Ⅰ　ＧＨＱ勧告の原文

1. AMENDMENT OF JAPANESE LABOR LEGISLATION（第１回勧告）

・第１回勧告の元となった英文。タイプ書きで全 17 頁。
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・不鮮明や欠落による判読不能部分は、〈?〉という形で示した。

史料出所：労働組合法立法史料簿冊⑦

AMENDMENT OF JAPANESE LABOR LEGISLATION

Ⅰ. Basic problem

It is a misconception to assume that the basic labor relations laws which have been passed by the Diet since the Occupation began were designed to do more than lay the foundations for a labor policy. These laws and the governmental agencies established for their administration cannot in themselves guarantee happy labor relations and industrial peace. They merely provide a blueprint designed to safeguard the workers' right of organization, to encourage the fixing of wages, hours, and other working conditions by collective bargaining, to insure minimum standards of economic well being, and to prevent the exploitation of labor, with no more direct interference in the economic process than is customary in the United States is absolutely necessary in the light of the grave problems posed by the Japanese economy.

However, since the Japanese Government was permitted the widest latitude in synthesizing labor legislation to implement basic policy laid down by the United States and the Far Eastern Commission, it could not be expected that model legislation would result. The defects which inevitably appeared, as well as the new legislative requirements that seem warranted in the light of current conditions, are the subject of the suggested amendments which follow.

Ⅱ. Proposed Amendments to the Trade Union Law (21 December 1945) and the Labor Relations Adjustment Act (27 December 1946).

(Note: The main scheme of these two laws is to provide for self-Organizational freedom, orderly collective bargaining, and the peaceful adjustment of labor

management disputes. Collective bargaining is the process by which union members, through their representatives market and help manage the labor skills and energies that employers need to buy. The amount of money to be paid for work, the number of hours it is going to take, the conditions under which it is to be performed, all make up the bargain, when ― like any other ― is usually a compromise between what the union com[m]ands and what the employer is able or willing to grant. At best, to apply collective bargaining competently, to use it even reasonably well, requires hand work for both management and union alike. This is not a difficulty peculiar to collective bargaining ― it is inherent in the free play of forces which characterize the free enterprise system.)

1. The Trade Union Law

a. Democracy in trade union. No bargain can be successful unless the parties to it adequately represent those for whom they act. In collective bargaining, where the bargaining agents speak ― at least on the labor side ― for thousands, authentic representation is absolutely initial. Further, democracy is needed in trade unions because there is room for great differences of opinion among the members in the objectives of unions, in their policies, and in the ways in which they should conduct their affairs. This principle is all the more applicable in present day Japan because of current ideological conflicts. There are, however, severe limitations on the extent to which the desired goal may be achieved by legislative fiat because of the obvious dangers in opening internal union affairs to government supervision and control. It is recommended, as a safe expedient, that the Trade Union Law be amended to require that union constitutions assure union members that their leaders will hold office as a result of fair and regular elections; that they will account to the membership for the expenditure of union funds; that honest opposition to union leadership shall be tolerated without penalty; that there will be no discrimination between members on account of their attitude to the leadership or any other legitimate activities and that no discrimination be permitted to exclude persons from membership in unions. In implementation of the foregoing, the Law should require union constitutions to embody substantially the following provisions;

This organization shall not.

(a) fine, suspend, expel, penalize, or otherwise discipline any person or local without reasonable cause or without a fair hearing, before a special council composed of other than those who brought the charges;

(b) fine, suspend, expel, penalize or otherwise discipline any person or local for participation or refusal to participate in any political campaign or political activity, or proposal except such proposals as may affect the economic activities of labor organizations;

(c) discriminate unfairly against any member in the procurement of employment or

with respect to seniority rights;
(d) fail to hold four general membership meetings each year and elections of its officers or elective personnel at least once every year;
(e) fail to conduct elections by secret ballot free from intimidation.
(f) unreasonably interfere with nominations or elections or with the campaigns incident to such nominations or elections; subject any member to any unreasonable rules or handicaps or to any action not imposed equally on all members in connection with any participation in the internal affairs of the labor organization, including but not limited to the right to vote and the right to the floor at labor organization meetings or the right of any member to express himself freely concerning the officers and affairs of the organization;
(g) require excessive initiation fees or refuse to accept any members at any time without just cause;
(h) fail, suspend, expel, penalize or otherwise discipline any person or local for opposition to any of the foregoing forbidden union practices;
(i) refuse to make periodically available to its membership and to the public an accurate and comprehensive financial report based upon an audit made by an outside expert;
(j) fail to publicize the decisions of its president, executive board, and other official groups in the union publication or otherwise.

b. Insuring Genuine Collective Bargaining. The protection of free and uncoerced self-organization of employees can have real meaning for successful industrial relations only when the ultimate goal is viewed as the stabilization of working conditions with employers arrived at the genuine collective bargaining. The experience of the industrial democracies elsewhere has shown that the procedure of collective bargaining requires not only that the employer meet and negotiate with the representatives of his employees, but more important still that he bargain with them in good faith in an honest attempt to reach an understanding on employment terms: and that if such an understanding is reached, it be reduced to writing in a collective agreement or contract. The Trade Union Law falls short of this objective since it specifies merely that union representatives shall have the “power” to negotiate with their employer (Article 10).

It should be pointed out that the requirement that an employer bargain in good faith is not satisfied if he simply meets with the employee representatives and goes through the motions of passively listening to their proposals without any intention to do more. He should, if he rejects them, be prepared to make counterproposals or otherwise indicate a serious intent — and the union representatives as well — to adjust differences and reach an acceptable agreement. This is not to say, however, that an employer would be obligated by law to grant any particular, or indeed any, demands advanced by his employees. The decision as to

whether there was in fact good faith bargaining in a given case may properly be left to the labor Relations Committee.

The Trade Union Law should, therefore, make it illegal for employer and employers（注・"employees" の誤りか）“to refuse to bargain, collectively in good faith with each other.

c. Majority rule principle. Under the present Law the employer is, apparently permitted to negotiate and bargain, separately with each and every group of his employees that wishes to form a union and select representatives for this purpose (Article 10). The only limitation upon the application of this provision is the stipulation that when three-fourths or more of the workers come under the application of a trade agreement, the remainder shall be bound by it (Article 23). Majority rule, rather than proportional or individual representation is of prime importance in the orderly and successful conduct of the bargaining process. This principle has been a feature of modern federal labor legislation enacted in the United States and is almost unanimously endorsed by the foremost experts in the labor field.

This concept simply requires that when a majority of the employees have chosen a particular union to represent them, the employer foregoes his former privilege of dealing directly with any individual employer or group of employees with respect to the basic conditions of employment. Otherwise, the employer is perfectly free to undercut the authority of a union which has gained the adherence of over half the employees and undermine whatever prestige and support it may have attained by the expedient of bargaining and making employment contracts with individuals of minority groups. Such contracts could by design contain more advantageous terms than those secured by the majority union. Thus an employer, if he so wished, could keep the employees divided into rival groups indefinitely. By analogy to the political process, majority rule permits the employee of an enterprise to elect, if they choose, by majority vote a union to represent them in making decisions governing working conditions and to shape the policies of the union by the influence of their membership in this form of industrial self-government.

The following proposed article would implement the principle here advocated. “Representative selected for the purposes of collective bargaining by the majority of the employees in an appropriate bargaining unit shall be the exclusive representatives of all the employees in such unit for the purpose of collective bargaining with respect to conditions of employment; Provided, that when an exclusive bargaining agent has not yet been selected, representatives designated by less than a majority of the employees shall bargain collectively for the employees whom they represent and provided further, that any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

It follows, of course, that the requirement recommended above that an employer bargain collectively in good faith would be conditioned upon the foregoing

provision. It is realized that there may arise conflicting claims on the part of rival unions as to majority representation but these are readily resolved by balloting or other procedure that could be carried on under the auspices of the Labor Relations Committee, which also have the task of determining the appropriate bargaining unit within a large plant － as, for example, a craft unit or a plantwide unit.

Suggested legislative provisions for impartial determination of majority representatives are as follows; "A union designed by a majority of employees in the appropriate unit shall be the exclusive bargaining representative of all employees in the unit. In the event of rival claim to exclusive representation rights, the neutral members of the Central Relations Committee shall determine;

(a) Which unit of employees is most appropriate for collective bargaining purposes; and

(b) Which union is the majority representative of the employees within the designated unit.

In arriving at the determination required by (a) above the neutral members of the Central Labor Relations Committee shall be guided by the basic consideration that the grouping of employees which constitutes a unit appropriate for organization and collective bargaining purposes is generally grounded in a community of interest in their occupations, and more particularly in their qualifications, experience, duties, wages, hours and other working conditions. In resolving the question, the neutral members of the Central Labor Relations Committee shall give due consideration to each of the following facts.

(1) Desire of Employees: What membership showing or demonstration of support is made by each contending union or group within the fringe or disputed categories. If an attempt is made to break away a segment of an established unit, whether the enployees concerned acquiesced or participated in representation in the existing unit. Whether such employees constitute a homogenous, identifiable group.

(2) Mutual Interest: what nature of work is done by the employees working in the classifications in question. Whether wages and working conditions are uniform. Whether the employees in disputed classifications are possessed of special skills. Whether there is functional coherence and interdependence between the disputed classifications of employees. Whether the employees work in close proximity to each other.

(3) History of labor relations: In arriving at the determination required by b above, the neutral members of the Central Labor Relations commitee may, when they deem that unusual circumstances warrant, order and conduct employee elections by secret ballot to ascertain wishes of the majority the employees. The neutral members of the Central Labor Relations Committee shall prescribe administrative rules for the conduct of such elections with

respect to such matters as the designation of eligible voters, the posting of appropriate advance notices regarding the date of the election, the selection of appropriate polling premises, the posting of election observers, and the guarantee of speedy, accurate and honest tally of ballots.

d. Employer domination of trade unions ("company unions"). Company-dominated unions are considered obnoxious because they are not formed for the purpose of collective bargaining but rather to avoid the necessity of collective bargaining. An employer usually does not find it necessary to bargain collectively with a company-dominated union unless it serves his purpose to do so. Such union serve as a convenient puppet responsive to the will of the employer, defeating the legitimate and independent organizational efforts of the employees.

The provisions in the Law dealing with employer-dominated unions are not adequate on their face to cope with all of the various techniques which may be utilized to create or foster a union which will remain under the thumb of the employer. It is now permissible for an employer to render some financial aid to a union of his employees provided that he does not defray the "major" share of the organization's expenses. (Article 2) Substantial financial contributions by the employer whether or not they amount to "major" support should be prohibited since employer domination can demonstrably be bought even at this lesser cost. Further, the annals of company-unionism in other countries are replete with devices other than those specifically banned by the Law which have helped bring company-dominated unions into existence. In some cases an employer has suggested to certain picked employees, whom he can trust to carry out his ideas, the desirability of establishing a certain type of labor organization; has given advice as to the form such organization should take; has assisted in the preparation of by-laws and constitution: and has otherwise aided in setting up the organization. In other cases, an employer or his close representatives have attacked one form of organization and encouraged employees to join another: have permitted one organization to solicit members and carry on their activities in the plant during working hours while denying such rights to another organization: and have instructed employees to attend meeting of a favored organization, or have ordered cessation of operations in order to permit employees to attend such meetings.

In order to adequately cope with the problem, it is recommended that it be made illegal for an employer to "dominate or interfere with the formation or administration of any labor organization or contribute substantial [f]inancial or other support to it other than welfare or recreational schools.

Summarizing in legislative forms the discussion thus far; it might be well for the Law to contain a compact summary of the rights accorded employees. The following is suggested;

1. preamble. It is hereby declared to be the purpose of the present Act to minimize industrial unrest by encouraging practices fundamental to the

friendly resolution of industrial disputes; to elevate the status of workers by promoting an equality of bargaining power as between employers and employee; to protect the exercise by workers of full freedom of association, self-organization, and the designation of real[l]y elected representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection; and to encourage the practice and procedure of collective bargaining.

2. Article : Rights of employees

1. Employees shall have the right to self-organization, to form, join, or assist labor organizations, and to bargain collectively through real[l]y elected representatives of their own choosing.

2. It shall be illegal for an employer to interfere with, restrain, or coerce employees in their exercise of the rights guaranteed in paragraph 1. It shall further be illegal for an employer:

(a) To dominate or interfere with the formation or administration of any labor organization or contribute substantial financial or other support to it.

(b) To discharge an employee or discriminate against him in regard to hire or tenure of employment or any term or condition of employment for the purpose of encouraging or discouraging membership in any labor organization. Further, no employer shall as a condition of employment require that a worker refrain or withdraw from membership in a trade union.

(c) To refuse to bargain collectively in good faith with the representatives of his employees subject to the other provisions of this Act relating to representatives selected for collective bargaining."

e. Indefinite extension of labor contracts. Many labor contracts currently in force in Japan provide for an indefinite extension if either labor or management refuses to agree to cancellation. Thus a contract which has proven outmoded or bad in actual application may be kept alive through the veto power of the favored party. The Trade Union Law by amendment to Article 20 should provide that : "A contract may not be extend beyond the term stipulated therein without the consent of both contracting parties."

f. Grievance machinery. The negotiation of a collective bargaining agreement by means of conferences around the table is merely prologue. To interpret and enforce that agreement in the plant are tasks less dramatic, but far more important. It is the day-by-day adjustments of grievances that put collective bargaining to the test, but there are few legal precedents for policing a collective agreement. Its success or failure depends upon the mutual trust, good will, and intelligence with which management and union can surround a controversial point. It is recommended that the following suggested paragraph be added to Article 21 of the Law: "During the term of a trade agreement, the contracting parties shall mutually assume the obligation to utilize

grievance machinery to resolve disputes arising from conflicting interpretations of the trade agreement.

g. The problem of "wildcat" strikes is one that cannot be ignored. The protective features of the Law should be denied participants in such strikes. The following article is suggested : "It shall not be considered a proper act of dispute within the meaning of this Law for any individual or group of individuals who are members of a union to engage in strikes, slow-downs, or other acts hampering the normal course of work of an enterprise, if such action has not been sanctioned by their trade union in accordance with the organizations' constitution or other established procedure."

h. Enforcement procedures and sanctions. The Law provides only the following penalties and procedures to buttress its substantive provisions for the protection of employees:

(a)Imprisonment not exceeding six months or fine not exceeding 500 yen is specified for violation of Article Ⅱ, which prohibits employers from discharging or discriminating against workers because of their union affiliation or from making non-affiliation a condition of employment

(b) Under Article 32 when conditions of labor or the treatment of workers are "especially inappropriate" the Labor Relation Committee may investigate and formulate corrective proposals with which the employer may be ordered to comply if the prefectural governor "deems it necessary" (Article 45 of the Enforcement Ordinance). In this event the employer is required to apprise the employees of the order so issued under penalty of fine (Article 37 of the Law).

The Law is singularly lacking in any affective mechanism for implementing and enforcing the right of self-organization and collective bargaining. Apart from the delays inevitable in referring cases to the public procurators for prosecution, the protection of freedom of association and other trade union rights guaranteed by law cannot be achieved by the imposition of criminal sanctions.

While this may act as a general deterrent to future violations, it does not provide redress to the employees or the trade union which has been frustrated and suffered injury, nor does it furnish the necessary assurance that workers may again freely engage in union activities without fear of again suffering disadvantageous consequences. The employer should be directed to take affirmative steps, of the kind outlined below, in order to reestablish in the particular enterprise involved a situation in harmony with the basic purposes of the Law.

It is recommended, therefore, that the Law place in the hands of the Labor Relations Committees certain tools to accomplish these ends with the realization, however, that their action must be further patterned to suit the needs of each individual case. In all cases where the Labor Relations Committee has decided that an employer has violated the Law, it should be empowered to issue an order directing him to cease and desist immediately from his course of illegal conduct. The Labor Relations

Committee should be further empowered to order the employer to take certain necessary action designed to restore the situation that calls for redress;

(1) Where an employer has discharged a worker because of legitimate union activity, it is wholly logical and just to order that the employee be returned to his former position and that he be paid the wages he would have earned during the time he was involuntarily unemployed; i.e., from the time of the illegal discharge until reinstatement. Otherwise, any employer can without serious liability, even if a fine is imposed, permanently rid himself of those employees most vital to the union in his plant; he can exercise his power of discharge so as to cripple the union by removing its leaders.

(2) Where an employer has fostered a company-union, he should be ordered to liquidate all of the effects of his dealings with that union, including the abrogation of any trade agreement made with the dominated organization and to abstain from any future dealings with it. The Labor Relations Committee should further disfranchise the organization for all time as a trade union, thus leaving the field clear for the legitimate organizational efforts of the employees.

(3) Where an employer has refused to negotiate with the representatives of a union or has, without any intention of concluding an agreement, merely gone through the sterile motions of bargaining he should be ordered to commence bargaining in good faith with the union representatives.

(4) In all cases where a violation of workers' rights has been found, the employer should be required to post written notices for the employees in the plant or enterprise stating that he will henceforth abstain from the violations and stating further what positive action he is taking to remove their effects. This personal reassurance from the employer is psychologically very important, especially in Japan, where workers have historically never known real freedom of trade union action and have been long conditioned by repressive measures.

(5) Finally, the order of the Labor Relations Committee should direct the offender to make a report within a specified time, or from time to time, showing the extent to which he has complied with the order.

In any revision of the Law along the lines suggested, appropriate procedural provision should be made for prompt enforcement of the orders of the Labor Relations Committees. Under the system established by the present Law and Enforcement Ordinance, the operation of some critical sections, such as those in Article 2 relating to company-dominated unions, depend upon a "resolution" of the Labor Relations Committee which is transmitted to the prefectural governor; he then renders a "decision" which is translated into action. It is recommended instead that the decisions and orders of the Labor Relations Committee should become final when issued, subject to judicial appeal. It is further recommended that, when necessary, the orders of the Labor Relations Committees be enforced and backed by the judicial powers of the

District Courts upon proof to that court that there has been non-compliance.

The following article is suggested: "If the Labor Relations Committee has determined that an employer has violated Article___of this Law, the Committee shall state its findings and shall cause to be served upon the employer an order requiring him to cease and desist from such practices, and to take such affirmative action including reinstatement of discharged employees with or without back pay, as will effectutate the policies of this Law. The employer shall comply with the order within fifteen days or file a petition in the District Court challenging the legality of the order. The District Court shall gave presumptive weight to the fact findings of the Labor Relations Committee and shall otherwise determine according to applicable legal standards whether the order is in conformity with the Law and Ordinnaces. If the order of the Labor Relations Committee is sustained by the court, further non-compliance by the employer shall subject him to one-year of penal servitude, or a fine of ¥100,000, or both."

1. Realignment of the functions of the Central Labor Relations Committee. Experience has shown the inability of the prefectural Labor Relations Committee, which are tripartite in their make-up (labor, employer, and public members), to properly discharge the role accorded them by the Law and Enforcement Ordinance. Disruption because of an employer － employee split or because of differences in political ideology has been the order of the day. To overcome these weaknesses and to make possible uniformity of decision for all of Japan as well as a consistent line of precedent stemming from the decided cases, it is proposed to vest permanent authority in the Central Labor Relations Committee and < ? > only the neutral or public members of the Central Labor Relations Committee < ? > it upon cases such as those arising under Article 11, involving quasi-judicial determinations and cases involving compulsory mediation or arbitration under the Labor Relations Adjustment Act, which is discussed below. It is recommended that < ? > following article be added after Article 31 of the Law: "The Central Labor Relations Committee shall have paramount authority to deal with all matters which fall within the purview of the LRCS under the law and shall exercise continuing supervision over the functions of PLRC, and special LRC's including the promulgation of interpretative principles which shall be binding upon the PLRC's.

Labor Ministry shall fix by administrative regulations those matters over which the PLRC's may assume initial Jurisdiction. Despite the assumption of such initial jurisdiction the CLRC may nevertheless, within ten days of the final action or decision of the PLRC, place the matter upon its agenda and reverse, modify, or otherwise alter the action or decision of the PLRC.

Cases arising under Article 11 and Article 33 and new Articles of this Law shall be dealt with solely by the neutral members of the CLRC who shall be assisted by a staff of expert technicians in the discharge of this duty."

j. Elimination of Article 15. The Law should be amended to eliminate the power vested in the local Courts of Justice, acting upon the resolution of the local Labor Relations Committees, to order the dissolution of trade unions adjudged to have frequently violated "laws and ordinances" and disturbed "peace and order". These measures appear to represent an anachronism reminiscent of the mentality of the middle 30's in Japan when trade unions were suspiciously regarded as a threat to security. The civil and criminal laws <?> on the statute books and the latitude permitted the police in preserving public order during labor disputes and organized activity are all perfectly adequate for public protection, the punishment of offenders, and the discouragement of further breaches of the Law. Unless, and this is hardly conceivable, unions were to pose a mounting threat to peace and order which could be met <?> no other means, the provision in question is as untenable in its present legislative context as would be a similar measure directed against employers. There is no evidence to indicate that the law enforcement officers have been only lax in the application of the existing penal laws to employee offenders.

b. Amendment of Article 26. Experience has demonstrated the need for amending this Article in the following self-evident fashion: "If a proposal for settlement is accepted by both parties and thereafter disagreement arises over interpretation or implementation of the settlement, the case shall be referred back to the Mediation Committee for clarification during which period neither of the parties concerned shall resort to acts of dispute."

The functions of the Mediation Committee shall terminate upon duration of the date of acceptance or non-acceptance of its ward except that it may be reconvened as provided in the paragraph above."

c. Prevention or treatment of strikes in industries vital to the national economy, health, safety or general welfare. The problem of handling industry-wide labor disputes after conciliation and arbitration have failed has long plagued students of labor relations in every democratic country. Indeed, some believe that thus far no satisfactory solution has been found and that further expert study of the question is needed.

In some industries where the need for continuous service is more important than the freedom of employers and unions to fight each other through strikes and lockouts, the government should have adequate authority to protect the community against strikes or lockouts which would gravely imperil the public health, the public safety, or the general welfare. Two principal policies are possible. One is to give the government special emergency powers for dealing with such strikes or lockouts. The other is to give employees in certain essential industries a special status which gives them special privileges but imposes on them the obligation to refrain from striking. It is expected that the second alternative will be adopted by the forthcoming session of the diet in the railway industry and the government monopolies. But what about the

remaining industries designated as public welfare work in Article 8; and what of the coal industry? With respect to these, the following is considered a possible plan of action.

(a) Article 8 would be amended to include the coal industry as public welfare work. This Article would be further amended to provide that designation of other industries as public welfare work may be accomplished by a majority vote of the Central Labor Relations Committee rather than a majority of each group is the tripartite body as presently provided. The present provision would seem to give each faction a veto power.)

(b) If compulsory mediation, coupled with the thirty-day cooling off period provided for in Article 37 of the Law, failed to effect a settlement of the dispute, the government by Cabinet action would be required to assume management of the industry in question immediately following an overt act of dispute by either management or labor. The government would manage the industry until such time as a settlement was effected and a written contract between management and labor signed or for a maximum period of 120 days. During the 120-day period, acts of dispute would be prohibited.

(c) During the first 60 days of the period of government management, compulsory mediation would continue. At the end of this period an effort would be made to effect a contract between the government and workers.

(d) If a contract were consummated between government and workers, this contract would become binding upon the employer at the end of the 120-day period and continue a permit not to exceed _____months.

(e) If no settlement were effected during the 120-day period, <?> private owner and the dispute left for settlement between the employer and the union according to the normal operation of the Law.

It is claimed by its sponsors that the foregoing plan "would have the advantage of being a positive action for restraint of both labor and management in case of a labor dispute in a public welfare industry, and would provide an incentive to both parties to bargain in good faith and get back on the basis of private operation and unrestricted collective bargaining. It would not take the place of strengthening the existing machinery for conciliation or for voluntary mediation of disputes. It certainly would not take the place of long-term development of collective bargaining processes."

III. Conclusion.

1. The proposed amendments to Japanese labor law are designed to stabilize labor relations, improve labor administration and adjust certain inequities in the laws with respect to benefits granted to workers by these laws.

a. It should be recognized that the first objective, i.e., to stabilize labor

relations will not be attained solely through legislation. The proposed amendments will at best, postpone labor disputes in industries related to public welfare until every effort has been made by responsible governmental agencies to effect a peaceable solution. The proposals are not a panacea but in palliative.

b. Labor relations problems in Japan arise from three major causes, namely:

(1) The inexperience of both management and labor is collective bargaining negotiations as conducted in a free society.

(2) The traditional subservient attitude, illiteracy and general apathy of rank and file unionists which has resulted in domination by irresponsible leaders and minority political groupe.

(3) Finally, and most important, the extreme economic plight of the nation arising from devastation by war and the shortage of goods and services required to maintain minimum living standards for 80 million persons.

c. The causes listed in b (1) and (2) above will be largely met by education and experience. This is a long term process but specific program for their accomplishment have been vigorously carried forward by Labor Division, ESS, throughout the past three years. Much has been accomplished and more remains to be done.

2. The economic situation is being slowly but constantly improved by the efforts of the various divisions of ESS in cooperation with government, manage-<？> Jap <？> （注・欠落により、前後ほぼ 1 行にわたり判読不能） materials and higher production of goods and services <？> and export. This, too, is a long range program. As general condition improves, the income of commerce and industry should be enhanced to the point where employers are able to bargain with their employees and to pay a living wage without the necessity of government loans and subsidies. At the same time, as goods and services become more plentiful, prices will be stabilized and the workers' real wages increased. These improved conditions will go far toward improving the labor relations picture in Japan.

3. It is not probable that labor will willingly accept the proposed amendments to labor laws, at this time. Some of the provisions may also be opposed by management groups. Certain elements in this government will hesitate to amend labor legislation at this time. Therefore, if it is believed that in that legislation is of sufficient importance as to require its amendment at an early date, it will be necessary for SCAP to make a strong representation to all groups concerned.

２．SUMMARY OF PROPOSED AMENDMENT TO LABOR LEGISLATION（第２回勧告）

・第２回勧告の元となった英文。タイプ書きで全 19 頁。
・下線、点線による下線、判読不能部分の表示については、前掲（Ｉ－１）と同様。

史料出所：労働組合法立法史料簿冊⑦

SUMMARY OF PROPOSED AMENDMENT TO LABOR LEGISLATION

(In the general order of importance)

Strengthening the Labor Relations Adjustment Law to provide for greater protection of the community against interruption of public welfare industries.

1. The Central Labor Relations Committee would be empowered by simple majority vote (rather than the present requirement of a majority of each group labor, management and public) to designate industries other than those specified in the law as public welfare industries.

2. If a settlement of a dispute in a public welfare industry were not effected by mediation during the 30-day "cooling（注・原文は colling）off period" now provided by law, the government would be required to assume management of the industry immediately following an act of dispute. The government would manage the industry until such time as a settlement was effected or for a maximum period of 120 days. Acts of dispute would be prohibited during the 120-day period.

Democracy in trade unions.

3. It is proposed that the Trade Union Law be amended to require that, before unions can be approved by governmental authorities, constitutions of unions must assure that union leaders will hold office as a result of fair and regular elections and that members will not be penalized for honest opposition to union leadership.

Bargaining in good faith.

4. Both labor and management would be required by law to bargain in good faith.

Majority determination of bargaining agent.

5. The Trade Union Law would be amended to provide that when a majority of the employees has chosen a particular union to represent them, the union would be recognized as exclusive bargaining agent and the employer would be required to bargain with this union. Appropriate bargaining units would be determined by the Central Labor Relations Committee, If necessary, by supervised elections.

Prevention of employer domination.

6. In order to more effectively prevent employer domination of unions, employers would be prohibited from providing substantial financial or other support to a union, or otherwise（注・原文は other wise）attempting to control or foster the development of a union.

Termination of contracts.

7. The Law would be amended to prevent the extension of a collective bargaining contract beyond its expiration date without the consent of both parties.

Grievance machinery.

8. The establishment of grievance machinery would be required in trade agreements.

"Wildcat" strikes.

9. Workers engaging in "wildcat" strikes would be denied the protection of the Trade Union Law.

Strengthening labor relations administration.

10. The Trade Union Law would be amended to enable the Labor Relations Committees to require appropriate corrective action by employers in case of violation of certain of the provisions of the Law.

11. The Central Labor Relations Committee would be given authority on the prefectural Labor Relations Committees, and only neutral or public members of the Committee would be permitted to sit upon cases involving quasi judicial determinations.

Improving Employment Security Administration.

12. The Employment Security Law would be amended to provide full administration by the Labor Ministry to make it consistent with the National Public Service Law and to provide more effective enforcement.

Unemployment Insurance Law amendments.

13. The Unemployment Insurance Law would be amended to cover construction and day labor, and to raise the level of benefits.

PROPOSED AMENDMENTS OF JAPANESE LABOR LEGISTLATION.

Ⅰ. Basic problems.

It is a misconception to assume that the basic labor relations laws which have been passed by the Diet since the Occupation began were designed to do more than lay the foundations for a labor policy. These laws and the governmental agencies established for their administration cannot in themselves guarantee happy labor relations and industrial peace. They merely provide a blueprint designed to safeguard the workers' right of organization, to encourage the fixing of wages, hours, and other working conditions by collective bargaining, to insure minimum standards of economic well being, and to prevent the exploitation of labor on the one hand and unfair competition on the other with no more direct interference in the economic process than is customary in the United States or is absolutely necessary in the light of the grave problems posed by the Japanese economy.

However, since the Japanese government was permitted the widest latitude in synthesizing labor legislation to implement basic policy laid down by the United States and the Far Eastern Commission, it could not be expected that model legislation would result. The defects

which inevitably appeared as well as the new legislative requirements that seem warranted in the light of current conditions, are the subject of the suggested amendments which follow.

Ⅱ. Proposed Amendments to the Trade Union Law (21 December 1945) and the Labor Relations Adjustment Act (27 December 1946).

(Note: The main scheme of these two laws is to provide for self-organizational freedom, orderly collective bargaining, and the peaceful adjustment labor management disputes. Collective bargaining is the process by which union members, through their representatives, market and help manage the labor skill and energies that employers need to buy. The amount of money to be paid for work, the number of hours it is going to take, the conditions under which it is to be performed, all make up the bargain, which, like any other, is usually a compromise between what the union demands and what the employer is able or willing to grant. At best, to apply collective bargaining competently, to use it even reasonably well, requires hard work for both management and union alike. This is not a difficulty peculiar to collective bargaining ― It is inherent in the free play for forces which characterize the free enterprise system.)

a. The Trade Union Law.

1. Democracy in trade unions. No bargain can be successful unless the parties to it adequately represent those for whom they act. In collective bargaining, where the bargaining agents speak ― at least on the labor side ― < ? > authentic representation is absolutely essential. Further, democracy is needed in trade unions because there is room for great differences of opinion among the members in the objective of unions, in their policies, and in the ways in which they should conduct their affairs. This principle is all the more applicable in present day Japan because of current ideological conflicts. There are, however, severe limitations on the extent to which the desired goal may be achieved by legislative fiat because of the obvious dangers in opening internal union affairs to government supervision and control.

It is recommended, as a safe expedient, that

(a) The Trade Union Law be amended to require that union constitutions assure union members that their leaders will hold office as a result of fair and regular elections;

(b) Leaders will account to the membership for the expenditure of union funds;

(c) Honest opposition to union leadership will be tolerated without penalty;

(d) There will be no discrimination between members on account of their attitude to the leadership or any other legitimate activities; and

(e) No discrimination will be permitted to exclude persons from membership in unions.

In implementation of the foregoing, the Law should require union constitutions to embody substantially the provisions in TAB A.

2. Insuring genuine collective bargaining. The protection of free and uncoerced self-organization of employees can have real meaning for successful industrial relations only when the ultimate goal is viewed as the stabilization of working conditions with employers arrived at through genuine collective bargaining. The experience of post-war Japan, as well as the experience

of the industrial democracies elsewhere, has shown that the procedure of collective bargaining requires not only that the employer meet and negotiate with the representative of his employees but, more important still, that he bargain with them in good faith in an honest attempt to reach an understanding on employment terms; and that, if such an understanding is reached, it be reduce to writing in a collective agreement or contract. The Trade Union Law falls short of this objective since it specifies merely that union representatives shall have the "power" to negotiate with their employer (Article 10).

The Trade Union Law should, therefore, make it illegal for employer and employees "to refuse to bargain, collectively, in good faith with each other."

3. Majority rule principle. Under the present Law, the employer is apparently permitted to negotiate and bargain separately with each and every group of his employees that wishes to form a union and select representatives for this purpose (Article 10). The only limitation upon the application of this provision is the stipulation that when three fourths or more of the workers come under the application of a trade agreement, the remainder shall be bound by it (Article 23). Majority rule, rather than proportional or individual representation, is of prime importance in the orderly and successful conduct of the bargaining process. This principle has been a feature of modern federal labor legislation enacted in the United States and is almost unanimously endorsed by the foremost experts in the labor field.

This concept simply requires that when a majority of the employees have chosen a particular union to represent them, the employer foregoes his former privilege of dealing directly with any individual employee or group of employees with respect to the basic conditions of employment. During the past two years in Japan, there has been a growing tendency for some employers to undercut the authority of a union which has gained the adherence of over half the employees and undermine whatever prestige and support it may have attained by the expedient of bargaining and making employment contracts with individuals or minority groups. Such contracts could, by design, contain more advantageous terms than those secured by the majority union. Thus an employer, if he so wished, could keep the employees divided into rival groups indefinitely.

The following proposed article would implement the principle advocated above: "Representatives selected for the purposes of collective bargaining by the majority of the employees in an appropriate bargaining unit shall be the exclusive representatives of all the employees in such unit for the purpose of collective bargaining with respect to conditions of employment: provided, that when an exclusive bargaining agent has not yet been selected, representatives designated by less than a majority of the employees shall bargain collectively for the employees whom they represent and, provided further, that any individual employee or a group of employees shall have the right at any time to present grievances to their employer."

It follows, of course, that the requirement recommended above, that an employer bargain collectively in good faith, would be conditioned upon the foregoing provision. It is realized that there may arise conflicting claims on the part of rival unions as to majority representation, but these are readily resolved by balloting or other procedure that could be carried on under the auspices of the Labor Relations Committee, which would also have the task of determining the appropriate

bargaining unit within a large plant, as for example, a craft unit or a plant-wide unit.

Suggested legislative provisions for impartial determination of majority representatives are as follows.

"A union designated by a majority of employees in the appropriate unit shall be the exclusive bargaining representative of all employees in the unit. In the event of rival claims to exclusive representation rights, the neutral members of the Central Relations Committee shall determine by supervised elections in special cases:

(a) Which unit of employees is most appropriate for collective bargaining purposes (see TAB B); and

(b) Which union is the majority representative of the employee within the designated unit."

4. Employer domination of trade unions ("company unions"). Company-dominated unions are considered obnoxious because they are not formed for the purpose of collective bargaining but rather to avoid the necessity of collective bargaining. An employer usually does not find it necessary to bargain collectively with a company-dominated union unless it serves his purpose to do so. Such unions serve as a convenient puppet responsive to the will of the employer, defeating the legitimate and independent organizational efforts of the employees.

The provisions in the Law dealing with employer-dominated unions are not adequate on their face to cope with all of the various techniques which have been utilized in Japan to create or foster unions which remain or may remain under the thumb of the employers. It is now permissible for an employer to render some financial aid to a union of his employees provided that he does not defray the "major" share of the organization expenses (Article 2) Substantial donations to unions by employers is the general <?> in Japan at present. Substantial financial contributions by the employer, whether or not they amount to "major" support, should be prohibited since employer domination can demonstrably be bought even at this lesser cost. <?>, the annals of company-unionism in other countries are replete with <?> other than those specifically banned by the Law which have helped bring company-dominated unions into existence. In some cases an employer <?> suggested to certain picked employees, whom he can trust to carry out <?> ideas, the desirability of establishing a certain type of labor organization; has given advice as to the form such organization should take; has <?> isted in the preparation of by-laws and constitution; and has otherwise <?> ided in setting up the organization. In other cases, an employer or his <?> ose representatives have attacked one form of organization and encouraged employees to join another; have permitted one organization to solicit members and carry on their activities in the plant during working hours while denying such rights to another organization; and have instructed employees to attend meetings of a favored organization, or have ordered cessation of op<?> <?> order to permit employees to attend such meetings.

In order to cope adequately with the problem, it is recommended that it be made illegal for an employer to "dominate or interfere with the formation or administration of any labor organization or contribute substantial financial or other support to it."

With respect to 1-4 above, the Law should provide a compact summary of the rights accorded employees. Suggestions are included in TAB C.

5. Indefinite extension of labor contracts. Many labor contracts currently in forces in Japan provide for an indefinite extension if either labor or management refuse to agree to cancellation. Thus a contract which has proven outmoded or bad in actual application may be kept alive through the <?> to power of the favored party.

The Trade Union Law, by amendment to Article 20, should provide that: "A contract may not be extended beyond the term stipulated therein without the consent of both contracting parties."

6. Grievance machinery. The negotiation of a collective bargaining agreement by means of conferences around the table is merely prologue. To interpret and enforce that agreement in the plant are tasks less dramatic but far more important. It is the day-by-day adjustment of grievances that put collective bargaining to the test, but there are few legal precedents for policing a collective agreement. Its success or failure demands upon the mutual trust, good will, and intelligence with which management and union can surround a controversial point.

It is recommended that the following suggested paragraph be added to Article 21 of the Law. "During the term of a trade agreement, the contracting parties shall mutually assume the obligation to utilize grievance machinery to resolve disputes arising from conflicting interpretations of the trade agreement."

7. "Wildcat" strikes. The problem of "Wildcat" strikes is one that cannot be ignored. There has been a growing number of such strikes in Japan in the past year. The protective features of the Law should be denied participants in such strikes.

The following strikes is suggested; "It shall not be considered a proper act of dispute within the meaning of this Law for any individual or group of individuals who are members of a union to engage in strikes, slowdowns or other acts hampering the normal course of work of an enterprise if such action has not been sanctioned by their trade union in accordance with the organization's constitution or other established procedures.

8. Enforcement procedures and sanctions. The Law provides only meager penalties and procedures to buttress its substantive provisions for the protection of employees. The Law is singularly lacking in any effective mechanism for implementing and enforcing the rights of self-organization and collective bargaining. Apart from the delays inevitable in referring cases to the public procurators for prosecution, the protection of freedom of association and other trade union rights guaranteed by law cannot be achieved by the imposition of criminal sanctions. While this may act as a

general deterrent to future violations, it does not provide redress to the employees or the trade union which has been frustrated and suffered injury, nor does it furnish the necessary assurance that workers may again freely engage in union activities without fear of again suffering disadvantageous consequences. The employer should be directed to take affirmative steps, of the kind outlined below, in order to reestablish in the particular enterprise involved a situation in harmony with the basic purposes of the Law.

It is recommended, therefore, that the Law place in the hands of the Labor Relations Committees certain tools to accomplish these ends with the realization, however, that their action must be further patterned to suit the needs of each individual case. In all cases where the Labor Relations Committee has decided that an employer has violated the Law, it should be empowered to issue an order directing him to cease and desist immediately from his course of illegal conduct. The Labor Relations Committee should be further empowered to order the employer to take certain necessary action designed to restore the situation that calls for redress.

In any revision of the Law along the lines suggested, appropriate protectoral provision should be made for prompt enforcement of the orders of the Labor Relations Committees. Under the system established by the present Law and Enforcement Ordinance, the operation of some critical sections, such as those in Article 2 relating to company dominated unions depend upon a "resolution" of the Labor Relations Committee which is transmitted to the prefectural governor; he then renders a "decision" which is translated into action.

It is recommended instead that the decisions and orders of the Labor Relations Committee should become final when issued, subject to judicial appeal.
It is further recommended that, when necessary, the orders of the Labor Relations Committees be enforced and backed by the judicial powers of the District courts upon proof to that court that there has been non-compliance.

For detailed suggestions on the above recommendations, see TAB D.

9. Re-alignment of the functions of the Central Labor Relations Committee.
Experience has shown the inability of the prefectural Labor Relations Committee, which are tripartite in their make-up (labor, employer and public members), to discharge properly the role accorded them by the Law and Enforcement Ordinance. Disruption because of an employer-employee split or because of differences in political ideology has been the order of the day.

To overcome these weakness and to make possible uniformity of decision for all of Japan as well as a consistent line of precedent stemning from the decided cases, it is proposed to vest paramount authority in the Central Labor Relations Committee and allow only the neutral or public members of the Central Labor Relations Committee to sit upon cases such as those arising under Article 11, involving quasi-judicial determinations and cases involving compulsory mediation or arbitration

under the Labor Relations Adjustment Act.

10. Elimination of Article 15. The Law should be amended to eliminate the power vested in the local Courts of Justice, acting upon the resolution of the local Labor Relations Committees, to order the dissolution of trade unions adjudged to have frequently violated "Laws and ordinances" and disturbed "peace and order." These measures appear to represent an anachronism reminiscent of the mentality of the middle 30's in Japan when trade unions were suspiciously regarded as a threat to security. The civil and criminal laws now on the statute books and the latitude permitted the police in preserving public order during labor dispute and organized activity are all perfectly adequate for public protection, the punishment of offenders and the discouragement of further breaches of the law.

b. The Labor Relations Adjustment Act.

1. Amendment of Article 26. Experience in Japan during the past two years has demonstrated the need for amending this Article in the following self –evident fashion: "If a proposal for settlement is accepted by both parties and thereafter disagreement arises over interpretation or implementation of the settlement, the case shall be referred back to the Mediation Committee for clarification during which period neither of the parties concerned shall resort to acts of dispute."

"The functions of the Mediation Committee shall terminate upon expiration of the date of acceptance or non-acceptance of its word except that it may be reconvened as provided in the paragraph above."

2. Prevention or treatment of strikes in industries vital to the national economy, health, safety or general welfare. The problem of handling industry-wide labor disputes after conciliation and arbitration have failed has long plagued students of labor relations in every democratic country. Indeed, some believe that thus far no satisfactory solution has been found and that further expert study of the question is needed.

In some industries where the need for continuous service is more important than the freedom of employers and unions to fight each other through strikes and lockouts, the government should have adequate authority to protect the community against strikes or lockouts which would gravely imperil the public health, the public safety or the general welfare. Two principal policies are possible. One is to give the government special emergency powers for dealing with such strikes or lockouts. The other is to give employees in certain essential industries a special status which gives them special privileges but imposes on them the obligation to refrain from striking. It is expected that the second alternative will be adopted by the forthcoming session of the Diet in the railway industry and the government monopolies. But what about the remaining industries designated as public welfare work in Article 8; and what of the coal industry?

With respect to these, the following is considered a possible Plan of action;

(a) This Article would be further amended to provide that designation of other industries as public welfare work may be accomplished by a majority vote of the Central Labor Relations Committee rather than a majority of each group in the tripartite body as presently provided. The present provision would seem to give each faction a veto power.

(b) If compulsory mediation, coupled with the 30-day cooling off period provided for in Article 37 of the Law, failed to affect a settlement of the dispute, the government by Cabinet action would be required to assume management of the industry in question immediately following an overt act of dispute by either [原文は eigher] management or labor. The government would manage the industry until such time as a settlement was effected and a written contract between management and labor signed or for a maximum period of 120 days. During the 120-day period, acts of dispute would be prohibited.

(c) During the first 60 days of the period of government management, compulsory mediation would continue. At the end of this period, an effort would be made to effect a contract between the government and workers.

(d) If a contract were consummated between government and workers, this contract would become binding upon the employer at the end of the 120-day period and continue in effect for a term not to exceed six months from the date the contract is signed.

(e) If no settlement were effected during the 120-day period, management would be returned to the private owner and the dispute left for settlement between the employer and the union according to the normal operation of the Law.

The foregoing plan would appear to have the advantage of being a positive action for restraint of both labor and management in case of a labor dispute in a public welfare industry, and would provide an incentive to both parties to bargain in good faith and get back on the basis of private operation and unrestricted collective bargaining. It would not take the place of strengthening the existing machinery for conciliation or for voluntary mediation of disputes. It certainly would not take the place of long-term development of collective bargaining processes.

Ⅲ. Proposed Amendments to Employment Security and Unemployment Insurance Laws.

a. Amendment to Employment Security Law to provide for full administration of the Law by the Labor Ministry and removal of prefectural governors from administrative authority in the Law.

The present line of administration from the labor Ministry through the prefectural governor has proved to be unsatisfactory, because the governors, locally elected officials, are not always enthusiastic about enforcement of the provisions of the

Employment Security and Unemployment Insurance Laws, especially those aspects such as elimination of labor bosses and collections of unemployment insurance premiums. It has also proved to be a cumbersome administrative pattern for referral of workers between prefectures and for organization of metropolitan and national labor markets in the interest of economic rehabilitation and maximum opportunities for unemployed to get jobs.

In addition, presently proposed amendments to the National, Public Service Law make all officials of the Employment Security System, including local officials, employees of the national government. It would be highly undesirable to have the governors attempt to supervise officials over which they have no control.

b. Unemployment Insurance Law, Amendment to extend compulsory coverage to construction workers and to day labor using industries, to become effective six months after passage of the amendment.

The Law excepts these important groups of workers who have been dependent for security of their attachment to later bosses. It is necessary for them to have an alternative means of support during periods of unemployment, in order to make their release from labor boss control effective and permanent. These casual laborers with intermittent employment are usually those most in need of unemployment relief.

c. Amendment of the Unemployment Insurance Law to raise the level of benefits.

When the law was passed, it was contemplated that the benefit would be 60 percent in the case of workers with average wages, with higher percentages for low paid workers and lower percentages for high paid workers. However, the 60 percent rate was tied to the government's fictitious ¥ 1800 average wage level which did not represent the real average wage. The result is that the sliding scale provisions in the law started at too low a level and have not worked as intended. Most workers have drawn benefits at a rate lower than the 60 percent rate. The 60 percent rate is believed to be the minimum which will enable the system to perform effectively the function for which it was intended, of tiding workers over short periods of unemployment.

TAB A

Proposed wording for amendment to the Trade Union Law with respect to provisions to be included in union constitutions:

"This trade union shall not:

a. fine, suspend, expel, penalize, or otherwise discipline any person or local without reasonable cause or without a fair hearing, before a special council composed of other than those who brought the charges;

b. fine, suspend, expel, penalize or otherwise discipline any person or local for

participation or refusal to participate in any political campaign or political activity, or proposal except such proposals as may affect the economic activities of labor organizations;

c. discriminate unfairly against any member in the procurement of employment or with respect to seniority rights;

d. fail to hold general membership meetings at reasonable intervals and elections of its officers or elective personnel at least once every year;

e. fail to conduct elections by secret ballot free from intimidation, or unreasonably interfere with nominations or elections or with the campaigns incident to such nominations or elections;

f. subject any member to any unreasonable rules or handicaps or to any action not imposed equally on all members in connection with any participation in the internal affairs of the labor organization, including but not limited to the right to vote and the right to the floor at labor organization meetings or the right of any member to express himself freely concerning the officers and affairs of the organization;

g. require excessive initiation fees or refuse to accept any members at any time without just cause;

h. fine, suspend, expel, penalize or otherwise discipline any person or local for opposition to any of the foregoing forbidden union practices;

i. refuse to make periodically available to its membership and to the public an accurate and comprehensive financial report based upon an audit made by an outside expert.（注・" expert " は判読不能であるが、第１回勧告から推測）

j. fail to publicize the decisions of its president, executive board, and other official groups in the union publication or otherwise."

TAB B

Suggested legislative provisions for Trade Union Law for determining collective bargaining unit.

In arriving at the determination of which unit of employees is most appropriate for collective bargaining purposes, the neutral members of the Central Labor Relations Committee shall be guided by the basic consideration that the grouping of employees which constitutes a unit appropriate for organization and collective bargaining purposes is generally grounded in a community of interest in their occupations and more particularly in their qualifications, experience, duties, wages, hours and other working conditions. In resolving the question, the neutral members of the Central Labor Relations Committee shall give due consideration to each of the following facts:

a. Desire of Employees: What membership showing or demonstration of

support is made by each contending union or group within the fringe or disputed categories. If an attempt is made to break away a segment of an established unit, whether the employees concerned acquiesced or participated in representation in the existing unit. Whether such employees constitute a homogenous, identifiable group.

b. Mutual Interest: What nature of work is done by the employees working in the classifications in question. Whether wages and working conditions are uniform. Whether the employees in disputed classifications are possessed of special skills. Whether there is functional coherence and interdependence between the disputed classifications of employees. Whether the employees work in close proximity of each other.

c. History of Labor Relations: In arriving at the determination required by "b" above, the neutral members of the Central Labor Relations Committee may, when they deem that unusual circumstances warrant, order and conduct employee elections by secret ballot to ascertain the majority wishes of the employees. The neutral members of the Central Labor Relations Committee shall prescribe administrative rules for the conduct of such elections with respect to such matters as the designation of eligible voters, the posting of appropriate advance notices regarding the date of the election, the selection of appropriate polling premises, the posting of election observers, and the guarantee of speedy, accurate and honest tally of ballots.

TAB C

Suggested Summary of Rights of Employees for Trade Union Law;

It might be well for the Law to contain a compact summary of the rights accorded employees. The following is suggested:

"1. preamble. It is hereby declared to be the purpose of the present Act to minimize industrial unrest by encouraging practices fundamental to the friendly resolution of industrial disputes; to elevate the status of workers by promoting an equality of bargaining power as between employers and employees; to protect the exercise by workers of full freedom of association, self-organization, and the designation of representative of their own choosing for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection; and to encourage the practice and procedure of collective bargaining.

2. Article__: Rights of employees.

a. Employees shall have the right to self-organization, to form, join, or assist labor organizations, and to bargain collectively through freely elected representatives of their own choosing.

b. It shall be illegal for an employer to interfere with, restrain, or coerce employees in their exercise of the rights guaranteed in paragraph a. It shall further be

illegal for an employer:

(1) To dominate or interfere with the formation or administration of any labor organization or contribute substantial financial or other support to it.

(2) To discharge an employee or discriminate against him in regard to hire or tenure of employment or any term or condition of employment for the purpose of encouraging or discouraging membership in any labor organization. Further, no employer shall, as a condition of employment, require that a worker refrain or withdraw from membership in a trade union.

(3) To refuse to bargain collectively in good faith with the freely elected representatives of his employees subject to the other provisions of this Act relating to freely elected representatives selected for collective bargaining."

TAB D

Proposals with Respect to Enforcement procedures and Sanction provisions of the Trade Union Law:

1. Where an employer has discharged a worker because of union activity, it is wholly logical and just to order that the employee be returned to his former position and that he be paid the wages he would have earned during the time he was involuntarily unemployed; i.e., from the time of the illegal discharge until reinstatement. Otherwise, any employer can, without serious liability, even if a fine is imposed, permanently rid himself of those employees most vital to the union in his plant; he can exercise his power of discharge so as to cripple the union by removing its leaders.

2. Where an employer has fostered a company-union, he should be ordered to liquidate all of the effects of his dealings with that union, including the abrogation of any trade agreement made with the dominated organization and to abstain from any future dealings with it. The Labor Relations Committee should further disfranchise the organization for all time as a trade union, thus leaving the field clear for the legitimate
organizational efforts of the employees.

3. Where an employer has refused to negotiate with the elected representatives of a union or has, without any intention of concluding an agreement, merely gone through the sterile motions of bargaining, he should be ordered to commence bargaining in good faith with the elected union representatives.

4. In all cases where a violation of workers' rights has been found, the employer should be required to post written notices for the employees in the plant or enterprise stating that he will henceforth abstain from the violations and stating further what positive action he is taking to remove their defects. This personal

reassurance from the employer is psychologically very important, especially in Japan, where workers have historically never known real freedom of trade union action and have been long conditioned by repressive measures.

5. Finally, the order of the Labor Relations Committee should direct the offender to make a report within a specified time, or from time to time, showing the extent to which he has complied with the order, and direct the contents of the report to be submitted to elected representatives of the union.

The following article is suggested to facilitate prompt enforcement of orders of Labor Relations Committees: If the Labor Relations Committee has determined that an employer has violated Article ___ of this Law, the Committee shall state its finds and shall cause to be served upon the employer an order requiring him to cease and desist from such practices, and to take such affirmative action including reinstatement of discharged employees with or without back pay, as will effectuate the policies of this Law. The employer shall comply with the order within 15 days or file a petition in the District Court challenging the legality of the order. The District Court shall give presumptive weight to the fact findings of the Labor Relations Committee and shall otherwise determine according to applicable legal standards whether the order is in conformity with the law and Ordinances. If the order of the Labor Relations Committee is sustained by the <?> the employer shall subject him to one year of penal servitude, or a fine of ¥ 100,000, or both."

（注・不明部分は折り目の劣化による欠落。第１回勧告から、"court, further non-compliance by"であろうと推測される）

３. SUBJECT: Major Recommendations Relating to Revision of Japanese Labor Laws （第3回勧告）

・第３回勧告の元となった英文。タイプ書きで全３頁（行間狭）。
・下線、点線による下線、判読不能部分の表示については、前掲（Ⅰ－１）と同様。

史料出所：労働組合法立法史料簿冊⑦

SUBJECT: Major Recommendations Relating to Revision of Japanese Labor Laws (24 Nov. 1948)

1. It should be noted at the outset that all legislation which endeavors to solve industrial strife is highly controversial inasmuch as it bears directly upon individual economic and governmental philosophies and beliefs concerning which agreement can rarely be obtained.

2. Of the utmost importance to any suggested legislation in this field is that such

legislation be reconciled insofar as possible with a variety of basic, and at times conflicting, concepts including freedom to organize, freedom to make demands collectively and exert economic pressures to obtain them, freedom to refuse to work, the supremacy of the state in the protection of the safety, health and welfare of the people, and the principles of democratic control and equal justice under law.

3. The recommendations herein set forth are brief, without any extended explanation or reasons therefor and with no attempt to draft precise legislative language. Memoranda setting forth such matters will be submitted following approval of the principles outlined in the recommendations. Modifications of the recommendations and additional proposals may be expected as the drafting of legislation proceeds within the Japanese Government. However, the basic policies set forth herein are believed to be reasonable and in conformity with the FEC principles for Japanese Trade Unions.

a. Recommendations regarding labor disputes in industries or businesses affecting the public welfare.

(1) In the event of actual or imminent work stoppages or other forms of job action or reprisals by management or labor during a labor dispute which may directly and immediately affect the safety, health or welfare of the people, the prime Minister shall be empowered (without the present necessity of obtaining a decision from the majority of each group within the Central Labor Relations Committee) to designate such industry or business as essential to the public welfare for a specified period of time, in addition to those already so specified in the present law.

(2) Upon designation as a public welfare industry or business the provisions of Article 37 of the Labor Relations Adjustment Law (with suggested revisions) shall apply, providing therein that acts of dispute by the parties concerned shall be disallowed for a period of 90 days from the commencement of mediation proceedings, during which time efforts will be made to resolve the dispute.

(3) During the 90-day period the economic position of the workers shall be frozen and no change of wages or working conditions shall be permitted without a resolution of the dispute. Furthermore during that time the industry or business involved shall also be frozen in status quo with only ordinary day-to-day transactions allowed. Disposal of or aggrandizement of assets, distribution of dividends, transfers of assets and all other extraordinary transactions shall be forbidden in somewhat restricted Japanese concerns under the present laws and regulations.

b. Recommendations regarding the internal democratization of trade unions.

(1) No union shall be registered pursuant to the Trade Union Law or be eligible to receive the protection of that law or the Labor Relations Adjustment Law unless its constitution contains the following democratic features protecting the rights of the membership:

(a) No member shall be penalized, expelled, suspended or otherwise disciplined without a fair trial upon stated charges.

(b) No person shall be barred from becoming a member if he meets the

qualifications for membership established by the union constitution.

(c) No member shall be penalized, suspended, expelled or otherwise disciplined for participating in or refusing to participate in any political activities or campaign, except that contributions for political propaganda purposes specifically voted for by a majority of the membership and conformity with the union constitution and by-laws may be permitted.

(d) All local union officials and standing committees authorized to act for the union shall be elected at least annually, and in the case of national organizations at least every two years, by secret ballot, either directly by the members or directly by representatives directly elected by secret ballot by the members. All union members shall be accorded adequate opportunity to vote.

(e) A financial statement showing all sources of revenues and expenditures, including specific denotation of principal contributors, and present financial status, shall be made public annually by the union together with certification of its accuracy by an outside auditor selected by the members.

(f) No union official nor committee shall be authorized to direct strikes or other acts of dispute without prior authorization through a secret referendum of the union members, with all union members being given an adequate opportunity to vote.

(2) Union members shall be allowed to obtain legal redress from appropriate court if union officials violate the union constitution, providing such individual members have exhausted all mediums of appeal or remedy provided for by the union constitution or by-laws.

c. Recommendations regarding labor relations and collective bargaining.

(1) The law shall require that both labor and management bargain in good faith in a sincere effort to reach an agreement peacefully, evidence of such bargaining being, among other things, the presentation of offers and counter-offers and the availability of both sides for collective bargaining at all reasonable times.

(2) The revised law shall provide for exclusive representation of all employees within an appropriate unit by the organization selected by the majority of employees in the unit. The labor relation committees shall be empowered, either directly or with the assistance of the Labor Ministry, to carry out election or other forms of proceedings when required to determine representation and appropriate unit.

(3) In order to prevent employer domination of unions more effectively, the present provisions of the law shall be clarified and employers shall be specifically prohibited from providing substantial financial aid to a union, with an exemption for contributions to pension or welfare funds.(It is intended that the law shall eventually provide for the withdrawal of all employer assistance to the operations of trade unions.)

(4) Contract clauses permitting extension of collective bargaining agreements indefinitely beyond the termination date by the refusal of one of the parties to conclude a new

agreement after expiration of the contract shall be prohibited as against public interest.

(5) The use of “wildcat” strikes shall be restricted by excluding such strikes from the definition of “proper acts of dispute” thereby removing the special protection of the law from individuals or groups of individuals engaging in those tactics.

d. Recommendations regarding the strengthening of the labor relations committees.

(1) In discriminatory discharge cases and other unfair labor practices by employers the neutral members of the labor relations committees shall be given authority to issue orders requiring employers to cease and desist from such illegal conduct, to maintain the status quo ante, or to carry out corrective measures subject to judicial review of their quasi-judicial determinations. The labor relations committees would be empowered to obtain court enforcement of their orders.

(2) In the interests of centralizing and strengthening authority and responsibility paramount authority shall be vested in the Central Labor Relations Committee. The neutral members of this committee shall hear cases involving unfair labor practices, such as those arising under Article 11 of the Trade Union Law, and shall make such other quasi-judicial determinations as shall be required by law, and shall hear all cases involving arbitration. The tripartite functioning of the Central Labor Relations Committee shall take place principally in cases of conciliation, mediation.

(3) The neutral members of the Central Labor Relations Committee shall be given the authority to hear and decide cases on appeal from the local labor relations committees involving quasi-judicial determinations, such as those concerning alleged unfair labor practices. The Central Labor Relations Committee shall also be given the authority to withdraw such cases from the local labor relations committees on its own initiative or to require a rehearing before it.

(4) The Central Labor Relations Committee shall be given greater control over the prefectural labor relations committees, particularly with reference to determination of questions of jurisdiction, interpretation of law, and the establishment of a system of precedents. Increased administrative authority over the labor relations committees shall also be given the Central Labor Relations Committee.