justify revisions based on actual fluctuations. Related to this, it is not clear what the special circumstances are in which a revision by courts is allowed. The same is true of the scope of measures which suffice to ensure that the bidding processes were fair.

6. Labor/Social Security Law

X et. al., v. Yamanashi Kenmin Shin-yo Kumiai
Supreme Court 2nd P.B., February 19, 2016
Case No. (*jyu*) 2595 of 2013
70 Minshu 123

Summary:

In the case contested concerning the validity of an unfavorable change of working conditions based on the consent of employees to the modification of the work rules, careful determination should be made as to whether or not a worker has consented to the changes from the perspective of whether reasonable grounds exist objectively for finding that the worker has given consent by his/her own free will, though it is possible to change working conditions by individual agreement (Article 8 and 9 of the Labor Contract Act (LCA)).

Reference:

Article 8 and 9 of LCA

Facts:

1. The appellants (plaintiffs of the first instance, and appellants of the second instance) were employees of A (Credit Union; non-party to the litigation). However, A was merged into the appellee (a defendant of the first instance, and an appellee of the second instance), in 2002, to avoid a bankruptcy. At the merger (hereinafter the first merger), their employment contracts were succeeded to the appellee.

2. On December 19, 2002, the committee on the merger, constituted by

both the directors of A and the appellee, recognized a new standard for the retirement allowance related to employees of A. This new standard brought a disadvantage for these employees: the reduction of the total amount by half or more, while maintaining, as in the past, deduction of the amount paid by the employees' pension and also deduction of the money refunded by the corporate pension of A due to cancellation at the time of the first merger, from the total amount.

3. On December 13, directors of A explained the change to the employees in an information session so that they could understand the impact of the change. On 20th, the managers (including part of appellants) were required to sign a consent form about the new standard by the directors of A. Appellants instantly accepted to sign the form.

4. On February 16, 2004, the appellee got another merger with 3 other Credit Unions (hereinafter the second merger). Before the second merger, the appellee directed managers of each branch office to inform their subordinates that the retirement allowance would not be paid if an employee left the appellee for personal reasons before the further new standard, which was expected to be promulgated within about three years after the second merger, was provided, and that the amount of retirement allowance for the period before the second merger would be calculated with a standard applied for personal circumstances. Each manager of each branch read out the above direction to the employees, then the employees (including the appellants) signed a document titled "About the explanation to employees", in the signature space of an accepter.

5. On April 1, 2009, the appellee applied the newly promulgated standard. Due to the above two changes, appellants' retirement allowance was drastically reduced or became zero. Then, appellants brought an action seeking the payment of retirement allowance based on the rules of A at the moment of the first merger (i.e., the rule before the above-mentioned changes).

6. The decision of the first instance (the decision of Kofu District Court, September 6, 2012, 1136 RODO HANREI 21) and the second instance (the

decision of Tokyo High Court, August 29, 2013, 1136 Rodo Hanrei 15) both rejected the appellants' claim because of the existence of individual agreements.

Opinion:

The court quashed and remanded the case.

1. 'Working conditions, which constitute the content of a labor contract, may be changed by an individual agreement between a worker and an employer, and it is construed that the same applies even where working conditions as prescribed in the work rules are changed in a manner disadvantageous to a worker... (see Articles 8 and 9 of the LCA)'.

'However, where changes to working conditions proposed by an employer are related to wages and retirement benefits, even if a worker performs an act by which he/she accepts such changes, it is inappropriate to consider immediately from the said act that the worker has consented to the changes, because the worker is ... subjected to the employer's command and has only a limited ability to gather information based on which he/she can make his/her own decision. Therefore, careful determination should be made... Accordingly, it is appropriate to construe that determination as to whether or not a worker has consented to changes to his/her working conditions ...should be made not only by considering whether the worker has performed an act by which he/she accepts the changes, but also from the perspective of whether reasonable grounds exist objectively for finding that the worker has performed the said act of his/her own free will, and in order to consider the latter point, it is necessary to take into account factors such as the content and degree of the disadvantage that may be caused to the worker due to the changes, the circumstances leading up to the worker performing the said act and the manner in which he/she performed it, and the content of the information or explanation provided to the worker before his/her performance of the said act (see The Singer Sewing Machine Co. case, the Supreme Court, January 19, 1973, 27 Minshu 27, The Nisshin Seiko case, the Supreme Court, November 26, 1990, 44 Minshu 1085, etc.)'.

2. In this case, 'appellants ...cannot be deemed to have been provided with the necessary and sufficient information for considering and deciding by

themselves whether to consent to the changes to the standards if they were only provided with the information and explanation concerning matters such as the necessity to change the payment standards under the former rules, but rather they should have been further provided with the information and explanation concerning the content and degree of the specific disadvantage'.

'However, the court of prior instance ...failed to make a finding or give consideration sufficiently as to whether any information or explanation concerning the matters mentioned above was provided to appellants'.

'Thus... the determination by the court of prior instance as such is illegal due to errors in the application of laws and regulations resulting from insufficient examination.'

Editorial Note:

1. This case was concerned with the workers who gave their "consents," at least formally by their own sign and seal, to the unfavorable change of working conditions. The issue was whether the working condition could be changed through individual agreement to the modification of work rules. The Supreme Court made a first decision about this question.

2. In Japan, work rules (*Shugyo-kisoku*) play an important role to determine or change working conditions. All employers who continuously employ 10 or more workers are required to draw up work rules, which provide stipulations concerning effective working conditions in the workplace, like wages, working hours and so on (Article 89 of the Labor Standard Act (LSA)). When drawing up work rules, it is not necessary that employers make an agreement with each employee or workers' representative, though they have to ask the opinions of either a labor union organized by a majority of the workers at the workplace concerned, where such a labor union exists or a person representing a majority of the workers where such union does not exist (Art.90 of LSA). Thus, work rules are characterized by the procedure that employers can unilaterally draw up or modify them.

However, the following question came from the view point of the principle of the contract, that is, whether an unfavorably changed working condition, through the modification of the work rules, is binding to the

opposing employees without their consents. The Case Law showed the ruling that unfavorably changed work rules have the binding force even on the opponents, if such changes are "reasonable" (*The Shuhoku Bus* case, Supreme Court, December 25, 1968, 22 Minshu 3459). Today, this "reasonableness" test for modification of work rules is codified into the Article 10 of the LCA which sets the factors for judging the reasonableness of modification of work rules: (a) the extent of the disadvantage to be incurred by the Worker, (b) the need for changing the working conditions, (c) the appropriateness of the contents of the changed work rules, (d) the status of negotiations with a labor union or the like and (e) any other circumstances pertaining to the change to the work rules.

Under the rule, employers gradually came to secure employees' consent to unfavorable modifications of work rules in order to avoid the modified work rules being held unreasonable and therefore not binding to opposing workers under the test, considering the fact that the examination under the test has often tended to be an unpredictable, case-by-case decision. According to Article 9 of the LCA, an employer cannot change any of the working conditions that constitute the contents of a labor contract unfavorably to a worker by modifying work rules except in cases stipulated in Article 10. In other words, this article shows the principle of agreement in case of modification of working conditions through a change of work rules. Notably, Article 9, on the face of it, does not refer to the factors under Article 10 for examining the reasonableness of the modification of work rules.

3. There therefore arises a question whether unfavorably modified work rules would be binding, without their "reasonableness" being examined, if there is a consent by employees.

Scholars are divided into two opinions: (a) it is no more necessary to control the "reasonableness" of work rules for the validity of change of working condition if there exists an agreement between two parties, though there is a necessity for prudence for finding a consent of a worker, (b) the validity should still be controlled by the "reasonableness" stipulated by Article 10.

Before this case, lower courts took the position (a) (see *Kyoai* case, Osaka High Court, March 18, 2010, 1015 Rodo Hanrei 83, *Kumamoto Shin-*

yo Kumiai case, Kumamoto District Court, January 24, 2014, 1092 Rodo Hanrei 62).

4. In this case, the Court held that the principle of the agreement at the moment of changing working conditions can be applied as well when an employee gave consent to the modification of work rules, adopting the position (a) above. However, it also held that the validity of his/her consent should be examined strictly from the viewpoint of whether or not the worker made a decision under a truly free will, in a similar manner as the lower courts did. As the Supreme Court mentioned, such a prudence position is based on the consideration about the difficulty of making a free decision by an employee under a labor contract. The Court also held in detail the criteria to determine whether or not the consent was under a truly free will: (a) the content and degree of the disadvantage that may be caused to the worker due to the changes, (b) the circumstances leading up to the worker performing the said act and the manner in which he/she performed it, and (c) the content of the information or explanation provided to the worker. In consequence, employers who would like to claim the validity of changes to working conditions based on the existence of an agreement with their employees are now required to provide necessary and sufficient information so that employees could understand the content and degree of disadvantages caused by the modification of work rules.

Thus, this case law resolved the problem whether the 'reasonableness' stipulated in article 10 of the LCA is required or not when an employer obtains an apparent consent from an employee by denying the 'reasonableness' test, and held that a consent of an employee should be found carefully.

5. The decision of the remanded instance (the decision of Tokyo High Court, November 24, 2016, 1153 Rodo Hanrei 25) changed the decision of prior instance and admitted, partially or totally, the appellants' claims, by denying the validity of consents of appellants on the change of the work rules for the reason that appellants had not been informed or explained the content and degree of the disadvantage due to the change to the new standard.