Ⅱ　日本側草案へのコメント

1．MEMORANDUM ―― SUBJECT: Japanese Draft Revision of Trade Union Laws

・第３次案に関するタイプ書きのメモ、末尾にジャクソンの名前あり（タイプ書き）。全 11 頁。
・スペリングのミスと思われる部分や、その他、注記が必要と思われる箇所については、点線による下線を付した。また、手書きによる訂正は【　】で示した。

史料出所：国立国会図書館 TUL file

19 Jan 49

MEMORANDUM
SUBJECT:　Japanese Draft Revisions of Trade Union Laws

The following changes have been drafted by the Japanese governmental committee of the existing trade union laws.

Article 1. The preamble language has been somewhat amplified.

Article 2. Paragraph 3, which attempts in some measure to define persons who may be considered to represent the interests of the employers and therefore ineligible for union membership. Paragraph 4 of Article 2 also attempts to define certain things which would be considered examples of illegal employer financial support of trade unions.

Article 6. Specifically provides that unless a trade union is registered, it cannot receive the rights and protection provided in the trade union's laws or participate in the procedures provided in those laws.

Article 7. Provides for certain basic provision which the constitution of a labor union must contain including rules concerning the authority method of election and the term of office of officials, accounts of the union, union dues, and fees, and auditting, etc.（注・正しくは "auditing" と思われる）Article 7 embodies in detail all of the recommendations made by the Labor Division regarding internal union organization, aiming at demoralization of trade unions.

Article 8. Provides that registration shall be refused unless the provisions of Article 7 are observed or that deregistration shall take place if the

constitution of the union is changed to countervene the provisions of Article 7.（注・正しくは "contravene" と思われる）Paragraph 3 of Article 8 permits an appeal from refusal of registration or deregistration, to the Central Labor Relations Committee.

Article 10. Provides for general resolution of the union by secret vote if the union intends to use special funds such as welfare funds, for other purposes.

Chapter 3 sets up a new series of provisions under the heading of unfair labor practices and under this chapter, employers are prohibited from doing certain things, including ~~duration~~【domination】or interference with a labor union. ~~Duration~~【Domination】or interference in a labor union, taking discriminatory action of any kind against employees refusing to bargain collectively, etc.

Paragraph 4 of Article 15 provides that an employer can refuse to bargain collectively if there are just causes. For such refusal, certain examples of it are given.

Article 16. Authorizes the Labor Relations Committees to investigate alleged violations of the law unfair labor practices and to order employers to cease and desist, to carry out corrective measures such as re-employing discharged workers or responding to collective bargaining.

Article 17. Provides for an appeal procedure to the CLRC from order issued by local committees under the above article.

Article 19. Authorizes labor relations committees to appeal to court for confirmation of order that have been issued to employers and the courts have the authority to enforce such orders.

Article 22. Establishes a procedure for determining appropriate collective bargaining unit. This article further provides that the unit representing the majority of the workers within a unit, may bargain for the entire unit.

Article 24. Provides that in determining the appropriate collective bargaining unit, the labor relations committees conducting the investigation, shall determine the unit on the basis of certain criteria which are set forth in subparagraphs 1-7, of the article. The provisions of the sub-paragraphs are apparently based on the American legal interpretations of Federal law. Paragraph 3 of the article permits the conduct of elections.

Article 25. Permits an appeal to the Central Labor Relations Committee of determining as to unit or union representing the majority. It also authorizes the CLRC to change determinations made in case there has been a change in circumstances.

Article 26. Authorizes the CLRC to establish regulations for the conduct of elections in determining unit and union.

Article 29. Paragraph 2 provides that a labor agreement shall not be effective against the wish of either of the parties after the termination date.

Article 30. Paragraph 2 provides that a labor and management shall establish

and utilize grievance machinery to handle interpretations or applications of labor agreements, and any agreement which does not have grievance machinery shall be violated.

Article 36. Reduces membership of the CLRC to 15.

Article 37. Provides that neutral members shall be appointed by the Prime Minister with the approval of the House of Representatives and the House of Councils. Paragraph 3 provides that no more than 3 neutral members shall be from the same political party.

Article 38. Provides a three year term for the neutral members.

Article 39. Permits the discharge of neutral members only by the Labor Cabinet at the request of the Labor Minister and after getting the approval of Representatives and Councils.

Article 40. Gives a salary to neutrals equivalent to that of a minister of state.

Article 43. Permits the Labor Ministry under certain circumstances to discharge labor or management upon approval of neutral members.

Article 44. Permits neutral members to elect the chairman of the CLRC.

Article 46. Paragraph 3, excludes employer and labor members from all matters except conciliation, mediation, arbitration, and other adjustments of labor relations.

Article 50. Authorizes the CLRC to request reports from local labor relations committees and to give instructions to such committees concerning the "management of the business." Paragraph 2 of the article permits the CLRC to order local committees to transact all or a part of the business of the CLRC or of another local committee.

Article 52. Provides for 9 members for each local committee. In certain cases, the number may be 15. No more than 2 of the neutral numbers may be appointed from the same political party.

Article 54. Permits the government to discharge neutral members under certain limited circumstances.

Chapter 7 sets up penalties required to enforce the act.

Certain articles of the labor relations adjustment law have been amended to conform with the suggestions made by the Labor Division relative to the handling of disputes involving public welfare industries. The amendments also permit the labor relations committee in cases where a mediation plan has been proposed concerning which there is agreement in the interpretation or application to intervene again and render a binding interpretation.

The amendments provide that parties may not be permitted to carry out acts of dispute involving interpretation of a mediation plan until the disagreement has again been submitted to the Labor Relations Committee involved for consideration.

The foregoing is a very brief description of the suggested changes made by the Japanese Government in conformity with our memorandum of November 24, 1948. The amendments substantially adopt the recommendations regarding labor disputes

in industries or businesses affecting the public welfare. It will be noted that the approval of the Diet must be obtained by the Prime Minister before designating public welfare industries. Article 37 of the labor disputes adjustment law has been completely revoked and a new article substituted embodying our ideas concerning the handling of disputes in public welfare industries. It will be noted that in restricting activities of management during the freeze period the employer is “disallowed to carry out such transactions as abolition and transfer of enterprise and other actions which will affect disadvantageously the economical position of the workers.”

The recommendation concerning the internal democratization of unions have been substantially adopted. The recommendations embodied in (l(e)) exempting contributions for political propaganda voted by a majority of the membership in conformity with the union constitution do not appear to have been accepted by the drafting committees. The draft also requires elections at least once a year.（注・"(l(e))" の部分、中のパーレンは手書き。また、"e" の文字は判然とせず、他の文字の可能性もある。内容的には、GHQ 第 1 回勧告原文のⅡ1a および同第 2 回勧告原文の別紙 (TAB A)に出てくる規定の b 項と思われる）

The recommendation authorizing union members to obtain legal redress for violations of union constitution does not appear to have adopted.

The specific definition or restriction of wild cat strikes has been drafted nor has there been a provision adopted which would define proper acts of dispute so as to remove the privileges and protections of the law from individuals engaging in wild cat strikes or improper acts of dispute.

The recommendation concerning the strengthening of labor relations committees have been largely adopted, however, the control of the CLRC over the local committee does not appear to have been clearly set forth to the degree deemed desirable.

Additional Recommendations Concerning Trade Union Law Revision.

Since the major recommendations relating to the revision of Japanese labor laws were discussed and finally embodied in a check note to General Marquat dated 24 November 1948, certain additional matters have been brought to the attention of the division which will require consideration and possible transmittal to the Japanese Government in the form of recommendations. It is believed desirable in the first instance to consolidate the two basic labor relations laws. This should be quite simple to achieve and will lead to general simplification in future administration and citation of the laws.

It is considered important in the light of existing difficulties to have in the law, some definition of “proper act of dispute” or at least a statement as to what is not a proper act, subject to the protection of the labor relations committees. Accordingly the following language is suggested as an insert in an appropriate place in the draft. “For

the purposes of this law, an act of dispute or a proper act of dispute shall exclude all actions which involve to a major degree or inherently, violations of the criminal code, such other laws protecting person and property rights."

In examining the draft submitted by the Japanese Government, certain criticisms may be made which will require consideration and probable re-drafting of various articles. It will be noted that sub-paragraph 1 of Article 2, proports to define persons representing management, who are ineligible for union membership.（注・正しくは "purports"と思われる）The drafted definition does not appear to be adequate. For instance it excludes "persons who are in secret business." The meaning of this is not clear. It is suggested that among others, all persons who in the interest of the employers having authority to hire, fire, transfer, reward or discipline employees, or to adjust their grievances should be excluded from union membership in addition to the principal officers and officials of the company, and heads of departments. Furthermore, Article 3 which defines workers who compose the membership of labor unions, should include the exceptions set forth in sub-paragraph 1 of Article 2. In other words, Article 3 should state that workers for the purpose of this Law, shall not include representatives of employers, etc.

Sub-paragraph of Article 2 dose not state explicitly enough, what forms of employer support are illegal. For instance it does not exclude the payment of transportation money to the union which is usually a very large item, payment for office rentals, office supplies, telephone and electric light, etc. Also the article permits employers contributions to welfare and benefit work of unions without restriction. Experience has shown that such funds are constantly used by labor unions in Japan for the payment of officials' salaries and other expenses as a method of either getting around the law or provisions in labor agreements. The article should provide perhaps, the law or provisions in labor agreements. The article should provide perhaps, that management may contribute to welfare and other funds jointly administered by labor management and that such funds may not be subverted to other purposes forbidden by law.

Present draft prohibits union from disciplining its members for participating in political movements or activities in view of the difficulties created in the labor movement in America by communist activities which may be desirable to consider re-drafting this provision so as to permit disciplining of members who in the course of political activities take action which is detrimental to the economical interests of the membership or the labor union. Article 7, paragraph 2, sub-paragraph 11, permits the calling of strikes, etc. , after a vote by officials of the union, who have been elected by the union membership. This weakens the previous【recommended】restriction against disputes action which may not be taken without prior authorization through a secret vote of all union members. In other word, it permits the president or other officials of the union elected by the membership to call a strike at any time without submitting the matter to the membership.

Article 8, paragraph 12, of the draft, authorizes the administrative authority to de-register a union if its constitution is changed after registration so as to countervene the law. The provision, however, does not state on whose initiative de-registration proceedings shall take place. It may be advisable to require initiation of such action either by union members or labor relation committees.（注・" paragraph 12"という部分は、第 3 次案の内容に照らし、" paragraph 2" が正しいと思われる）

Sub-paragraph 3 of Article 8, permits appeal to the CLRC in cases of refusal of registration or in re-registration cases. It is questionable whether appeals should be made in such instances to the CLRC rather than to a court of law.

Article 15, paragraph 1, permits in broad language, management to pay wages to union officials engaged during working hours in negotiation concerning working conditions. The paragraph should be re-drafted to make clear that grievances are meant, namely the interpretation and application of existing contracts.

The present draft appears to exclude the CLRC from initially handling cases which require corrective orders to be issued such as in cases of discriminatory discharge. The CLRC it is true, has the appeal authority in such cases, a matter which itself is questionable. It is believed that the CLRC should handle such cases initially where they step across prefectural boundaries and other instances of national import.

The further question may be considered as to whether appeals in such cases ought to be brought to the courts.

In Article 19, the draft provides that all orders issued by committees shall be submitted to court and confirmation that the order is legal. Apparently the courts are given the authority to review the orders and other circumstances including evidence although the court is restricted by the draft in that it must accept findings of fact “in so far as they are not remarkably unreasonable.” The question is raised whether uncontested orders need be submitted to a court for confirmation.

With respect to Article 20, it is suggested that language be added to define the meaning of bargaining in good faith which should be deemed to consist of availability for discussion of collective bargaining at all reasonable times, under reasonable conditions and presentation of authors and counter-authors by such obligation should not compel either party to agree to a proposal or require the making of a concession.

The provisions of Article 22 and those following which set up machinery and establish circumstances under which collective bargaining unit and majority union are determined, are considered far too complex and involved under present labor relations situation in Japan. Apparently American law has been copied in this instance but the conditions wish prevail in the states and the historical facts in the field of labor which require such complex detailed legislation, do not exist in Japan. It is submitted that the legislation should provide in simple language that the committees which have the right to conduct elections, to determine the union which represents the majority of workers. That such elections should be conducted on a plant by plant basis. It is

doubtful whether in our opinion the question of appropriate unit should be carried into Japanese law. As an example of the confusion which already exists, the drafters of the legislation appear to have provided for the determination of appropriate unit within a group of associated industries. A situation which does not exist under our own legislation. If an employers association is authorized to carry out collective bargaining on a national level, for many companies the majority union should be determined nevertheless on a plant basis. Paragraph 3 of Article 22 incorporates a provision of the Taft-Hartley Law, the value of which is dubious.

Article 29 retains the 3 year limitation on labor agreements. Under present conditions, it is considered that this period is too lengthy.

Article 29, paragraph 2, prohibits extension of an agreement after the termination date. Additional language should be added to provide for a maximum extension of the agreement to permit collective bargaining and arrival at a new contract.

Article 30 provides that the parties which mutually assume the obligation to apply a labor agreement. Additional language should be added to the effect that written labor contracts shall be enforceable by law and in labor relations committees.

Article 32 should be changed to provide that remaining workers in a plant shall be bound by a labor contract negotiated by a majority of the workers.

Article 37 provides for the appointment of neutral members of the CLRC by the Prime Minister with the approval of Representatives and Councils. It is considered that this provision placing neutral members on a plane with ministers of state is undesirable.

Article 38 makes the term of office for neutral members 3 year. Some question is raised as to the desirability of this.

Article 39 relating to discharge of neutral members again treats them as ministers of state concerning which see remarks above.

Article 41 fails to incorporate present provisions enabling the appointment of labor and management representatives to committees in cases where recommendations have not been received from labor and management organizations. This authority should be included in the law.

Article 43 requires the approval of the neutral members of the CLRC before the labor Ministry may discharge other members. The validity of this position is questioned.

Article 46, paragraph 2, provides that the decisions of the CLRC shall be made by a majority or more, of the members present. In cases where only neutral members can act, such provision is all right but in cases where all three groups of members are authorized to make decisions, it is necessary for the law to make certain that the committee hearings the case is composed of an equal number of members from each group.

The law establishes prefectural labor relations committees. At this point, it is desirable to discuss the question of substituting a regional labor relations committee instead therefore. If this suggestion is approved, a certain amount of re-drafting will have to be done. The reasons for this suggestion will be presented orally.

Paul D. Jackson

2. MEMORANDUM -- SUBJECT: Conference Report on Japanese Draft Revision of Trade Union Law

・第３次案に関するタイプ書きのメモ、末尾にジャクソンの名前あり（タイプ書き）。全６頁。
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史料出所：国立国会図書館 TUL file

23 Jan 49

MEMORANDUM

SUBJECT: Conference Report on Japanese Draft Revisions of Trade Union

Article 1. It was agreed that the language in this article would be polished and sharpened up and that its application as a preamble would be made more certain.

Article 2. The Japanese language defining persons representing management was considered not specific enough. Furthermore, the question arises whether it is desirable to esclude from benefits of the trade union laws certain types of employees who might be excluded from a general industrial union because of conflict of interest e.g.foremen.（注・正しくは "exclude"と思われる）The following language is suggested as an alternative:

> Persons excluded from union membership as representative of management`s interests, shall include officers and high company officials, members of board of directors, supervisory employees having direct authority to hire, fire, promote, transfer or otherwise discipline, and supervisory employees having access to confidential information concerning company's internal policies or secrets and policies relating to labor relations and such other employees whose duties and obligations might directly conflict with their loyalty and obligations to a trade union

representing the general employees of the company; nothing in this act, however, shall be construed to prohibit persons excluded from union membership by the above provision, from forming organization of their own to bargain collectively with management.

The language of item 2 of Article 2, eliminating employer contributions to unions, is also considered not sufficiently explicit. It is necessary to add language excluding all contributions to unions other than the supplying of office space and a minimum amount of office supplies and contributions to welfare and similar funds, the use of which shall be restricted to the purposes originally intended for sch such things.（注・"sch" は "such" のミスタイプの消し忘れか) It is strongly urged that following Article 3, a new article shall be added to this effect:

"The term act of dispute shall exclude all actions taken in the course of a labor dispute which are in violation of the criminal code or other laws protecting person and property rights and such actions may be subject to employer disciplinary measures without recourse to the labor relations committees except, however, say employee so affected may seek legal redress in the courts in case of wrongful discharge or other disciplinary measures taken by management."

Article 6. The words "and participate in the procedures provided in the same laws, " shall be deleted.

Article 7. Paragraph 2, Item 2, shall be expanded to provide that union members may obtain legal redress if union officials violate the union constitution provided such members have exhausted all mediums of appeal or remedy within the union.

Item 4 of the same article shall be expanded to provide that "nothing in this law shall prohibit a union from taking such disciplinary action against members in cases where such members have acted directly against the interests of the membership or the union while participating in political activities.

Item7 of the same article shall be expanded to include members of committees and other persons authorized to act for or, on behalf of the union.

It is considered desirable to include in the law, the paragraph specifying that membership shall not be denied any person because of nationality, race, creed, color or class of origin.

Article 8. Paragraph 2 requires clarification to provide for the initiation of ds-registration proceedings by union members or labor relations committees.

Article 11. Strike Item 2.

Article 15. Paragraph 1 may require clarification to confine payment of wages to workers handling grievances and to limit the daily hours of such union activities.

Paragraph 4 of the same article shall be amended to provide for collective bargaining in good faith which shall be defined to consist of availability for discussion

of collective bargaining at all reasonable times, under reasonable conditions and the presentation of officers and counter –officers by such obligation, shall not compel either party to agree to a proposal or require the making of a concession. The language used in the draft at present, requires considerable deletion.

At this point the Japanese should be questioned as to why the CLRC was excluded from the initial handling of quasi-judicial cases and why it was set up only as an appeal body for such cases. It is suggested that that the law be amended to provide for the handling of cases of national import by the CIRC.

Article 19. The requirement of court confirmation of uncontested committee order, should be deleted.

Article 20. This article reiterates the requirement of collective bargaining in good faith but where the union is also asked to so bargain and failure to do so is not made an unfair labor practice on its part, this inconsistency might be corrected.

Article 22. It was determined that this and the following articles setting up procedure for the determination of proper unit, was much too complex. While no definite conclusions were reached, I would prefer to see such determinations restricted to a plant by plant determination, and that various criteria for determining proper unit be deleted or out down. I think some effort might be made to authorize separate units of white collar workers, professional or quasi-professional employees, and employees doing guard duty, etc.

Article 29. This should be amended to provide that all agreements shall have a termination date and that no agreement may be extended without the mutual consent of both parties.

Article 30. It is suggested that language be added provide that labor agreements shall be legally binding and enforceable in court.

Paragraph 2 and 3 of Article 30 shall be deleted.

The meaning of Article 31 is not clear and should be discussed with the government.

Article 32 should be deleted.

Article 33 should be delated.

Article 34. Should be expanded to permit the appointment of special labor committees by the government for any particular purpose desired.

Furthermore, the question of substituting regional committees for prefectural committees shall be discussed with the government drafting committee.

Article 36. Paragraph 2 on members of the committees shall be excluded entirely from the national public service law if upon examination of such law, that result is considered advisable.

Article 37. Should be changed to permit the Labor Minister to make appointments to the CLRG.

Article 38. Should be revised to provide one-year term of office for neutral

members and all members may be re-appointed.

Article 39. Should be revised to give the Labor Minister exclusive jurisdiction over the CLRG.

Article 40. Shall be revised to provide for the payment of per diem and travel expenses.

Article 41. Shall be revised to provide for the appointment of committee members by the Labor Minister in case there are no recommendations received or in case of failure of agreement

Article 44. Shall be revised to provide for the election of a chairman by all members.

Article 45. Requires more information regarding the present secretariat and its functions and those of the Labor Policy Bureau of the Ministry. Duplication of functions should be prevented and the secretariat of the committee shall be kept to a minimum.

Article 46. Paragraph 2 shall be revised to provide that in case of action or decision by the three sides of the committee, an equal number from each side shall participate.

Paragraph 4 of Article 46 shall provide that all proceedings in conciliation, mediation, and arbitration, shall be held in private.

Article 48. The strengthening of the authority of the CLRC over the local committees as recommended by GHQ, has not been sufficiently carried out by this paragraph. Further discussion and delated legislation setting forth the authority, must be added. (See also Article 50)

The penalties set forth in Chapter 7, must be checked and compared with present penalties and discussed with Dr. Oppler's office. Furthermore, it is advisable to make certain that all mandatory requirements of the law, carry the proper penalties or consequences.

Paul D. Jackson