governors will supervise enforcement of this law in their respective jurisdictions.

Article 5. Prefectural Employment Security Offices will be established, at least one in every Prefecture, in accordance with by-laws, or in the absence thereof, in accordance with orders of competent Governors.

Prefectural Employment Security Offices will be supervised by competent Governors and will administer Prefectural Employment Exchanges, vocational guidance, vocational training, unemployment insurance, and any other matters prescribed by law or by-law.

Chiefs of Prefectural Employment Security Offices will be appointed by Governors concerned. Other personnel will be employed and administered as part of the classified Prefectural Civil Service of the Prefecture concerned. In the absence of an established Civil Service, rules governing employment and administration of these personnel will be devised by by-law or, in the absence thereof, by order of competent Governors.

Article 6. Prefectural Employment Exchanges will receive applications from employers and workers. All applications, not contrary to law, will be accepted and will be given equal consideration in order of their receipt. In connection with employment or vocational counselling, Prefectural Employment Exchanges may give advice and information to workers. Use of personal questionnaires and standardized tests are authorized. In connection with employer applications, if requests for workers are at variance with prevailing conditions of hours, wages, or working conditions, Prefectural Employment Exchanges may consult with and advise employers with a view toward equalization of such conditions.

Article 7. Vocational training, under supervision of Governors concerned, will be carried out to the extent and in the manner prescribed by by-law. In case a national need for vocational training is evident from records of the Central Employment Exchange, special provision may be made by law for its effectuation at the expense of, and under direct supervision of the Central Government.

Article 8. Private Employment Exchanges will be licensed in accordance with orders of competent Governors; provided, however, no charges, direct or indirect, will be made to workers for services rendered, and provided further, Prefectural Assemblies may enact by-laws prescribing conditions for such licensing.

Article 9. No by-law will be passed to forbid recruitment of workers by employers; provided, however, such recruitment must be conducted by the employer himself or by a bona fide, full-time employee, and provided, further, no charges, direct or indirect, will be made to workers for services rendered. Only licensed private employment exchanges and Prefectural Employment Exchanges may be delegated power by employers for recruitment of workers. The system of recruitment of workers known as the labor supply project in which the employer contracts for supply of workers with a third party is forbidden.

Article 10. Information concerning employers and workers, secured incidental to the operation of the Employment Security System, will be confidential and will not be disclosed to any individual or group, public or private, except in pursuance of objectives stated in this law.

Article 11. Funds for the operation of Prefectural Employment Security Systems (except the national system) will be budgeted by and moneys therefor will be appropriated by Prefectural Assemblies. If properly provided in by-laws, employers who benefit from operation of this system may be charged service fees to assist defrayment of expenses.

Article 12. Governors may delegate powers given to them under this law to subordinate officials of the Prefectural Government or to mayors or headmen of cities, towns, and/or villages.

Article 13. Persons who violate the provisions of Article 10 of this law shall be subject to punishment by penal servitude for a period not to exceed one year and/or payment of a fine not to exceed ¥10,000. In addition, such persons will be subject to suit for damages by employers and/or workers concerned.

Article 14. Employment Security Law, Law 141, November 30, 1947 is repealed.

Supplementary Regulations: This law shall take effect 60 days after passage by the Diet.

6. Unemployment Insurance Law:

Paragraph 1, Article 39, is amended to add the following:

"All ordinances issued and changes of premium rates prescribed under this Law must be approved by majority vote of the Unemployment Insurance Advisory Committee."

APPENDIX

DISCUSSION OF AMENDMENTS

1. Trade Union Law and Labor Disputes Adjustment Law:

a. Limitation on use of Ordinances and Cabinate Orders:

(1) As a general principle, whenever the word "ordinance" appears, one of the following changes is urged:

(a) Revocation

(b) Limitation by stipulation of principles to be followed and results to be achieved.

(c) Limitation by transferring, to democratically elected or appointed boards or committees, the power of ratification.

(2) When revocation is proposed, the writer believes that if any additional regulation is desired, it should be incorporated in the law.

(3) If it is recommended that ordinance control be retained, but limited by stipulation of principles to be followed and results to be achieved, the writer is recognizing the impracticability of attempting to anticipate all contingencies and the foolhardiness of burdening the Diet with detailed problems of a strictly administrative nature. However, it is passionately denied that the wording of Article 15, Labor Relations Adjustment Law, attains results desired. That wording refers to "procedural matters". I submit that no line can, in truth, be drawn between procedure and substance and that expostulations to the contrary are founded upon sophistry, euphemism, or stupidity.

(4) In recommending limitation of ordinances by transferring power of ratification to democratically elected or appointed boards or committees, the writer recognizes need for legislative simplicity combined with a maximum of administrative flexibility, but concatinately, he considers the matter at hand to be of such great significance and subject to such variability of interpretation (even with principles and results defined) that he wishes to subject such ordinances to veto power of a committee which has both sufficient time and adequate experience to deal with the minutiae of what amount to delegated legislation.

(5) A luscious example of abuse by ordinance is noted in Article 6, Trade Union Law, in which Labor Minister is empowered to prescribe, by ordinance, procedures to be followed when Trade Union Statutes are judged to contravene provisions of Law. There is overwhelming evidence that the intent is to give local authorities final power of judgment.

However, in accordance with Article 5 of the enforcement ordinance, if anyone is dissatisfied with a Governor's decision, he may appeal it to the Labor Minister who may, with concurrence of Central Labor Relations Committee (appointed by Labor Minister), countermand the Governor's ruling. In effect, then, since the Labor Minister's own deputy, or even the Labor Minister himself, may appeal, if he (Labor Minister) does not concur in the Governor's ruling, he may change it to suit himself.

b. Explicit definition of "Administrative Authorities":

(1) Japanese legislation is glutted with reference to "administrative authorities" who are charged with responsibility to effectuate and authority to implement the law. Characteristically, definition is specified by ordinance, the evils of which were expatiated above. However, no statutory reference is ordinarily made to ordinances in connection with definition of "administrative authorities". Ordinances are used simply for the reason that no other method of definition has been attempted, and cabinate definitions have been foisted upon local public bodies. Without definition in the law or authority for cabinate interpretation, nothing prevents contrary definition by a Governor who desires to extend local hegemony. He may abjure cabinate appropriation of that authority and throw the whole problem back, probably by way of the courts, into the Diet, where it belongs.

(2) An elementary change in official interpretation of "administrative authorities" would completely reverse distribution of governmental authority. That responsibility for interpretation is delegated, by default, to extra-legislative agency is fantastic.

c. Elimination of Legislative Generalization:

(1) Gross generalization has no place in law. It transfers to activating agencies too much authority. It is the high-road to full amnesty for those who would scheme to appropriate power or to bilk intended authorities of theirs. Under its baneful influence, the national government can harry local officials and impale the very principle of law.

(2) For illustration, consider paragraph 3, Article 26, Trade Union Law:

> "The Labor Relations Committee shall consist of the National Labor Relations Committee and Prefectural Labor Relations Committees, and in case of special need, special Labor Relations Committees may be set up for a given locality or to deal with special matters."

The phrases "in case of special need", "for a given locality", and "to deal with special matters" beg flouting. Only the particular time and the specific precipitating circumstances are in doubt; no question of ultimate interpretation exists; local committees are destined, with certitude, to total eclipse.

d. Expansion of legislative authority of Prefectural Assemblies:

(1) Chapter VIII of the Japanese Constitution proclaims the principle of Local Autonomy. Compliments paid to it, in both Japanese and Occupation circles, are impressive.

(2) The highest authority in local affairs is presumed to be the Prefectural Assembly. Yet, assemblymen, when questioned about their legislative agenda, proclaim that their fields of competence are so narrow as to be almost negligible. Consequently, a current project in Local Government Division is to discover boundaries of legislative authority. I have consumed four days searching Labor Statutes in a vain attempt to ferret a single area, field, or item which has reasonable significance and in which local assemblies have legislative competence. Verily, then, at least within the domain of labor relations, local autonomy is a mockery. Whatever delegation of authority has been made is a decentralization of national authority to Prefectural Governors in their roles of Central Government officials. Hence, in no sense is there an atom of local autonomy in labor administration.

(3) The writer does not insist that National Law should specifically designate special areas of Prefectural legislative competence, for under provisions of the amended Local Autonomy Law, local public bodies are explicitly authorized to enact any legislation which does not contravene National Law. But the rub is this: National labor legislation has been so framed as to prescribe the law in such detail as to frustrate KENKAI from maddling. The assembly is so immured that any enactment in the field of labor would, of necessity, contravene National Law.

(4) Therefore, to relieve the grovelling assembly, it is proposed to decentralize important policy-making functions to that level. Within the field of labor relations, the procedure of appointing members of Labor Relations Committees is a policy matter of significance, for such committees occupy a crucial position in both the Trade Union Law and the Labor Relations Adjustment Law. Hence, it is mandatory that appointment be as democratic as possible. Since it is axiomatic that greater democracy attends decentralization and separation of authority, suffocating control of the National Government must be expunged.

2. Labor Standard Law:

a. General Remark:

The present Act contains a completely centralized system of definition of labor standards, as well as a vertical control of inspection and operations. At this time, the writer is content to leave definition of labor standards to determination by the Diet, or when authority is properly delegated, to the Labor Minister. However, enforcement of the law, including inspection and operation, should be delegated

to local authorities. Such a change would certainly be toward greater democracy, and it is probable that it would lead to greater economy. On the other hand, should a Governor fail to enforce the law, the Labor Minister may initiate mandamus proceedings to insure compliance.

b. Increase of Authority to Boards and Committees:

The Local Wage Board and the Prefectural Labor Standard Committee are democratically constituted agencies representing interests of employers, workers, and the general public. By reason of their knowledge obtained by constant study of matters within their scope, they have the expert knowledge to reasonably not only conduct investigations and make recommendations but also to make final rulings on controversial matters.

c. Elimination of Administrative Confusion:

By embracing the recommendations herein contained for changes, one of the most confusing aspects of present labor legislation would be eliminated. In Article 29, Trade Union Law, Labor Relations Committees, under supervision of local authorities, are empowered to inspect records, persons and employment premises in connection with investigations of labor disputes. In Article 32 of the same law, those committees are competent to formulate concrete proposals and submit representations to administrative authorities relative to conditions of labor and treatment of workers. The administrative authority is empowered, in turn, to issue standards which will have the same effect as a trade agreement between employers and workers. Such authorities constitute Governors and their properly appointed subordinates. On the other hand, as the Labor Standard Law is presently written, it is evident that all matters pertaining to labor standards are intended to fall under direct supervision of the Labor Minister. Hence, the recommended changes, while not primarily intended for that purpose, accomplish the necessary elimination of overlapping spheres of authority.

3. Employment Security Law:

Changes recommended in this law are so extensive as to justify complete re-writing of the law itself. Previous legislation was criticized mainly because of the confusing organization which it prescribed for Employment Security Offices, as well as because of its unnecessary and ill-founded centralization of function in the Labor Ministry. The recommended changes eliminate the "twilight zones of personnel organization" contained in the/contained in the/confused "single personnel system" under direct supervision of the Labor Minister but under operational control of Governors. In addition, since this law is concerned principally with the operational matter of finding jobs for the unemployed and workers for needy industry, the shift in authority under the recommended law is from the Central Government to local governments.

4. Conclusion:

Recommendations contained in this paper are a particularization of those previously made in the original Memorandum for the Record. Proposed changes are urged with a view toward safeguarding the beginnings of democratic government in Japan and toward implementing the principles of local autonomy contained in the Constitution of Japan of 1936. It is believed that, with incorporation of recommended amendments, Japanese labor legislation will be the most enlightened in the world and that its solid gain will be more permanently protected from reactionary forces which will seek to regress to earlier forms.

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In the case of local committees and boards, the argument may have some validity, for no procedure of nomination is conceivable which could be more democratic than the election of a governor. However, in this case, the principle of separation of powers is assigned to first place. In American government, such a procedure is commonplace, and its application here is believed to be appropriate.

(7) Great opposition to the above recommendations is to be expected. It will be argued that the procedures described here are cumbersome and slow. These arguments are granted. It will be further agrued that inefficiency will, in time of emergency, cause the whole structure to crumble. That argument is denied. There has been too much efficiency in Japan for the achievement of undesirable goals and no efficiency for the attainment of the highest goal of all. Moreover, as the American democracy so thoroughly demonstrated during the war, in case of true emergency, extraordinary measures can be taken by the Diet, and temporary centralization of authority may be achieved under its watchful eye.

6. Summary of Recommendations:

a. Recommendations contained in paragraph 5 are summarized as follows:

(1) Direct supervisory channels from the Labor Minister, through the Labor Standard and the Employment Security Bureaus, should be abolished. Branch Offices of those Bureaus should be eliminated. Governors should be charged with final authority, except by mandamus proceedings, for enforcement and implementation of the Labor Standard Law and the Employment Security Law.

(2) The provision that employees and officers of Employment Security Offices be included in a single system for purposes of seniority, promotion and reassignment should be abandoned. Such personnel should be included in prefectural civil services systems, and top officials should be appointed by governors.

(3) Boards and Committees should be raised from the status of deliberative bodies to one of real authority. Many of the powers presently assigned to administrative authorities should be vested in appropriate Boards and Committees.

(4) All changes indicated above should be effected by amendments to appropriate laws.

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Written by: Kenneth E. Schnelle

Noted : CLK

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