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More Lessons From Japan: End Industrywide Collective Bargaining?

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AND
UNIVERSITY OF HONG KONG

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MORE LESSONS FROM JAPAN END INDUSTRYWIDE COLLECTIVE BARGAINING?¹

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and

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I. INTRODUCTION

The number of books and articles discussing Japanese management techniques with an eye to transplanting them to the United States is staggering. Americans understandably are impressed by Japanese efficiency and like to think the adoption of some of their techniques will aid our own industries. Often these proposals seem fanciful and fail to recognize the many differences between the two countries, their economic systems and cultures.

There remains an important aspect of the Japanese economic system that could contribute significantly to the efficiency of the United States economy that has received scant attention; the Japanese collective bargaining structure. Japan has very little effective industrywide collective bargaining. Unlike the United States, in Japan the most important labor negotiations typically occur at the plant level, or at most at the company level.² In the United States, of course it is possible for all the employees in an industry to bargain together, collectively, against all the management of that industry. In other words, the antitrust exemption enjoyed by unions allows all the workers in an industry to "conspire" to fix their own wages, and all the employers in the industry to "conspire" to negotiate in opposition.³ This exemption attempts to promote the national goal of providing for potential equality in bargaining strength between labor and management.⁴ The current labor exemption to the antitrust laws may not, however, be the most efficient way to achieve this goal.

Our alternative is to treat unions identically to corporations under the antitrust laws. In this article we contrast the efficiencies and inefficiencies of this alternative with those arising from the existing labor exemption. We contend that the current United States system may promote unnecessary inefficiencies which retard the United States economy. Our alternative would allow, for example, most, but not all, horizontal union mergers (or union attempts to organize workers or union attempts to work together or to form joint ventures) and virtually

all vertical and conglomerate union alignments. But our proposal would not allow all the workers (or the employers) in a large industry to "conspire" to affect wages, hours, or working conditions.

We propose that the Japanese management/labor relationship be studied more closely and that their lack of industrywide collective bargaining be considered as the rule in the United States. We show that our proposal rests comfortably between the existing U.S. and Japanese positions and we raise the possibility that our approach would combine many of the strengths of each nation's systems, while avoiding many of the weaknesses inherent in each. It could, we believe, provide for labor-management bargaining equality, yet do so in a significantly more efficient manner than the existing system.

II. THE JAPANESE COLLECTIVE BARGAINING SYSTEM

The current Japanese collective bargaining system starts with the goal of worker-management equality (similar to that in the U.S.), that is "to elevate the status of workers... [to] equalize standing with their employers [s]" Japanese Law No. 174 of June 1, 1949, art. 1 (amended).⁵ But the Japanese system has evolved in a dramatically different direction.

In Japan, unions are primarily organized on a plantwide basis. Even different plants within the same company typically have separate, truly independent unions. Unions, or effective collections of unions, spanning more than one employer are almost nonexistent; approximately 90 percent of unionized workers in Japan belong to company-specific "enterprise unions."⁶ And, while national federations of enterprise unions do exist, they are loosely organized, with small staffs, and only have the power to advise the enterprise unions on negotiating goals and tactics.⁷ These federations do provide advice concerning the enterprise unions' annual "spring offensive" and also engage in political activity. They are similar to our trade associations, and there are no organizations in Japan comparable to the United Automobile Workers, the United Steel Workers, or the Teamsters. A Japanese Ministry of Labor study showed that only 5 percent of labor negotiations surveyed involved union officials from outside the company.⁸ Compare this to the coordinated activity among constituent unions comprising typical United States national labor organizations.

Not only is the bottom line in Japan that each enterprise union acts independently. The U.S. notion that all comparable workers within an industry should be paid comparable wages is not a significant concern in Japan. Competition on the basis of labor rates has not been

eliminated.⁹

The Japanese system can be explained better by sociology than by government regulation. It evolved in part from the paternalistic attitude of Japanese employers towards their workers, and the sense of obligation and loyalty on the part of Japanese workers towards their companies. The system arose from the same ethic which produces exceptionally hard workers who take pride in the quality of their teamwork, their ultimate products and services, and the reputation of their company. Japanese employers take a great deal of interest in the "non-business" aspects of employee' lives — firms are much more likely to play a role in securing employee housing, or schooling for employees' children, or to arrange company social events, than are U.S. companies. This has led to a close relationship between labor and management and a desire on both sides to avoid labor strife. And, of course, major employers typically offer lifetime security to permanent employees. For all these reasons, Japanese employees generally think in terms of movement within a company rather than movement between companies. Their attention is focused on their company rather than upon their trade. A worker at Toyota or Honda tends to identify himself or herself as an employee of that company, rather than as an auto worker or a member of the Japanese equivalent of the UAW.¹⁰

The Japanese system of plantwide or company-wide unions provides workers with many of the same types of benefits sought by American unions (these will be discussed in more detail later in this article). For example, such unions may be able to prevent opportunistic behavior by employees or their employer, provide credibility for long-term contracts, and prevent public goods/free rider problems. By contrast with American unions, a plantwide or company-wide union may become more attuned and responsive to the particular needs of its plant or company.¹¹ This can help the employer, both directly and indirectly, by further cementing workers' loyalties to their company.

The Japanese system is not without deficiencies. Many unions in Japan are unduly weak, ineffective and dominated by management. They typically have meager strike funds and their leaders often lack organization or negotiation skills.¹² In short, even though Japanese unions are coextensive with their employer's plant or company, they may not achieve equality, in terms of effective bargaining power, with management.

We emphasize that we are not proposing that the United States adopt the Japanese system. Our proposal would, in fact, permit

cooperation or mergers between modestly sized horizontally competing unions, and virtually any vertical or horizontal arrangement between unions. Any absolute size thresholds for effective union management, negotiating ability, organizing expertise, or financial strength, would be obtainable through small horizontal, or virtually any vertical or conglomerate union mergers or cooperative agreements. Similarly, such mergers or other arrangements should also allow unions to pool their resources for political activities.

III. THE UNITED STATES SYSTEM: GOALS, BENEFITS AND COSTS

The United States has experienced a difficult time striking an appropriate balance between industry and union strength. Overly harsh legal repression of unions has been followed by overly generous encouragement.¹³ One major form of this encouragement was to exempt unions from most applications of the antitrust laws.

The antitrust exemption originally arose from Congress' desire to allow workers to form effective unions. Congress understood that workers needed a union to enable them to negotiate as potential equals with management (the same overall goal as the Japanese system).¹⁴ Congress desired equality of bargaining potential, and a partial exemption of unions from the antitrust laws is required for unions to exist at all (since most significant unions can be considered conspiracies in restraint of trade). But the exemption that now exists is at least as much a creation of the courts as of Congress. It allows multiemployer and even industrywide collective bargaining (i.e., all of the employees in an industry can join one union, or separate unions can unite in their bargaining negotiations).¹⁵ This creates monopoly power and imposes efficiency costs that do not appear to be required to satisfy congressional intent or by considerations of sound public policy.

A. *Benefits From Unions*

The existence of unions may promote efficiency. Unions may be a mechanism to reduce contract costs where the firm or employees invest in specific human capital.¹⁶ In the absence of unions, both employer and employee have an incentive to extract rents opportunistically. The union may be able to enhance the credibility of workers and ensure the performance of long-term contracts by preventing individual workers from acting opportunistically. At the same time, the union provides a credible threat (strike) against companies that attempt

opportunistic behavior. Thus, the existence of unions both helps to encourage efficiency and also to ensure that workers obtain a "fairer" portion of these rents. Some of these efficiencies might depend on the size of the bargaining unit. We have, however, discovered no important examples of efficiencies that require unions larger than the plant or firm, other than economies of organization and bargaining.

There is also a public goods argument for the existence of unions.¹⁷ Many features of the work place, such as safety conditions, pollution levels, comfort, the speed of the production line, and the grievance procedure, have a public goods quality. Many people get the gains or no one does. Any individual worker has an insufficient incentive to provide information on these matters to management because benefits accrue to workers collectively. Unions can provide a "voice" and be efficient suppliers of information to management.

Finally, unions may arise and persist as a means of monitoring the effectiveness of management.¹⁸ That is, badly managed firms might attract unions, who may be better able to monitor certain management inefficiencies and offer helpful advice to management. Thus, the firm could realize gains from implementing more effective use of its labor force. The view of unions as efficient providers of services has considerable support in the empirical literature. For example, unionized firms appear to have greater productivity than nonunion firms, and the quit rate is much lower for unionized companies, a fact consistent with the notion that unions may supply credibility to ensure long-term contract fulfillment.

The question that arises is whether or not there exists a labor policy option that is consistent with the potential for equality of bargaining (congressional intent) that will permit the efficiencies of unionization and allow unions to protect workers rents, but that is more efficient than the current exemption. We have found no evidence that the existence of monopoly power by unions (i.e., industrywide collective bargaining) is necessary for, or even related to, those aspects of unions that promote efficiency or protect workers' rents. Thus, current antitrust principles suggest a program for achieving better public policy toward collective bargaining. Considerations of efficiency, as well as the logic of the equality objective, require that unions, like their companies, be subject to market power restraints.

B. *Costs From the Existing Labor Exemption*

1. Monopoly Aspects

The arguments against monopoly power that are applied to companies apply with equal force to unions. In both cases prices are higher; there is a loss to consumers and deadweight social loss. A recent study of 253 NLRB representation elections from 1962 to 1980 found that stock prices fell both when a petition for union election was filed and when a union was certified as bargaining agent.¹⁹ The fall in stock prices was greater in the cases in which unions ultimately won the election. Thus, the negative aspects of unions appear to outweigh their economic benefits to companies.

Greg Lewis finds that existing studies on the relative effects of unions on wages (there have been over 200 such studies since 1967) show an average union-nonunion wage differential of about 15 percent.²⁰ Freeman and Medoff, who are generally very supportive of unions, estimate the economic efficiency loss due to unions' wage effects of between \$5-10 billion per year.²¹ Their calculations also imply a transfer of wealth from shareholders and consumers to union members of about 10 times this amount.

2. Rent Seeking

The existence of union monopoly power is also the vehicle for wasteful rent seeking when unions and some employers conspire to raise rival employer's costs. Because firms often have different capital/labor ratios, different safety conditions, or different ways of doing business, a strategy which raises price by increasing the costs in industry can be profitable to the rent seeking firm. For example, if labor costs are raised, more capital intensive firms may gain a competitive advantage from an industrywide price increase. This type of rent seeking produces social loss beyond the usual deadweight loss associated with monopoly power. In contrast to the simple monopoly case in which the efficiency loss is only the deadweight loss which results from an increase in price, competitive restrictions that increase costs lead to an efficiency loss that includes the entire increase in cost.

There are no estimates of the costs of such rent seeking. This behavior must, however, be common and the costs substantial.²² In the rent seeking that occurs via predatory pricing, the costs to the predator are immediate since profits are lost due to the lower price. The gains are speculative and occur, if at all, in the future since they arise only if the low prices affect subsequent pricing decisions or other rivalrous behavior. In contrast, cost-raising rent seeking results in immediate and

certain gains. Since the firm gains an immediate relative cost advantage vis-a-vis its competitors, the predator need not sacrifice short-term profits, and the risks of failure are less severe. Unlike the case of predatory pricing no deep pocket or superior access to information is required.

Two brief examples illustrate how the existing labor exemption allows rent seeking behavior to occur: a leading labor law case, *Local Union No. 189 v. Jewel Tea Co.*, 381 U.S. 676 (1965), and the otherwise quite unremarkable case of *Adams Dairy v. St. Louis Dairy*, 260 F.2d 47 (8th Cir. 1958).

Jewel introduced prepackaged self-service marketing of meat in its supermarkets. However, it participated in a multiemployer negotiation with the butchers' union which resulted in a provision that:

Market operator hours shall be 9:00 a.m. to 6:00 p.m. on Monday through Saturday inclusive. No customer shall be served who comes into the market before or after the hours set forth.

This provision would eliminate the advantages of Jewel's prepackaging plan, which allowed customers who shopped at other hours to purchase meat. Convenience in shopping hours is an extremely important aspect of quality in the retail grocery market, and the restriction on marketing meat after 6:00 p.m. would reduce Jewel's ability to compete by offering more convenient hours. Rivals not offering these convenient hours clearly would have gained from the restriction, since it affected Jewel more than them. Jewel objected to this provision and sought to have it eliminated as violation of the antitrust laws. However, the Court found the hours provision to be a legitimate subject for collective bargaining and therefore exempt from the antitrust laws even though the hours that the butchers worked were not directly extended by the arrangement.

In the *Adams Dairy* case, Adams, a new entrant into the St. Louis dairy market, was subjected to a multiemployer labor contract with a provision that in effect singled it out. Prior to Adams entry, retail sales of milk to grocery stores had been small in comparison with sales of home-delivered milk.²³ Adams introduced the sale of milk in paper cartons at grocery stores and sold its milk at a lower price than home-delivered milk. The Milk Drivers Union served as bargaining agent for the employees of various dairies, and delivery costs were a substantial fraction of milk's retail price. Under the union contract drivers received a base salary plus commissions determined by the volume of milk

delivered.²⁴

The new contract provided that the commissions paid to drivers be increased substantially if the volume of milk delivered on a route exceeded a specified volume. In addition, any driver whose route was split was to receive special compensation. Adams was the only dairy with any routes with deliveries above the specified level, and the extra cost to Adams from the new contract was substantial.²⁵ Because Adams' drivers made milk deliveries to supermarkets, Adams' 12 routes were high volume routes. The extra cost to Adams should have been about \$43,200 per year in 1950 dollars. Adams' response was to hire 10 new trucks and drivers and split the routes which, of course, meant lower salaries to the previous drivers. Four years later, at the end of the contract, Adams was using 34 routes to handle deliveries, compared to 12 originally. Adams' drivers, however, organized their own separate union and signed a new contract; Adams then reduced the number of routes. Adams had to buy new truck, hire new drivers and fundamentally change the way it did business.

Much of labor law is made up of just such cases.²⁶ Moreover, a not insignificant portion of labor negotiations may be viewed as wasteful rent seeking by unions and/or companies.²⁷ Of course, the existence of union monopoly power allows and encourages this type of behavior. Yet, the law generally cannot differentiate legitimate collective bargaining from illegitimate rent seeking.

Under existing law it is extraordinarily difficult to determine whether a particular union/management agreement represents the efforts of both sides to secure legitimate goals, or to raise the costs of rival employers.²⁸ The result — a labor provision which raises costs — is often consistent with either explanation. The legality or illegality of rent seeking in a union context turns on such questions as the intent of the union and the rival employers, whether the subject at issue was one of the mandatory subjects of bargaining, whether the restraint in question operates directly on the labor market or only indirectly affects the market, and whether the employers had the agreement thrust upon them or whether they actively sought it. These distinctions have no basis in economic theory and are at best difficult and in many cases impossible to show. Current legal restrictions will catch only the unwary and the unwise. For the sophisticated, it is easy in a multiemployer bargaining unit to present an appearance that conforms with the law while achieving an effect consistent with rent seeking. Thus, rent seeking problems arise naturally from existing labor exemption and

there is no way that the existing framework distinguished beneficial cases from harmful ones. In the next section we propose one way out: change the overall framework of the labor exemption.

IV. A BETTER BALANCE?

Our proposal to eliminate the monopoly aspects of the labor exemption yet retain unions' efficiencies is simple and straightforward: treat unions and corporations equally and symmetrically with respect to mergers, and forbid agreements between unions to restrain trade if similar agreements between corporations would be illegal. This approach would treat unions and corporations alike under the antitrust laws: for both unions and corporations we would permit union mergers, joint ventures, etc., except those for which the anticompetitive potential was likely to outweigh the procompetitive benefits. Conglomerate and vertical agreements between unions or mergers would, of course, usually be allowed. A further provision to ensure equality of bargaining ability would be to allow unions within a single company to merge regardless of the companies' or unions' market shares (that is, a union could always be at least as large as its company). We would also exempt completely unions representing only a small number of workers.

To implement this approach, the Justice Department and/or the Federal Trade Commission could develop a set of merger guidelines for unions similar to those now used for corporate mergers. Under the Justice Department's 1984 Merger Guidelines, virtually all horizontal corporate mergers up to approximately an Herfindahl-Hirschman Index (HHI) increase of 50-100 (depending upon the postmerger HHI) are allowed. The basic methodology for applying the Guidelines' analysis is (1) define the relevant product and geographic markets; (2) calculate the concentration level within that market and the increase in concentration due to the merger; and (3) determine the effect of a large number of factors (or potential defenses) that will make the government more or less likely to sue. Perhaps the simplest way to resolve the trade-off for unions is to use these same approaches and standards for union mergers as well. Thus, union mergers would only be permitted up to the Guideline limits. After these levels the union could grow if their companies hired additional workers, but the unions could not engage in merger or in unionizing unaffiliated workers if this would violate the Guidelines. Similarly, all cooperative agreements between unions would be permitted if the unions involved would be permitted

to merge, or if similar agreements would be legal if undertaken by corporations. Agreements between large, horizontally competing unions, however, could — like similar arrangements between large, horizontally competing corporations — be found to be illegal under the antitrust laws.

The implementation of these simple proposals would have a number of important benefits. Union monopoly power would be reduced, as would the rent seeking that arises from it. Competition would be permitted among unions within an industry, and among union leaders, with all of the resultant desirable effects of competition. Competition among unions would determine which union could convince workers that it could secure the best benefits and working conditions for its members, perhaps weeding out inefficient unions and union leaders. This competition could also weed out corrupt union leaders who pay themselves too much, take bribes, or sell out to management. It could also make unions move responsive to their members.

Any organizational or bargaining advantages inherent in large size could be realized through small horizontal, or virtually any vertical or conglomerate merger or agreement. Indeed, we fully expect that such mergers or other forms of cooperation would be common. Any union which believed, for example, that it lacked adequate strike funds or organizing or negotiating experience, could enter into any merger to give it the necessary strength as long as it did not violate the Merger Guidelines. Alternatively, the union might be able to form a joint venture which would accomplish its goals. These arrangements constitute a large part of our answer to those who might believe that our proposal would lead to small, weak, uniformed, underfinanced "company" unions.

Thus, we believe that our preferred approach is halfway between the current U.S. and Japanese models. It would continue to permit the realization of union-generated efficiencies and protection of workers' rents. It would continue to provide equality of bargaining positions. But it would avoid both the rent seeking and monopoly aspects of the U.S. system, and the union weakness inherent in the Japanese system. Our halfway solution might well combine the best features of each.

The reduction in monopoly power resulting from our proposal should also enhance the public image of unions. Union growth would depend more on the unions efficiently meeting workers needs and in contributing to the production process than on their monopoly power or rent seeking ability. Good unions (and union leaders) to a far greater

extent would tend to drive out bad ones. And, it would be less likely that segments of the economy would become uncompetitive due to higher costs arising from union monopoly power, thus increasing the potential number of unionized workers. Our proposals may, indeed, stimulate union growth. Currently, a major barrier to their growth is employer opposition. But if unions are less likely to gain monopoly power, employer resistance will diminish. Employers will for the first time have the opportunity to obtain union efficiencies yet avoid monopoly power.

The costs of our proposal are several. First, there is a trade-off between union size and multiemployer bargaining on the one hand and negotiating costs on the other. Since our proposal would reduce the size of some bargaining units, it may well cause small increases in negotiating costs in these cases. Further, during a transition period we might expect collusive activity, given unions' established patterns of behavior. A law which attempted to stop unions from engaging in certain types of conspiracies, cooperation, or mergers, would undoubtedly be ignored and resisted, at least initially. It could also have short term negative effects on worker morale and productivity and might lead to violence by disgruntled union members.

Moreover, unions could still observe each others' behavior and act interdependently. So would employers. One employer would be reluctant to give in to wage demands unless it knew that its rivals would also. Employers and unions would both have an incentive to behave like oligopolists. Further, one practical problem could arise from this paper's approach: it would require evaluating mergers between corporations in terms of both corporate and union market shares (and other factors).

We recognize that our approach stands little change of current implementation due to political constraints. Existing unions are unlikely to be broken up. An alternative approach would be to implement our proposal only prospectively. This would mean that unions not already united could not do so if this would violate the Guidelines. It would also mean that unions within new companies might be prevented from joining existing national unions if this would violate the Merger Guidelines. Prospective implementation would over time reduce union monopoly power. While prospective implementation would take time to prevent the abuses resulting from union monopoly power, where union monopoly power existed other companies and rival unions would be attracted to enter the market (just as a product monopolist attracts new entrants). These new entrants would reduce the monopoly power

of existing unions. The effects could be similar to those seen recently in unionized industries that have become deregulated. The deregulation produced new entrants and made union control more difficult.

V. CONCLUSIONS

We do not contend that adopting a system halfway between the existing Japanese and American collective bargaining structures would cure a large portion of America's industrial woes. We also acknowledge that the problems we discuss are much less severe than they used to be. But this does not mean that the issue should be ignored; it is still significant²⁹ and might be more so in 20 years. Much of the value of our proposal would be to lock in place the advantages of the United States collective bargaining system that are currently evolving and to nudge it somewhat in the right direction.

Indeed, the fact that the labor market seems currently to be moving towards our suggested solution might diminish political opposition to our proposal. While in the past it was usually true that every comparable worker within an industry received similar wages and benefits, in recent years this rigidity has broken down. Part of this breakdown is due to recent deregulation successes and to increased foreign competition. Both reduce union monopoly power and given unions' incentives to develop a two tier wage system with lower wages for new hires. A similar arrangement arose a few years ago in the automobile industry, where United Autoworkers union members were paid more if they worked for General Motors than if they worked for Chrysler. Airline employees — pilots, machinists, and flight attendants — are increasingly likely to be paid different wages by different firms.

Union and nonunion workers in one industry are also becoming more common, even though this means that some workers earn more than others for doing the same job. Because different wage rates in one industry and within one union create significant internal tension within the union, perhaps a natural response has been to leave the lower paid workers out of the union.

A significant wage differential among members of a single union for an extended period - with or without a transfer payment among workers (such a transfer could consist, for example, of General Motors workers paying a larger share of a common automobile industry strike fund) - could cause workers' desire for multiemployer bargaining to weaken, and could even cause an industrywide union or collective bargaining unit to fragment. Industrywide pacts in industries such as

steel are also experiencing greater instability, largely due to increasing differences between the companies. Thus, there are definite signs of a recent trend away from multiemployer bargaining, and perhaps towards a solution similar to that proposed in this paper. Perhaps our solution will be implemented through market forces, rather than legislation.

But we do not expect the existing system to evolve rapidly enough. Moreover, in contrast to the overall trend in antitrust towards the goal of enhanced economic efficiency, we find no such trend involving labor exemption cases. Further, the relatively recent labor exemption statutes have tended to reflect either pro-union or pro-management positions, rather than attempting to benefit the economy as a whole.

Accordingly, the purpose of this paper was to raise for discussion the desirability of adopting one Japanese collective bargaining practice, and subjecting unions and multiemployer bargaining units to the antitrust laws in a way that outlaws industrywide collective bargaining. This proposal might substantially fulfill the primary goals underlying the labor exemption, but more efficiently than the prevailing system. It might help U.S. industries acquire some of those features of the Japanese system which may be helpful to our economy, while at the same time avoiding the problem inherent in overly weak or "company" unions. Whether such a solution actually would be superior to the present system depends on several unanswered, mostly empirical, questions, that have been discussed throughout this paper. Our purpose was to suggest that carefully specified limitations on union monopoly power might be in the public interest.

NOTES

1. The authors are, respectively, Assistant Professor, University of Baltimore School of Law, and Professor, Graduate School of Public Affairs, University of Washington. The authors thank Ernest Gellhorn, Howard Marvel, and Kim T.K. Seah for many helpful suggestions. Mistakes, of course, are our own. Many of the ideas in this paper, especially those in Section III, are extensions of those addressed in Lande & Zerbe, "Reducing Unions' Monopoly Power: Costs and Benefits," 28 *J. L. & Econ.* 297 (1985).
2. See Gould, "Labor law in Japan and the United States: A Comparative Perspective," 6 *Industrial Relations Law Journal* 1, 10-11 (1984); Special Project Note, "Alternatives to the United States System of Labor Relations: A Comparative Analysis of the Labor Relations Systems in the Federal Republic of Germany, Japan, and Sweden," 41 *Vand. L. Rev.* 627, 640-41 (1987).
3. See Lande & Zerbe, *supra* note 1, at 298-301.
4. *Ibid.*
5. See Comment "Japanese Labor Relations and Legal Implications of the Possible Use in the United States," 5 *Northwestern J. Int'l Law & Business* 585, 6000 (1983).
6. *Id.* at 601; Special Project Note, *supra* note 2, at 640.
7. Comment, *supra* note 5, at 601; Gould, *supra* note 2, at 11.
8. Gould, *supra* note 2, at 10; Comment *supra* note 2, at 601 n. 32 ("The federations — are considered "outsiders" by both enterprise unions and management; consequently, they are not welcome at the bargaining table.")
9. Gould, *supra* note 2, at 5.
10. *Id.* at 5, 7-8; Comment, *supra* note 2, at 594-602. See generally Special Project Note, *supra* note 2, at 643-46.
11. *Id.* at 12.
12. Comment, *supra* note 2, at 602-03; Special Project Note, *supra* note 2, at 643-46.
13. For the relevant history see J. Hughes, *American Economic History* 417-31 (1983) and P. Taft, *Organized Labor in American History* (1970). See also Lande & Zerbe, *supra* note 1, at 248-301.
14. Congress' desire for equality of bargaining potential has been widely recognized. See e.g., E. Berman, *Labor and the Sherman Law* 11-51 (1930). For a discussion of the goal of a balance of power between labor and management, especially with respect to the Wagner Act, see C. Heckscher *The New Unionism* 40-52 (1988). See also Lande & Zerbe, *supra* note 1, at 248-301.
15. See Lande & Zerbe, *supra* note 1, at 297-300.
16. Klein, Crawford, & Alchian, "Vertical Integration, Appropriable Rents, and the Competitive Contracting Process," 21 *J. Law & Econ.* 297 (1978).
17. See R. Freeman and J. Medoff, "What Do Unions Do?" 8-9 (1984).
18. Clark, in his study of the cement industry, found that entrance of unions was typically followed by a change in lower or middle management. Clark also found the quality of management to be higher in unionized firms. Clark, "The Impact of Unionization on Production: A Case Study," 33 *Indus. Lab. Relations Rev.* 451 (1980); Clark, "Unionization and Productivity: Micro-Econometric Evidence," 95 *Q. J. Econ.* 613 (1980). An alternative hypothesis would be that firms with better management tend to become unionized. If management is collecting short-term rents, the formation of a union may transfer these rents to workers.
19. R. Ruboch & M. Zimmerman, *Unionization and Profitability: Evidence from the Capital market* (unpublished manuscript) (Sloan School Mgmt., MIT, October 1982).
20. G. Lewis, *Union Relative Wage Effects*, (unpublished manuscript).
21. See Freeman and Medoff, *supra* note 17, at 267.
22. For representative cases, see *United Mine Workers, v. Pennington*, 381 U.S. 657 (1965); *Amalgamated Meat Cutters v. Jewel Tea*, 381 U.S. 676 (1965); *Adams Dairy Co. v. St. Louis Dairy Co.*, 260 F.2d 47 (8th Cir. 1958).

23. The Herfindahl index was greater than 2000. Before Adams' entry, St. Louis dairies supplied about 27 percent and Pevely Dairy, supplied about 36 percent of the fluid milk market. In addition, an association of smaller dairies existed and presented a solid front in union negotiations.
24. Under terms of the union contract drivers received a base salary plus commissions based on a point system, with points determined by the volume and type of milk delivered.
25. There was some indication that the motivation behind the original union was jealousy of the high wages of the Adams' drivers by other union members. The union may have predated against parts of itself. A not insignificant portion of labor law may be viewed as attempts to prevent waste resulting from one union rent-seeking at the expense of another, or one faction within a union to acquire wealth from another faction within the same union.
26. See cases in note 22, supra. See also *Allen Bradley Co. v. Local 3, IBEW*, 325 U.S. 797 (1945); *Apex Housiery Co. v. Leader*, 310 U.S. 469 (1944); *United States v. Hutchenson*, 312 U.S. 219 (1941). These cases firmly established that collective bargaining enjoys a general exemption from the antitrust laws.
27. For a rent-seeking explanation of the Pennington case see Williamson, "Wage Rates as Barrier to Entry: The Pennington Case in Perspective," *Q. J. Econ.* (1968) See also *Connell Construction Co. v. Plumber & Steamfitters, local 100*, 421 U.S. 616 (1975). As an example of further complexity, in Pennington the union itself was a major stockholder in one of the larger coal companies affected, and had ownership interests in three others. 381 U.S. at 733.
28. Safety requirements, for example, might be an effective tool for raising costs of smaller firms. Pashingian has shown that many environmental regulations differentially affect smaller firms. Environmental regulations can reduce the number of plants, raise average plant size, and reduce market share of smaller plants. Environment or safety regulations built into union contracts could have similar effects. Pashingian, "The Effect of Environmental Regulation on Optimal Plant Size and Factor Shares," *27 J. L. & Econ.* 1 (1984).
29. Unions of public employees, for example, are becoming increasingly important. Our proposal might help prevent relatively new as well as the more established unions from becoming a source of net costs rather than benefits.

ENHANCED CHILD RELIEF AS WORK INCENTIVE AND POPULATION MEASURES - AN EXPERIMENT IN SINGAPORE PERSONAL INCOME TAXATION

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I. INTRODUCTION

In the fifties and early sixties, Singapore experienced a very high rate of population growth.¹ Rapid population growth imposes its burdens on the economy in the form of a high dependency ratio, heavy social service requirements, and a subsequent employment problem. Therefore, "Stop At Two" was the catchword in those days. However, over the last quarter century, rapid economic growth, full employment, and slow domestic labour force growth due to declining birth rates have changed the scenario completely. The culmination has been a reverse of the Government's population policy and the replacement of the catchword "Stop At Two" by "Three Or More If You Can Afford It" in the mid-eighties. This article will review the use of enhanced child relief and tax rebates as work incentive and population measures in Singapore personal income taxation in response to demographic changes during this period.

II. ISSUES AND MEASURES

While the Government officially embarked on family planning with the formation of the Singapore Family Planning and Population Board in 1966, the first anti-natalist fiscal measure was put into force when the Government announced in October 1972 that, with effect from the year of assessment 1974, no deduction would be allowed in respect of any child born on or after 1st August 1973 if the child was the fourth or subsequent child. The deductions allowable for the first three children were \$750 (Singapore currency) each for the first two children and \$500 for the third child.² As economic development of Singapore accelerates, labour shortage becomes increasingly acute. Singapore relies heavily on foreign workers. The proportion of foreign

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