BARGAINING LAWS AND UNION DENSITY IN
THE CIVIL SERVICE: THE JAPANESE PARADOX

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ABSTRACT

A substantial body of literature has shown that in advanced industrialized
countries the legal rules governing labor relations have a strong impact on
union density and this relationship is strongly associated to the relationship
between perceived instrumentality and union density. But there are a few
cases of strong unions despite unfavorable rules. The Japanese civil service is
one of these cases. Despite a level of union security reduced to the minimum,
without the right to strike or to sign collective agreements and with a very
restricted scope of negotiation, the Japanese civil service has a relatively high
union density. Focusing on decision making concerning staff numbers, this
research shows Japanese civil service unions have found ways of influencing
decision makers without directly challenging the rules, making these unions
more relevant than they appear to be.

Many studies have shown that when legal rules encourage negotiations, collec-
tive agreements, and strong unions (union shop and other union security arrange-
ments), union density is likely to be high because it becomes relatively easy and
advantageous to belong to a union. However, the case of the Japanese civil
service (public corporations excluded) illustrates exactly the opposite. In Japan,
since 1948, civil servants, unlike private sector employees, have no right to enter
into collective agreements, cannot negotiate on many items, and have no right to
strike. Moreover, there is no union security (union shop, maintenance of dues,
etc.). Nevertheless, Japanese civil servants have a higher percentage of union
membership than nearly all other groups of Japanese workers. Therefore, it is
appropriate to suggest this case contradicts the theory. But the question that

remains is why Japanese civil servants choose to belong to unions rendered powerless by institutional rules.

There are many explanations possible for this phenomenon, but in a Western-style institutional setting two appear more likely. The first is that the civil service unions have more influence than the rules indicate. In other words, the unions' effectiveness is using informal relations to press their agendas compensates for the lack of legal support. The second is that unions have other functions attractive enough to make membership attractive. However, this second possibility has to be rejected. As opposed to what may be observed in some European countries [1, p. 60] and in Israel [2], Japanese civil service unions do not provide their members important supplementary benefits such as health care insurance, unemployment insurance, day care, or training. Therefore, only the first possibility remains.

To verify whether unions have a significant informal role in civil service labor relations, in 1996 and 1997 we interviewed sixty-seven people working in various ministries (mostly higher officials and personnel office staff) and civil service unions, as well as Diet members from the three main political parties. Interviews were semidirective and centered on attitudes and strategies of various actors with regard to the control of staff numbers in the Japanese central (national) government during the 1990s. Interviewees were assured their identity would not be revealed.

We chose the theme of staff numbers because this is one of the priorities of Japanese civil service unions, and also because this question is formally excluded from the scope of negotiations. The study of the Japanese case is relevant to other developed countries for two main reasons. First, it allows us to qualify the importance of the impact legal structures have on industrial relations. Second, it addresses the question of how civil service unions can manage to survive in an unfavorable legal environment. We could also add that this article constitutes an occasion to update information on a case—the Japanese civil service—rarely covered by the literature.

Our analysis is divided in three parts. First, we briefly review the literature about union density. Second, we introduce the Japanese paradox. Finally, we present the unions' strategies regarding control of staff numbers in the national government.

UNION DENSITY: THE IMPORTANCE OF THE LEGAL STRUCTURES

The comparative literature regarding union density mainly concentrates on three types of determinants: macroeconomic, psychological, and structural (or legal) factors.

Macroeconomic factors refer to technological changes, industry size, wage, prices, and employment. This type of factor is useful for explaining variation

between periods of structural shifts. Regarding the differences between the public and the private sector, the classical economic explanation is that unions of the latter can take advantage of operating in a monopoly if the institutional framework is favorable.

With regard to psychological factors, Barling, Fullagar, and Kelloway, who reviewed United States studies, concluded that pro-union employees do not have a specific profile [3], but other studies have shown the importance of perceived instrumentality (or perceived union effectiveness) as a key consideration for joining a union [4-7].

Legal factors are considered key factors for union density by a large group of researchers, especially when comparing various countries or governments [8-10]. In the public sector, Saltzman [11], Zax and Ichniowski [12], and Hindman and Patton [13], using U.S. data, showed that bargaining laws have a strong effect on unionization in local governments. In brief, this approach says favorable rules lower the cost to unions of providing collective bargaining, which in turn makes it advantageous for workers to be unionized.

THE JAPANESE PARADOX

However, the case of the Japanese civil service seems to contradict these studies. Indeed, Japan offers an intriguing contrast between a public sector with a minimum of union rights and recognition but a higher unionization rate than the private sector that enjoys better legal support. Private sector employees have the right to organize, bargain collectively, enter into collective agreements, and to strike (Table 1), but national and local civil servants cannot make a collective agreement or go on strike. Moreover, although in the private sector most unions have legally supported union-shop agreements [14, p. 146; 15, pp. 164-166]—but no closed shop [15, p. 165]—this is unlawful in the public sector [16, p. 305]. Finally, in the Japanese government, negotiations are not centralized, which means that, while decisions are made by central agencies and the Cabinet (the prime minister and his ministers), negotiations between unions and management are generally held at the bureau and ministry levels.

In fact, the scope of negotiation is restricted because of two important factors. First, on the employer's side, responsibilities are fragmented. Because decisions are ultimately made by politicians, typically employer's representatives, fearing to make too many concessions and to have problems with the decision makers, tend to adopt a very conservative approach [17, p. 16]. Because they do not feel free to negotiate (and, of course, because there is no collective agreement), the process looks more like a petition than authentic collective bargaining [16, p. 305]. Second, the parties are not allowed to bargain over questions of management, which generally include items having an important impact on unions' strength and employees' working conditions, such as rationalization, staff numbers, and subcontracting.

Table 1. Legal Rights of Private Sector and Public Sector Employees in Japan

	Organiza- tion	Collective Bargaining	Collective Agreement	Right to Strike
Private Sector	Yes	Yes	Yes	Yes
Public Sector				
Policemen, firemen, etc.	No	No	No	No
National civil service	Yes	Yes	No	No
National public enterprises	Yes	Yes	Yes	No
Local civil service	Yes	Yes	No	No
Local public enterprises	Yes	Yes	Yes	No

According to the government, these restrictions to workers' rights are compensated by the existence of the National Personnel Authority, which is an independent administrative commission mainly responsible for salaries, personnel classification, working conditions, appointments, and dismissals. However, this agency can make only nonbinding recommendations to political decision makers (the Cabinet and, ultimately, the Diet).

It could also be argued that even though the public sector does not have the right to strike, in proportion, there are more industrial actions in the public sector than in the private sector (237 acts of dispute in the public sector against 398 in the private sector in 1995) [18; 19, p. 363]. But, in fact, this situation involves more public corporations, which have the right to conclude collective agreements, than the civil service proper, where strikes are very rare [16; 20, p. 150; and interviews].

The literature does not say much about tactics used by civil service unions for influencing decision makers because authors generally concentrate their analysis on the more confrontational and flamboyant industrial relations in public corporations. Nevertheless, we know civil service employees have engaged in collective actions such as working-to-rule and "ribbon-wearing" [16, p. 309; 20]. Both have been declared illegal by the court [16, p. 309] and are becoming less frequent.

With regard to union density, in 1996, approximately 58.2 percent of national civil servants having the right to join a union were unionized [21, p. 327]. When local civil servants are included, this rate reaches 63.4 percent [22]. Regarding the private sector, statistics of the Ministry of Labour show a lower unionization rate for all type of industries [22], even though public corporations—which traditionally have a very high unionization rate [23, p. 279]—are included in these numbers (Table 2).

Table 2. Union Density by Industry in 1996
(Percentage)

Mining	22,0
Construction	19,9
Manufacturing	28,8
Public utilities	53,3
Transportation and communication	41,2
Wholesale and retail trade	9,8
Finance and insurance	44,9
Services	13,9
Civil service	63,4

Note: Civil service data refers to all public employees, including local civil servants, but excluding employees of public corporations. All the other categories exclude public employees [22].

In the Japanese civil service, union forces are divided. First, there are a large number of unions: more than 160 registered [21, p. 326], some belonging to three loose federations of national civil service unions. Typically, unions operate on a ministry-by-ministry basis, and there are many unions in each ministry. (There are 12 ministries and approximately the same number of smaller agencies which are external organs of the Prime Minister's Office.) Each union is financially and organizationally autonomous.

In sum, unlike private sector employees, Japanese civil servants do not have the right to strike, do not have any union security, and cannot conclude collective agreements or negotiate on some important items. Moreover, if the evaluation made by Naito in 1983 is still valid, union dues are substantially higher in the civil service than in the private sector [14, p. 147]. Therefore, why is so large a proportion of civil servants joining unions that have such a low bargaining capacity?

We suggest unions are not as powerless as rules make them appear to be and that they have been able to develop alternative strategies to standard bargaining tactics. To show this, we analyze the case of staff numbers in the Japanese central government.

CIVIL SERVICE UNIONS AND THE CONTROL OF STAFF NUMBERS

Japan is in the unique situation of having seen its number of civil servants decrease for almost thirty years through the application of nine successive reduction plans [23]. According to Muramatsu and Krauss, this has been possible because of the relative stability of political leadership and its ability to build a

consensus around a "conservative policy line" [24]. However, cutbacks have been slow and selective. Some ministries have been growing while others have been decreasing.

The main mechanism for controlling staff numbers consists of putting into a pool all positions that become vacant during the year. Later, part of the total number of jobs that have been pooled is cut and part is redistributed "according to the needs."

Because the control of staff numbers is considered a question of management, civil service unions are formally excluded from the decision-making process. According to this process, as described by interviewees and internal documents, every year there are negotiations directly about the distribution of positions among ministries for the coming year and, indirectly, about the total number of staff (the addition of the staff number of every ministry gives the total number[1]). In brief, it begins in August, when the staff requests are submitted by the ministries to the Management and Coordination Agency (MCA), and ends in late December, when the final proposals are transmitted to the Diet (with the budget proposals). During this period, there are intensive discussions between the ministries and the MCA (which remains in close contact with the Ministry of Finance). When they reach Cabinet and Diet level, the proposals are said to be extremely difficult to modify. Also, before the proposals are submitted by the ministries to the MCA, there are negotiations within each ministry regarding their content.

Therefore, in principle: 1) the MCA is the sole organization responsible for staff numbers; 2) politicians are not involved before the requests are officially submitted to the Diet; 3) the unions are not involved; and 4) the Ministry of Finance (MOF) does not directly negotiate. However, none of these principles is followed, in part because the unions are not passive. In the next subsection, we describe the resources used by the unions to influence decision makers, as well as the unions' relations with the ministries, the politicians, and the central agencies, using the viewpoint of all actors involved.

The Unions as Actors

The unions have a strong interest in staff numbers because of their impact on the membership and on working conditions. The impact on working conditions is particularly important in the Japanese government for two main reasons. First, there is "no job description which strictly defines duties . . . of each post of an entire organization" [25, p. 8]. The work is the responsibility of the administrative unit, and the employees are supposed to be able to accomplish any duty of that unit. Consequently, cutting one employee often means that the task he

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[1] But there is a legal ceiling, which is the total number of staff of 1967. The actual number is lower than this ceiling.

performed becomes the responsibility of those who remain. Second, the working hours, are elastic. Indeed, in the ministries we were told, every week employees were doing very long hours of unpaid overtime.[2]

We already know the unions are handicapped by formal rules and their lack of cohesion when it comes to influencing decision makers with regard to staff numbers. But they also have important resources. First, they have a direct channel of communication with employees. This means that they can have reliable information about the impact of staff scarcity on working conditions and work quality. Second, the largest unions and union federations have permanent staffs. This allows them to transform the information they receive and to develop appropriate means of action. Third, unlike ministry officials, they do not have the duty to be discreet. Therefore, it is less risky for them to contact media or pressure groups and give out information. So they have a strong legitimacy. Finally, we must add that civil servants operate a monopoly, which means their clients may be particularly vulnerable to the variations in quality and quantity of the services they provide. Staff numbers may have an impact on these variations.

Regarding strategies, ultimately the unions seek to influence the MCA and the MOF, because they consider that these organizations, de facto, are making the decisions about the staff number for each ministry and agency. They try to reach them directly, but also, and more often, through the ministries, the politicians, or, more indirectly, through the media and public opinion. They do not coordinate their actions among themselves, and they generally argue for increases only for their own ministry or their own unit.

More specifically, relations with the ministries consist mainly of exchange of information. From the ministries' viewpoint, first, a maximum of information helps produce a stronger case for their staff requests: unions' inputs help them evaluate the situation inside the ministry (workload, morale) and also develop arguments oriented toward services to citizens. Second, they consider that unions' pressure and legitimacy reinforce their own requests for staff increases. Third, unions help mobilize external support by contacting politicians, media, and pressure groups.

However, ministry officials try not to overstep the formal rules too much in their contact with unions. A higher official summarized the situation well: "From them we can get straightforward opinions about what is going on the work floor. We take this into account when we negotiate with the MCA and the MOF. But we do not decide [what will be the ministry's requests] from this. Instead, we say: "this is what the union says." Therefore, the unions' position is used as a reference. We also explain our viewpoint to the union. We know that they talk independently with the MCA and with Diet members" [16/07/96].

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[2] There are no official statistics concerning overtime work, but, according to MCA officials, only about 25 percent is paid (the situation may differ from a ministry to another).

The unions consider that, in their ministry, management also seeks more staff. They value the information they can get from management and try to coordinate their requests with those of their ministry. As we were told in one of the largest unions: "the ministry and we are defending the same positions. Together, we make the same requests. It gives us more strength. . . . The contacts with the ministry are quite intensive. For example, recently we had a meeting where the ministry explained to us the details of the budget requests for this year" [25/01/97]. This situation, typical of what we were told in many ministries, shows cooperation exists between unions and management regarding staff requests for their ministry.

Regarding their relations with politicians of the ruling political party (Liberal Democratic Party), they are less collaborative, but not confrontational. We were told by union officials that, being sensitive to bad publicity, politicians understand the impact a major failure of some government activity may have on public opinion. Therefore, many union representatives consider that politicians interested in their jurisdiction may be receptive to their pressure. Politicians confirmed they were actively solicited by unions. They generally described them as a potential threat to service for citizens.[3] Therefore, they could not be ignored.

The most active unions are large unions in fields where there are more direct contacts with the population. Large unions in growing or stable ministries also tend to have a wider range of activities with regard to staff numbers than small unions, because they have more resources.

Their main activities consist of directly lobbying Diet members, having petitions signed for improving a particular service or increasing staffing for it, and more indirectly, giving information to the media or pressure groups. More precisely, they share information with local politicians and pressure groups regarding the phasing out of local offices. At the national level, they meet politicians of all parties to explain the effects the control of staff numbers will have on government's programs. They give the media information that underlines staffing problems when there are accidents or problems. For example, the collapse of a new highway that did not meet construction standards during the Kobe Earthquake in 1995, or that of a tunnel in Hokkaido in 1997 were occasions for Ministry of Construction unions to explain that the inspection staff had been cut and that local offices were shrinking, and this point of view was largely adopted by the media.

In their turn, politicians apply direct pressure on the MCA and the MOF when an issue brings a strong demand from the environment or when an issue is highly politicized. They also often ask questions in the Diet about understaffing for some service or in some local office. Their pressures for improved services

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[3] Politicians interviewed explicitly expressed displeasure with the fact that most unions are siding with the Social_Democratic and the Communist parties.

through public declarations or questions at the Diet are generally used by ministries in the staffing requests. As a matter of fact, the staffing request documents we have been able to consult also show that ministries usually use media coverage of their problems as an argument for more staff.

Finally, unions also meet MCA and MOF officials, but they affirm they do so to support management's negotiations and do not hope for much from this type of action. The discussions are generally low-level. The MCA officials we interviewed considered it was important to keep their distance from the unions. As one of them told us: "The union does not have any direct role in the system of control of staff numbers. It is not a negotiation matter. We only listen to their complaints" [17/07/96]. But like politicians, they described unions as a potential threat. As a higher official said: "If we cut too rapidly, we will have problems with the unions. Therefore, we do that little by little, year after year, on a very long term basis" [04/10/96].

It is difficult to estimate the impact of union activities on staff numbers. The declarations of MCA officials and politicians tend to show that cutbacks would be worse without union pressure. Moreover, the ministries appear willing to cooperate with unions despite rules that allow them to refuse, in part because they believe in the unions' capacity to influence decision makers.

Hence, it appears that, with regard to staff numbers, even though the rules are not favorable, unions can be influential and therefore useful to their members. They can develop alternative tactics, and they can find allies inside and outside their ministry.

CONCLUSION

Many studies have shown the important impact that rules governing labor relations have on union density. It has also been demonstrated that this relation is strongly associated with the relationship between perceived instrumentality and union density. But we have seen that even though, unlike workers in the private sector, Japanese civil service unions do not have the right to strike, to conclude collective agreements, to have union shops or other types of union security arrangements and to negotiate on many items, their unionization rate is high. Therefore, we asked, why do civil servants join unions?

We eliminated various possibilities such as that laws might be ignored or that unions might provide various important alternative services to their members. What remained was the possibility that unions might have more influence than the rules indicate.

The analysis of the decision-making process regarding the control of staff members in the central government showed this is indeed the case. While the literature on Japanese unions of public employees mainly focuses on strikes, ribbon-wearing, and other highly visible tactics that mainly concern public corporations, we focused our research on alternative strategies for influencing

decision makers. We observed that unions lobby politicians, exchange information, and coordinate their activities with the ministry in which they operate, and give information to the media and pressure groups. Through strategic alliances with various actors and direct and indirect pressure on decision makers they manage to have a significant influence on staffing decisions.[4]

The main lesson to be drawn from this case is that even if bargaining rules are unfavorable, a civil service union can stay influential and attractive to potential members. Advantageous rules such as the right to strike and collective agreements are not the only resources a union can use to further its members' interests: politicians and bureaucratic decision makers are vulnerable on many points, and a judicious use of information that helps to have their demands perceived in terms of public interest as well as the research of strategic allies may help unions capitalize on these weaknesses.

As for the relationship between unions' influence and union density, even though there are many reasons why employees choose to become and stay members of unions, the literature has clearly shown that in the long term—and Japanese civil service unions have been around for approximately fifty years—people do not unionize if they do not believe in unions' usefulness. Hence, union activities and successes have to be publicized as much as possible among members and potential members—which is what Japanese civil service unions are doing—to keep people aware of this usefulness.

Therefore, by focusing on "classical" industrial actions, the research on the Japanese public sector may have overlooked an important side of unions' activities in this sector. As for studies on union density, obviously, we cannot deny an important correlation between union density and the legal framework concerning union activities, but the Japanese case may demonstrate that, at least in the public sector, unions can do fairly well even if they operate in a highly unfavorable legal environment. However, the relationship between this case and perceived utility of unions still has to be analyzed more closely, and more research has to be done on other issues of interest to Japanese civil service unions before drawing definitive conclusions.

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[4] We do not go as far as saying that unions are happy with the actual rules (we observed the opposite) or that they would not be more effective with more favorable rules. As a matter of fact, the arguments they developed concerning the negative impact of these rules on their capacity to defend their members' interests have generally been used by researchers to classify them as organizations without much influence.

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