GHQ/SCAP Records(RG 331)
Description of contents

(1) Box no. 2330

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(3) Date : May 1948 - June 1949

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Classification	Type of record
741	c, e, v

(5) Item description and comment :
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(6) Reproduction : (Yes) No

(7) Film no. Sheet no.

NO.	DATE	FROM	TO	SUBJECT
1.				Imperial Ordinance No. 311
2.				Cabinet Ordinance No. 384
3.				Emergency Unemployment Counter-measures Law
4.				Amendment to the Employment Security Law
5.				Amendment of the Unemployment Insurance Law
6.				Three Draft Bills for Unemployment
7.				Cabinet Ordinance No. 384
8.				Trade Union Law (Draft)
9.				Basic Japanese Labor Union Legislation
10.				Employment Security Law
11.				Interpretation of the Trade Union Law and the Labor Relations Adjustment Law.
12.				Cabinet Order No. 252 (July 5, 1949)
13.				The Public Corporation Labor Relations Law
14.				Cabinet Ordinance No. 231, 1949. Enforcement ordinance of the Trade Union Law.
15.				Cabinet Ordinance No. 231, 1949 , Enforcement Ordinance of the Trade Union Law
16.				Cabinet Ordinance No. 231, 1949.
17.				Cabinet Ordinance for Partial Amendment to the Enforcement Ordinance of the Labor Relations Adjustment Law.

CORRECTION

THIS DOCUMENT

HAS BEEN REPHOTOGRAPHED

TO ASSURE LEGIBILITY

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RG 331(Allied Operational & Occupation
Headquarters, World War II)

SUPREME COMMANDER FOR THE ALLIED POWERS
Civil Affairs Section
Headquarters Division
Miscellaneous Labor File
1946-51

#18 to 33

Box No. 2330

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18

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
Economic and Scientific Section
APO 500

010(1 Aug 49)ESS/LAB 1 August 1949

SUBJECT: Interpretation of the Trade Union Law and the Labor Relations Adjustment Law.

TO: Civil Affairs Labor Officers

1. Attached is a copy of official interpretations of the Trade Union Law and the Labor Relations Adjustment Law.

2. These interpretations were made and are now being issued by the Labor Minister. The administrative authority of the Japanese Government was authorized to interpret these laws and they have the approval of the Attorney General's Office and the Central Labor Relations Committee. They were prepared with the advice and assistance of General Headquarters, Supreme Commander For The Allied Powers.

3. Labor Policy Section Officials on the national and prefectural level, the Central Labor Relations Committee, the Maritime Labor Relations Committee and prefectural labor relations committees, as well as district labor relations committees under the Maritime Labor Relations Committee will be guided accordingly in the administration of these laws until such time as the courts may overrule them.

4. Civil Affairs Labor Officers may be guided by these interpretations of the laws. In those instances where questions are raised that cannot be answered by reference to the attached interpretations, General Headquarters, Supreme Commander For The Allied Powers, ATTENTION: Economic and Scientific Section, Labor Division, will refer such questions to the Labor Ministry for official interpretations upon receipt of the inquiry from the Civil Affairs Labor Officer. All interpretations made by Government Officials, or others, contrary to these official interpretations should be disregarded.

5. It is recommended that these interpretations be given wide publicity on prefectural and local levels so as to coincide with the national publicity campaign.

FOR THE CHIEF, ECONOMIC AND SCIENTIFIC SECTION:

Chester W. Hepler
CHESTER W. HEPLER
Chief, Labor Division

1 Incl
Interpretations Trade Union
Law and Labor Relations

Incl #2

11

INTERPRETATIONS

TRADE UNION LAW
AND
LABOR RELATIONS ADJUSTMENT LAW 1 August 1949

1. Q. Is it necessary for trade unions to comply with Art. 2 ?

A. Yes, in order to become a trade union under the law, an organization of workers must comply with Art. 2 of the Trade Union Law. However, if such organization has not likewise complied with par. 2 of Art. 5, it is not entitled to avail itself of the remedies provided in the law or to participate in the procedures set-out in the law. Articles 8 and 10 of the law would apply to such an organization and it may sign a trade agreement as provided for in Chapter 3 and the standards which are set-out in Articles 16, 17 and 18 may be applied to such contract. An organization which is qualified only under Art. 2 cannot appear or take part in any proceedings before a Labor Relations Committee on behalf of its membership. Art. 28 of the Japanese Constitution guarantees "the right of workers to organize and to bargain and act collectively . . . "; consequently, Art. 6 of the Trade Union Law gives no additional advantage to a trade union qualified only under Art. 2 even though it does come within the provisions of Art. 6 because unless it is qualified under Art. 5 of the Law also, it cannot file a complaint against an employer for unfair labor practices. Therefore, practically speaking, Art. 6 does not apply to trade unions qualified only under Art. 2.

2. Q. Is a labor organization which is not a trade union under the law entitled to any of the benefits of the Trade Union Law and the Labor Relations Adjustment Law?

A. No, it is not.

3. Q. Is any punishment provided for a labor organization which does not comply with Art. 2 ?

A. No punishment is provided. Members enforce.

4. Q. How may this portion of the law be enforced?

A. There is nothing in the law which makes it mandatory for an organization of workers to qualify as a trade union under Art. 2 or par. 2 of Art. 5, therefore there is no question of enforcement. The question is one of obtaining voluntary compliance through education by pointing out to the organization of workers the benefits and protection it will have under the law which it could not otherwise enjoy. Members enforce.

5. Q. Is it possible for supervisory workers to organize labor unions?

A. No, it is not. See Supplement "RANKING OFFICIAL UNIONS."

6. Q. Are such ranking officials of unions entitled to any benefits of these laws?

A. Since the membership of so-called "Ranking Official Unions" would be composed of persons who fall within the categories set-out in par. 1 of Art. 2 such an organization could not qualify under Art. 2 and therefore it could not participate in the procedures provided in the law nor avail itself of the remedies provided therein.

7. Q. If a labor organization which accepts the employer's financial support under the law, is not a trade union and under Art. 7 an employer is prohibited from giving financial support to a trade union, how may an employer be stopped from giving financial support to a labor organization which is not a trade union under the law?

A. In answering this question it must be borne in mind that unfair labor practices are committed against individuals and not against organizations, therefore the payment of the operational expenses to a workers organization is an unfair labor practice because it is a violation of the individual's right to belong to an organization which is free of interference or domination on the part of the employer. In order to make this point more clear, an organization which receives the employer's financial support in defraying the organization's operation expenditures cannot become a trade union within the meaning of the law. (See par. 2 of Art. 2 of TUL). Now, since this is true, any organization which receives such payment could not become a trade union even if the members so desired and this fact standing alone would prevent the formation of a trade union and therefore constitutes an interference with the formation of a trade union which is prohibited under par. 3, Art. 7.

The law is designed to protect individuals from the domination of minority groups and regardless of the majority opinion of the membership of an organization which seeks to defray its operational expenditures from funds supplied by the employer, the individual's right is interfered with and any interested party may complain of the resulting unfair labor practice. As an example of interested persons, the following categories may be included: (1) any individual worker concerned; (2) Labor Policy Boards; (3) the Governor; (4) the Labor Minister; (5) Procurator General; (6) Labor Relations Committees, etc.

8. Q. Under Art. 3 does the definition of workers apply to supervisors or so-called "ranking officials" ?

A. Art. 3 of the Law is merely a definition of what is meant by the term "workers" and the definition does apply to supervisors and so-called "ranking officials." However, such categories of persons even though they are workers are precluded from becoming members of a trade union under the provisions of par. 1 of Art. 2 of the TUL. Confusion may have arisen on this point but it is only necessary to bear in mind that they are workers which may not join trade unions because their loyalty to their employer, which is demanded by the very nature of their employment, would interfere with their duties as a member of a trade union with the result that their membership in a trade union would be undesirable both to the employer and the trade union.

9. Q. Is it necessary for a trade union to comply with both Art. 2 and Art. 5 in order to be eligible to participate in the procedures provided in the Trade Union Law and Labor Relations Adjustment Law and to avail itself of the remedies provided therein?

A. Yes, it is. See Supplement, "Proof Necessary for a Union to Qualify Under Article 5."

10. Q. What are the formal procedures mentioned in par. 1 of Art. 5 ?

A. The word "formal" which appears in the English text of the law is a misinterpretation inasmuch as the word does not appear in the Japanese texts. Consequently, all procedures set forth in the law regardless of whether they are formal procedures or informal procedures are denied to the organizations which have not qualified under both Art. 2 and par. 2 of Art. 5 of the Law.

To attempt to answer this question in detail would require much time and space but it is sufficient to know that the procedures mentioned apply to any procedure authorized to the members of the Labor Relations Committee. This includes conciliation, mediation, and arbitration and procedures set out in the Labor Relations Adjustment Law and applies to Articles 5, 7, 11, 18, par. 7 of 19, 20 and 27 of the TUL. Broadly speaking, the procedures referred to means any matter of any description which is authorized by any portion of the Trade Union Law and Labor Relations Adjustment Law to be handled by a Labor Relations Committee or court.

11. Q. What are the remedies mentioned in the same paragraph?

A. This question like the previous question is extremely broad and difficult to answer in terms understandable to a laymen and to attempt to point out each of the remedies set forth in the law as distinguished from a procedural matter would involve a technical explanation. However, generally speaking, the benefits given to the working man by this law is a remedy, so therefore any relief of any kind or character which the Labor Relations Committee is permitted to give to a working man or a trade union is a remedy. This understanding of the word remedy as applied legally is sufficient for the purposes of a general understanding of the law as distinguished from a technical explanation and any further attempt of an explanation of the matter would become purely academic and would be of little value to the layman.

12. Q. Does sub-paragraph 8, par. 2 of Art. 5 mean that all decisions for strike must be ratified by local members?

A. In the strict application of the meaning of the word "ratify" which means to express formal approval and acceptance of an act such as the ratification of a treaty, the sub-paragraph referred to does not mean that all decisions for a strike must be ratified. The better terminology perhaps would be to use the word "authorized" which means the giving of authority or the conferring of a power of action with an assurance of support. The term "ratify" would be applied after the action had taken place and the term "authorized" could apply both before and after. Therefore, since authorization lends itself more easily to an answer of the question involved and a better understanding of the meaning of sub-paragraph 8 of par. 2 of Art. 5, it will be answered from that standpoint. No strike action may be commenced without the authorization by a majority of the members of the union concerned or by a vote of the majority of the members authorizing delegates to commence strike action. The election of these delegates must be by secret written ballots. In the first instance, the decision to strike is made by the membership as a whole. In the second instance, the membership delegates the authority to a group of persons especially elected for that purpose to determine whether strike action is necessary and if it is to act accordingly.

If, in the wisdom of the delegates strike action should be commenced, the delegates may order the strike since authority has already been given to them to take such action. No ratification is necessary because the delegates are acting within the scope of authority delegated to them. However, if the officers of a union or the representatives of a union, not having been specifically given the power to commence strike action, should desire to do so, their act would have to be ratified before the strike would be legal.

13. Q. Do the representatives of labor organizations which are not trade unions under the law have the power to negotiate under Art. 6 ?

A. Article 6 of the TUL applies only to an organization which has qualified under Art. 2 and par. 2 of Art. 5. Since negotiation is a procedure outlined under the law and since trade unions which are not qualified under both Art. 2 and par. 2 of Art. 5 of the Law cannot participate in the proceedings provided for in the Law, no organization not so-qualified can enjoy the privileges given under Art. 6.

14. Q. Clause 1 of Art. 7 states that a worker may not be discriminated against "by reason of his being a member of a trade union." Art. 5 states that no individual worker may be denied the protection of Clause 1. If his organization, however, is not a trade union under the Law, how may he avail himself of the benefits of Clause 1 of Art. 7 ?

A. An individual worker need not depend upon his organization to file a complaint against an unfair labor practice directed against him as provided for in par. 1 Art. 7 of the Law. He may file his own complaint with the Labor Relations Committee but unless his organization is qualified under Art. 2 and Art. 5 of the Law it may not appear on his behalf. He may, of course, hire a lawyer to represent him before the committee or he may have advisors represent him if he first gets the consent of the committee concerned. For complete discussion, see supplement "Individual Worker's Rights As Distinguished From Those of a Trade Union or a Workers Organization."

15. Q. What proof is necessary for a union to qualify as a trade union under Art. 5 ?

A. See Supplement, "Proof Necessary For a Union To Qualify Under Article 5."

16. Q. If a union was not in compliance with the Law at the time an unfair labor practice was committed against it but was in compliance at the time it filed a charge of unfair labor practice, is that union qualified under the law?

A. Yes, the union is qualified. See Supplement, "Status of an Organization Not Qualified as a Labor Union at the Time Unfair Labor Practices Are Committed."

17. Q. How may a union prove that it represents a majority of workers?

A. There is no set method for a union to prove that it represents a majority of the workers. The amount of proof necessary is the amount which the Labor Relations Committee will require. Each case will be different and therefore it is better to permit the issue to be settled when the matter is brought to the attention of the Labor Relations Committee. The most simple and effective method is to hold an election and certify its results. The organization may present its membership list in cases where more than 50 percent of the employees in a particular working place are members of the union or it may submit a signed petition containing the bona fide signatures of more than 50 percent of the workers. In short, there are innumerable methods of providing the required proof.

18. Q. What is the difference between the union shop as provided in Art. 7 and the application of a trade agreement as provided in Art. 17 ?

A. A union shop as provided under Art. 7 is created by a contract between the employer and the employee and cannot be created in any other manner. In the union shop, created by such a contract, the employer will require as a condition of employment that his employees will become members of the union after they have been hired. However, the standard as provided for in Art. 17 unlike a union shop may not apply to all of the workers in a plant. When three-fourths of the workers of a similar kind normally employed in a factory or other working place is covered by the same trade agreement, all the other workers of the same kind are bound by the contract regardless of whether they are members of the organization that signed the contract. It might well be that three-fourths of the plumbers normally employed in a factory or other working place may be

covered by a trade agreement signed by the plumbers union; in such case all of the plumbers in the plant, regardless of whether they are members of the plumbers union, are bound by the contract. In this same plant there may be many carpenters but the carpenters union has only 50 percent of the carpenters who come under their trade agreement; in such cases, the remaining carpenters would not be bound by the contract. It is only when three-fourths of the workers of a similar kind normally employed in the plant or other working place is covered by the same trade agreement that the remaining workers of similar kind will be bound by such contracts. The difference to remember is that a union shop arises out of a contract, the labor standard is set by law and arises out of the operation of the law. The former is voluntary, the latter is mandatory. In considering this question it must be borne in mind that there is absolutely no similarity between a union shop and the standard as set up under Art. 17 and consequently must at all times be considered separately. They arise out of circumstances wholly incompatible because where a union shop exists the standards do not apply and where there is a standard the union shop does not exist.

19. Q. If a federation or a national body of unions such as Sanbetsu or Sodomei includes individual unions which are not in compliance with the Law, is that federation or national body qualified under the law?

A. A national body which includes individual or local unions which are not in compliance with the law is not qualified because by the acceptance in its federation of unions of that type they either do one or two things: admit to membership prohibited persons or engage in prohibited practices.

20. Q. Is it considered an unfair labor practice for the employer to deduct union dues from the workers wages and to deliver the dues to the trade union?

A. Insofar as the check-off system is concerned it is not prohibited by Japanese law and is practiced in some places. However, bear in mind the check-off is a matter for collective bargaining and should be incorporated in the trade agreement. An employer without authorization of a trade agreement cannot arbitrarily deduct union dues from his employees' wages.

21. Q. Is it an unfair labor practice for an employer to pay the wages of workers attending general meetings, conventions or committee meetings of the trade union during working hours?

A. Yes, it would be an unfair labor practice because the attending of general meetings, conventions and committee meetings of the trade union by its members and officers is part of the general operational procedure of unions. Consequently, the deferring of expenses of the members and officers of a union to attend the meetings amounts to financial support of the union in deferring part of its operational expenses. Therefore, it would be an unfair labor practice.

22. Q. May the employer pay traveling expenses and allowances for workers attending such meetings?

A. Traveling expenses and allowances for workers attending meetings of the type referred to in Question 21 is an unfair labor practice because it involves the same principle as outlined in the answer to Question 21.

23. Q. Is it an unfair labor practice for an employer to pay the wages of workers for time lost in attending labor schools operated by the union? By the government?

A. No, it is not an unfair labor practice. See Supplement, "Financial Support of the Employer to Workers Education." When the term "labor school" is used, it means that the school must have regular instructors and a regular curricula and does not mean incidental educational programs carried on by the union for its own benefit such as conferences, lectures, etc.

24. Is it a violation of the Law for an employer to pay the salaries or expenses of a full-time union official attending such labor schools?

A. Yes, it is a violation because the full-time union employee who did not draw a salary while attending such school relieves the union of the obligation of paying him for that period of time. Since such payment amounts to an indirect contribution to the operational expenses of a union by relieving it of a part of its normal operational expense, it is an unfair labor practice.

25. Q. Does Art. 8 mean that an employer may claim indemnity for damages caused by strike from an organization which is not a trade union under the Law?

A. Art. 8 does not give an employer the right to claim indemnity for damages caused by strike from an organization which is not a trade union but it denies him the right to proceed against an organization which is a trade union. This Article does not deny any organization the protection under the general laws of Japan and is a protective measure only.

26. Q. Does Art. 10 mean that a labor organization which is not a trade union under the Law may be dissolved for other reasons than those stated in Art. 10?

A. Art. 10 like Art. 8 is a protective measure and does not authorize the dissolution of any organization for any reason but does guarantee that a trade union may not be dissolved except for the reasons stated. There are many provisions of the general laws of Japan concerning the dissolution of voluntary organizations which would apply to organizations which are not trade unions and they may be dissolved for many more reasons than trade unions may be dissolved, but those reasons are already contained in the Law and are not given authority by Art. 10.

27. Q. May a labor organization which is not a trade union under the Law register as a juridical person?

A. An organization which is not a trade union may not register as a juridical person under the provisions of the Trade Union Law, but it may register as a juridical person under the general laws if the general law makes provisions for its type of organization. That question will have to be determined by the authorities in each individual case. Such organizations certainly have no protection under the Trade Union Law and if they did become juridical persons under the general law would be subject to many provisions of the general law which are extremely obnoxious to the existence of a trade union.

28. Q. Does Art. 11 give a trade union special consideration in registering as a juridical person?

A. Art. 11 gives unusual consideration to a trade union desiring to become a juridical person. It provides for the most simple method of registering as a juridical person that could possibly be conceived by Law.

Not only that, but a trade union which is a juridical person under this Law can be dissolved only under the provisions of Art. 10 which is by action of its own members. It cannot even be dissolved by bankruptcy and it is protected from arbitrary interference by the court or other governmental agents. It may sue and be sued in its own name and a judgment taken against it must be executed against the property of the juridical person and not its members. There are many advantages given under this Law to trade unions which become juridical persons; advantages they could not possibly receive under the general law of Japan because they are excepted from those provisions which are inimical to good trade unionism.

29. Q. In general, what is the nature of the Articles of the Civil Code and the law on procedure of Non-Contentious cases referred to in Art. 12 ?

A. This question cannot be answered in a general manner without an explanation of the Japanese Law with reference to procedures. Roughly speaking, the provisions of these Articles, referred to in Art. 12, contain the bare minimum requirements necessary to corporate existence with most of the control measures deleted. In order to understand the necessity for having these provisions in the Law, it is necessary to understand that a juridical person is an artificial being existing by virtue of the Law and only in the contemplation of the Law is it separate and distinct from the members who compose it and it may sue and be sued in its own name. Since it is an artificial person, it is necessary that it have an existence of some type so that it may do business in its own name. These provisions are the provisions which permit of such an existence. For instance, they provide for a board of directors which in a trade union would be its officers. They provide that the reasons for existence should be stated and they provide methods for the disposition upon dissolution of the property which belongs to the artificial being. None of the provisions are restrictive measures.

30. Q. Does Art. 13 mean that income and other taxes may be levied against labor organizations which are not trade unions under the Law?

A. Art. 13 does not mean that income and other taxes may be levied against other organizations which are not trade unions under the Law but means that they are not exempted from the payment of those taxes as are labor unions.

31. Q. What is the difference between a trade agreement and a labor contract?

A. In the United States we are very likely to use the term "trade agreement" and the term "labor contract" interchangeably. However, in Japan the two terms are not synonymous and in discussing trade agreements and labor contracts this fact must be borne in mind. If there is any question, a determination should be made immediately as to what type of agreement is being referred to. A trade agreement is an agreement reached between the employer and the employee as a result of collective bargaining and a labor contract is an individual contract for hire. If an understanding of Chapter 3 of the Trade Union Law concerning trade agreements is to be had, this difference must be borne in mind.

32. Q. Does Art. 16 mean, for instance, that if an employee signs an individual labor contract to work for ¥7,000 a month, and a trade agreement is later signed applying ¥8,000 to that job, that the worker will receive ¥8,000?

A. Yes, that is exactly what it means.

33. Q. Please explain Articles 17 and 18.

A. Art. 17 has already been explained under Question 18. Art. 18 gives to the Labor Minister or the Prefectural Governor the authority upon the resolution of a Labor Relations Committee to establish a labor standard in the same locality. Locality would ordinarily mean a trade area where the conditions of work, the cost of housing, the cost of food, etc., is the same as living costs of the workers on the same parity. In such areas, when a majority of the workers of a similar kind come under the application of one trade agreement, the Labor Minister or the Governor, as the case may be, may set a standard so that the employers of those persons who are not under the trade agreement will be required to meet the same wage scale and the same conditions of work, etc. which are contained in the trade agreement. For instance, assuming a majority of the employees of the private railroad within the Tokyo area were organized and came under the same trade agreement: The Labor Minister, upon the resolution of the Labor Relations Committee could extend the application of that trade agreement to all other employees, including employees of other private railroads within the Tokyo area.

34. Q. Are there any portions of Chapter 4 concerning labor relations committees that require special explanation?

A. There is no particular portion of Chapter 4 which requires special explanation. The entire chapter should be read as a whole if a good understanding is to be had. No particular part of any law should be construed or explained except in relation to the whole.

35. Q. Does Chapter 5 include penalties against trade unions or their officers?

A. Chapter 5 does not include penalties against trade unions or their officers.

36. Q. May a labor organization which is at present registered as a juridical person but which is not in compliance with Art. 2 and Art. 5 be considered as a trade union within the meaning of par. 2 of the supplementary provisions?

A. Par. 2 of the supplementary provisions provide that a trade union, which is a juridical person at the time of the enforcement of the law, shall be regarded as a trade union which is a juridical person in accordance with the provisions of the Law. Since trade unions which are juridical persons received their authority to become juridical persons under the old trade union law, the terms of the amended law setting up new procedures and qualifications for trade unions which are juridical persons automatically dissolved the juridical persons which were trade unions. However, in order to place their affairs in shape, such former juridical persons, while not actually being juridical persons are to be regarded as such but during the 60 day period those unions are required to get the certificate of the Labor Relations Committee as set out in Art. 11 of the Law.

Par. 2 of the supplementary provisions should not be construed to mean that a trade union which does not get the certificate referred to within the time specified, should continue to be regarded as a trade union which is a juridical person. The Law merely gives to such organizations a privilege which it would not otherwise enjoy but in return for that privilege the Law requires certain specific acts upon the part of the organization and such organization would not be permitted to enjoy the fruits of the Law unless it likewise complied with the conditions set up by the Law. Consequently, the trade union which is a juridical person under the old law could not, after 60 days, be regarded as such unless it had received the certificate of the committee. Also, the trade union which falls within the provisions of par. 2 of the supplementary provisions is required to be in compliance with Art. 2 and par. 2 of Art. 5 of the Trade

Union Law if it desires the services of the committees. There is nothing in the law to exempt them from such requirements nor was any such exemption intended.

37. Q. What happens to such an organization which fails to comply within 60 days from 10 June 1949?

A. The organization can no longer be regarded as a juridical person.

38. Q. What is the meaning of "acts of violence" and "appropriate acts of trade unions" in par. 2, Art. 1 ?

A. Acts of violence has been added to par. 2 of Art. 1 of the Law for the purpose of clarification only. Under the old Trade Union Law, Art. 35 of the Criminal Code of Japan was made to apply mutatis mutandis to trade unions. This merely guaranteed to trade unions that they would have the same protection as given to other legitimate business in Japan. Art. 35 of the Criminal Code of Japan was never intended to permit any crime, much less an act of violence, but since the wording of that Article is ambiguous so that it could be subjected to several interpretations, certain persons construed it to mean that labor organizations could indulge in violence and they proceeded to do so. Unfortunately, the Procurator Generals and the police officers, in view of the provision, were reluctant to act and enforce the Law. Consequently, in order that no confusion on that point could arise in the future, the wording "acts of violence" was added to the Law. A good rule-of-thumb to determine an act of violence is the following:

Any act intentionally committed which if consumated would result in injury to person or property of another, is an act of violence. Any such act would be a violation of some one of the numerous provisions of the Criminal Code of Japan and would be categoried according to the act itself. For example, striking a man with a baseball bat not causing his death would be an assault with intent to do great bodily harm. The same act resulting in death would be murder. No unlawful act, regardless of whether it is an act of violence or not is permitted under par. 2 of Art. 1 of the TUL and no other construction could be entertained or permitted with reference to this provision. Appropriate acts of trade unions are legal acts such as peaceful collective bargaining, peaceful assembly, peaceful parades and demonstrations, etc., i.e. acts on the part of trade unions which are permitted by Law.

39. Q. If a trade union admits to membership those who represent the interests of the employer (those persons who fall within the categories outlined in par. 1 of Art. 2) does their admission into the union constitute an unfair labor practice on the part of the employer?

A. It does. The employer is chargeable with the knowledge of the contents of the Trade Union Law and even though actually is not aware of its provisions, he would still be guilty because ignorance of the Law is not excuse for its violation. Also, an employer is presumed to have full knowledge of the action of his employees concerning his or the company's business, especially with reference to those of his employees who are in management and it is his duty to determine whether or not his management employees join a trade union and he is responsible for their action in that respect. Consequently, if he permits his employees to join a trade union or if he fails in his duties to ascertain whether they have joined or not, he is in violation of the provisions of par. 3 of Art. 6 because when members of the management staff join a union, it constitutes an interference with the management of the union.

40. Q. Is it necessary that the constitution of a federated union contain the provisions outlined in sub-paragraph 3 of par. 2 of Art. 5 ?

A. Yes. It must guarantee the right to all of its members to participate in all of its affairs and to be given equal treatment.

41. Q. What is meant by "nation-wide scale" as applied to the provisions of sub-paragraphs 5 and 9 of par. 2 of Art. 5 ?

A. The term "nation-wide scale" would mean the election of officers of a federated or national union covering all of the nation of Japan when applied to sub-paragraph 5. In such case the officer would be elected on a "nation-wide scale." The same would apply to the revision of the constitution of a national or a federal union. An example of the use of the term in this instance would be "the constitution was amended on a nation-wide scale."

42. Q. May a proxy be appointed (Letter of Attorney) in the case of a direct secret ballot?

A. No. The person entitled to the vote must cast his own vote and can give no other person that authority.

43. Q. Does sub-paragraph 8 of par. 2 of Art. 5 include other acts of disputes or does it apply only to strike action?

A. It refers only to strike action.

44. Q. What is the meaning of a "professional competent auditor" ?

A. A professional competent auditor is one whose qualifications have been certified to by the proper governmental agency or one who earns his livelihood as an auditor.

45. Q. Is it necessary for the provisions of sub-paragraph 8 of par. 2 of Art. 5 to be included in the constitution of a trade union which is prohibited from disputes by laws and ordinances? What about a union which prohibits strikes by the provisions of its constitution?

A. Unions which are prohibited from acts of disputes by laws and ordinances do not fall under the provisions of the Trade Union Law. With reference to a union which prohibits strike action by its constitution, that provision would take the place of the provisions of sub-paragraph 8.

46. Q. What effect does a trade agreement have without a provision fixing a termination date?

A. In the event the trade agreement does not have a termination date, it would be automatically terminated at the end of three years because the Law plainly states that all trade agreements will include the fixing of a definite termination date in its provisions not exceeding three years from the date of the signing of the agreement. If the provision is not written into the contract, the law will treat it as though the three year provision had been written in. The failure to include this provision would not invalidate the rest of the contract.

47. Q. Is a trade agreement which stipulates that the employer will pay the salary and wages of full-time union officials, a valid contract?

A. That portion of the trade agreement which provides for the wages of the union officials is invalid and unenforceable, but this does not necessarily affect the other stipulations and agreements contained in the contract.

48. Q. Does an organization of workers which is not a trade union in compliance with the provisions of Art. 2 and par. 2 of Art. 5 of the Law have the right of collective bargaining under the provisions of Art. 28 of the constitution?

A. Any law passed by a legislative body contrary to the Constitution of a soverign state is an unconstitutional law and since Japan is a soverign state with a constitution, any provision of the Trade Union Law contrary to the Constitution would render that portion of the Law invalid. Therefore, organizations not in compliance with the Trade Union Law do have the right of collective bargaining in accordance with the provisions of Art. 28 of the Constitution and the Trade Union Law does not and could not abolish that right. The Trade Union Law merely gives to labor organizations which are in compliance with its provisions certain rights and privileges which are not denied by the Constitution, but which are not provided for in the Constitution, and since these rights and privileges which are extended to such organizations go beyond the constitution but are not prohibited by the Constitution, an organization which desires the benefit of the Law must also comply with the requirements of the Law.

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S U P P L E M E N T

So-called "RANKING OFFICIALS UNIONS"

So-called "ranking officials unions" are workers organizations whose membership is composed of officers, supervisors, and persons having direct authority to hire, fire, promote, or transfer workers or who have access to confidential information relating to the employer's labor relations plans and policies of such nature as would interfere with their loyalties to a trade union. Consequently, these organizations cannot be considered as trade unions within the meaning of the Trade Union Law. (TUL Article 2 Paragraph 1). This means simply that organizations composed of such workers cannot be considered as trade unions and must not be considered as such in relation to the Trade Union Law and the Labor Relations Adjustment Law, because the provisions of those laws do not apply to them. However, this does not mean that organizations composed of such workers do not have the right to form their own labor organizations because they do have such rights. Persons who live by wages, salaries, or payment in kind regardless of their occupation are workers and Article 28 of the constitution of Japan gives the right to all workers to organize and to bargain collectively which means, of course, that they do have the right to strike and to carry on collective bargaining negotiations with their employer, but they do so by right of the constitutional provisions and not by any right which is given to them by the Trade Union Law or the Labor Relations Adjustment Law. Such organizations may be properly termed labor organizations but they are not trade unions and should not be referred to as such. Since they are not trade unions they should not be permitted to affiliate with trade unions because if they do, since their members are composed of persons who cannot be members of trade unions, their admission to a federation of trade unions would bring a prohibited class of workers into the federation and would automatically disqualify the federation as a trade union.

FINANCIAL SUPPORT OF THE EMPLOYER TO WORKERS' EDUCATION

It is not an unfair labor practice for an employer to pay the tuition of an employee to a labor school; likewise, it is not an unfair labor practice for him to pay the workers full-time wages while he attends such schools. Also, he may defray travel expenses, subsistence and housing expenses of such workers if he so desires. Article 7 of the Trade Union Law makes it an unfair labor practice for the employer to pay the operational expenses of a union but there is nothing to prevent him from paying the expenses and wages of his employees for schooling regardless of whether his employee is a member of a union or not. The payment of wages and defraying of necessary expenses for such purposes must be entirely voluntary upon the part of the employer and he cannot be forced to make such payment. An employer cannot pay full or part-time wages of a full-time union employee to attend school for the reason that even though such union official may be on leave status with the employer concerned, he is nevertheless the employee of the union and for whatever time a private employer pays his wages the union is relieved of its obligation, which is a part of their normal operational expense; this would, in effect, amount to a contribution to the operational expense of the union and is therefore not permitted.

Since the payment of the wages, for the purpose mentioned herein, is a payment to an individual and not to a union, the sponsor of the school attended by the worker is not a question to be concerned with.

PROOF NECESSARY FOR A UNION TO QUALIFY UNDER ARTICLE 5.

Article 5 provides that in order for a union to be eligible to participate in the procedures and remedies provided by the Trade Union Law it must be in compliance with both Articles 2 and Paragraph 2 of Article 5 and the question arises as to how such proof should be made.

An organization desiring to qualify as a trade union and secure the full benefits of the law need only apply to the Prefectural Labor Relations Committee, where it has its head office, or to the Central Labor Relations Committee. There is no formal method of presenting proof and the committee will instruct the representatives of the organization as to the proof which they will require the organization to present. Most likely a copy of the constitution of the organization will be requested together with proof that the organization is not receiving payment of operational expenses from an employer. Also, a roster of the membership may be required in order to determine that no prohibited class of workers is included in the membership list. It must be borne in mind that the committee does not have to accept the proof offered by the organization as final, but it may make its own investigation and undoubtedly will do so or it may request the Labor Policy Bureau to conduct a thorough investigation. Since there is no formal procedure necessary other than the request to the committee, little need be said on this point. The committee concerned will instruct the officers of the organization how to proceed when they appear before it.

STATUS OF AN ORGANIZATION NOT QUALIFIED AS A LABOR UNION AT THE TIME UNFAIR LABOR PRACTICES ARE COMMITTED.

The test as to whether a labor organization is qualified as a labor union is based upon the qualifications at the time it applies for assistance from a Labor Relations Committee. Unfair labor practices may be committed against the members of an organization of workers at a time when the organization is not qualified under the law as a trade union. However, if subsequent to the time the unfair labor practices were committed and before the time that application for relief is made to the Labor Relations Committee the organization has made the changes necessary to qualify it as a labor union entitled to the benefits of the law, it may file a complaint concerning the unfair labor practice which were committed before it was qualified.

TREATMENT OF WORKERS ORGANIZATIONS WHICH ARE NOT TRADE UNIONS.

Paragraph 2 of Article 1 of the Trade Union Law guarantees to unions which are qualified under the law the protection of Article 35 of the Criminal Code of Japan. This Article reads as follows:

> "Acts done in accordance with laws and ordinances or in pursuance of a legitimate business or (occupation) are not punishable."

The insertion of this provision of the Trade Union Law is to insure to labor organizations the protection afforded by that provision of the Criminal Code and this provision in the law does not apply to an organization of workers which has not qualified under Article 2 of the Law. This does not mean that an organization of workers could not have the protection of Article 35 of the Criminal Code of Japan, if, under the general law of Japan they could be said to be in the pursuance of a legitimate business or occupation. However, such organizations are not guaranteed this protection and if they have the protection, it springs from other sources and not the Trade Union Law.

A workers organization which is not a trade union does not have the power to negotiate with the employer or the employer's organization on behalf of its members as does a trade union qualified under the law, because Article 6 of the Trade Union Law applies only to trade unions which have qualified. However, such an organization by virtue of Article 28 of the Constitution of Japan would have the same privileges as the so-called "ranking officials' union" which has been previously discussed. It is true that Paragraph 2 of Article 7 of the Trade Union Law makes it an unfair labor practice for an employer to refuse to bargain collectively with representatives of his employees but that does not mean that an organization which is not a trade union can set itself up as the representative of the employees and even if they were to do so, it would have no method of enforcing its claim because it could not file a complaint before a Labor Relations Committee. However, if the officers of such an organization or a

group of its members were actually selected by the employees to represent them, the persons so selected would become the representatives of the employees entitled to the right of collective bargaining, but the only complaint which could be lodged against the failure of an employer to enter into collective bargaining would have to be on the part of an individual employee and the organization as such could take absolutely no part in the subsequent proceedings before the Labor Relations Committee.

An organization of workers which is not qualified as a trade union cannot complete a trade agreement as an organization on its own behalf because Article 14 of the Trade Union Law provides that a trade agreement may be made only between trade unions and the employer or the employer's organization, however, this does not mean that they could not conclude labor contracts. In order that this statement will be fully understood, it is necessary to explain that the Japanese do not use the term "trade agreement" and "labor contract" interchangeably as do English speaking people. To the Japanese a trade agreement is an agreement which is concluded between a union and the employer as a result of collective bargaining and a labor contract is an individual contract for hire. The outstanding difference to be understood at this time is to remember that Articles 16, 17 and 18 of the Trade Union Law fixes certain standards which are easily understood when the law is read. When a trade agreement is concluded between a qualified labor union and an employer these standards are automatically applicable to such trade agreements but if an organization which is not a qualified trade union enters into a labor contract the provisions of these articles cannot be applied to such contract.

Article 7 Paragraph 1 of the Trade Union Law specifically authorizes a union shop but that union shop is permitted only when the employer is negotiating a trade agreement with a qualified trade union. The law does not authorize the signing of an agreement providing for a union shop with an organization of workers which is not a qualified trade union. If an organization of workers which is not a qualified trade union signs such an agreement such organization will have to be prepared to test the validity of their contract under the application of the general laws of Japan because they have no authority under the Trade Union Law to negotiate any such contract.

INDIVIDUAL WORKER'S RIGHTS AS DISTINGUISHED FROM THOSE OF A TRADE UNION OR A WORKERS ORGANIZATION .

A trade union which is qualified under the Trade Union Law may file a complaint against any unfair labor practice which is set-out in Article 7 of the Trade Union Law and they may file this compliant in their own name. However, in order for a trade union to be qualified under the law to file such complaint, it must be qualified as a trade union both under Article 2 and Article 5 of the Trade Union Law and once a trade union is so qualified it has all the benefits of all the provisions of the law. A trade union which is qualified only under Paragraph 2 of the law receives certain benefits. It has the protection of Article 8 of the Law which does not permit an employer to sue the union for damages received through a strike or other acts of dispute which are proper. Also, it has the benefits of Article 10 which permits it to be dissolved only on the action of its members or by the happening of circumstances for dissolution which are set-out in its constitution. In addition, it may sign a trade agreement and has all the benefits of Chapter 3 of the Trade Union Law but it cannot participate in the procedures provided by the Trade Union Law and the Labor Relations Adjustment Law or the remedies provided therein. This simply means that such a union cannot file any complaint before the Labor Relations Committees or to engage in any procedures before a Labor Relations Committee.

An individual employee, whether he is a member of a trade union, an organization of workers, or whether he is not a member of any organization, has the right to complain of unfair labor practices which are set-out in Article 7, Paragraph 1 of the Trade Union Law. This is the Article which deals with discrimination against a worker because of his wishing to form,

join, or organize a labor organization of his own choosing. Also, if an individual worker is a member of a trade union which is qualified only under Paragraph 2 of the Law, he may file complaints against unfair labor practices which arise out of the contract which his trade union has with the employer but the trade union itself could not represent him and could not file the charges on his behalf.

In this connection, it is well to bear in mind that a trade union qualified only under Paragraph 7 of the law and an organization of workers not qualified in any respect of the law, cannot protect or represent its members before a Labor Relations Committee and the member must depend upon his own action in the matter.

The right of collective bargaining is a right which is given to the individual workers and not to organizations as such. Therefore, an employer must bargain with the representatives of his individual employees whether he is a member of an organization or not. The only organization which has the authority to enter into collective bargaining is a qualified trade union under both Article 2 and Article 5 of the Trade Union Law. This authority is specifically given to such a trade union by Article 6 of the Law and is not given to any other organization and no other organization has that right.

WELFARE FUNDS OF ORGANIZATIONS WHICH ARE NOT TRADE UNIONS.

We are not concerned with organizations which are not trade unions and there is little use to go into this question but since it is repeatedly inquired about, the answer is that the members of such an organization are not afforded the protection of the Trade Union Law and therefore any complaint which they may have with reference to the abuse of the funds of that type would have to be settled through the ordinary civil and criminal procedures outlined in the Japanese Law.

WORKER'S RIGHT TO PROTECTION FOR HAVING GIVEN TESTIMONY AT PROCEDURES FOR ADJUSTMENT OF LABOR DISPUTES.

Article 40 of the Labor Relations Adjustment Law provides in substance that no employer shall discharge or give discriminatory treatment to an employee for testimony he has given at proceedings for adjustment of labor disputes under the Law. This protection covers all workers, regardless of what type of organization. This provision protects the "ranking official" as well as the rank and file worker.