

我國勞基法的問題與展望

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(中文摘要)

本文簡述勞動基準法制定背景及其改革重點，並從規範面比較我國與西方工業國家、日本、南韓等的勞動保護法，發現我國法律對勞工的保護大致已達西方水準，但若再從實證面觀察，則未免瞠乎其後。勞基法基本上雖僅為舊法的體系化，改革幅度不算太大，仍遭致企業界及學者的激烈反對，尤其是經濟學者，多認為保護規範「愛之其實害之」。

作者在結論中一方面肯定勞基法為

因應社會發展自然的結果，並符合憲法保護勞工的要求，另一方面指出勞資領域的法律化今後應從實體規範轉向組織、程序規範，以充分回應不同產業的需要，並透過自治減輕勞工行政的負擔。作者並強調勞基法在修改前仍須執行，目前各界一味批評，業界公然抗拒的情勢，已對法治形成極惡劣的影響，這種一面倒的批評也適足反應勞資利益在代表上的不均衡。

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The Current Situation of the Basic Labor Standards Law and Industrial Relations in the Republic of China

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This paper concerns the development and current situation of the Basic Labor Standards Law (BLSL) and industrial relations in the Republic of China (ROC). It is divided into five sections, including background; reforms; international comparison; practice and critical remarks; and, conclusion and outlook. Reference material for this work has been drawn from both Chinese sources and various international surveys, as noted herein.

I. Background

The BLSL was enacted on July 30, 1984. Passage of this law represented a long, cumulative process, involving all sectors of the ROC's society and Government. The BLSL has its historical origins in the first

draft of a ROC labor code in 1961 which, like its 1929 draft predecessor, failed to be codified, due to its unwieldy size and structure.¹

The development and enactment of the BLSL was far from a smooth process. During the course of events that led to its passage, there were widely different opinions emanating from industry leaders, well known academicians and several Government bodies, as well as minority members of the country's workforce. The discussions which took place during its development and passage were occasionally very heated, reflecting the serious concerns of those involved.² To some extent, this situation was most ironic as not only the essential points of the BLSL are not original

1) Kuo-chun Chen, *Modern Labor Problems and Labor Legislation* (Chinese), Volume 2, 4th Edition (Cheng Kuang Book Company, Taipei), 1984, pp. 26-86.

2) See *Press Materials* (Chinese), Volume 1, "On Labor Standards Act," edited by the Library Staff of the Legislative Yuan, ROC, 1986.

in basis, but the very people who were to be protected by this law occasionally were involved in opposing the enactment of it. Furthermore, if viewed from a long-term perspective, this law is quite evolutionary in nature and does not represent any earth-shaking departure from past ROC industrial relations legislation. The law is also in keeping with mainstream legal trends around the world concerning labor relations.³

Prior to the passage of the BLSL, there were approximately one hundred labor related laws and statutes on the books in the ROC, representing over fifty years of legislation on the subject. Viewed in the main, many of these laws were highly idealistic and progressive in nature. However, some were of limited use, and largely outdated, while others were passed by the ROC's Legislature but never officially sanctioned for enforcement. The emphasis was on norms of conduct rather than on formulation of organizational and procedural conditions of industrial relations; in Teubner's terminology—more on substantive law than on reflexive law.⁴ Due to the economy's weak infrastructure and immature legal culture, the net result of this situation was that there were many laws on the books, but few laws in the factory.

During the 1930s, after the Kuomintang Party unified China, it

passed a comprehensive set of laws, the most important of which are noted below. After the Sino-Japanese war broke out in 1937 and the economy's fate grew perilous, the Government passed a series of industrial relation laws reflecting tighter labor procedures. The most important of these Acts were the Employee Bonus Act (passed 1943) and the Compulsory Public Works Labor Act (passed 1943). After the war was over, a Constitution was passed in 1947. This piece of legislation was very favorable to the interests of labor; specifically Articles 14, 15, 152-154 and 156.

1. The Union Act (passed 1929)
2. The Factory Act (passed 1929)
3. The Labor Conflict Management Act (passed 1930)
4. The Collective Bargaining Act (passed 1930)
5. The Factory Inspection Act (passed 1931)
6. The Labor Contract Act (passed 1931, but not enforced)
7. The Minimum Wage Act (passed 1936)
8. The Mining Standards Act

After moving to Taiwan, the Government revised many old industrial relation laws and enacted new laws to further the welfare of the workforce and to facilitate the

3) Spiros Simitis, "Zur Verrechtlichung der Arbeitsbeziehungen," in Kübler (ed.), *Verrechtlichung von Wirtschaft, Arbeit und sozialer Solidarität*, (Suhrkamp, Frankfurt), 1985, pp. 73-163.

4) Günther Teubner, "Substantive and Reflexive Elements in Modern Law," 17 *Law and Society Review*, 1983, page 239.

economy's rapid growth. Below are noted the most important of these laws.

1. Miner Retirement Regulations (passed 1951)
2. Factory Worker Retirement Regulations (passed 1951)
3. Labor Insurance Regulations (passed 1958)
4. Labor Education Regulations (passed 1958)
5. Factory Worker Employment and Termination Regulations (passed 1960)
6. The Mining Safety Act (passed 1973)
7. The Labor Safety and Hygiene Act (passed 1974)
8. The Occupational Training Act (passed 1983)

Overall, these laws, which were very unsystematically put into force, are not comprehensive enough in character and are rapidly becoming outdated, and in some cases, totally mutually contradictory in nature.

At present, the labor situation in the ROC is becoming more and more complex, due to the rapid growth of the workforce as well as higher and higher educational levels of the society as a whole.⁵ Unfortunately, the country's legal structure, which is supposed to facilitate this

growth, is now obviously inadequately structured to meet these challenges. In addition, the ROC's unions are not forcefully organized to compensate for this situation.⁶ This is acknowledged by many sectors of society who now realize that something must be done in the future. During annual meetings between ROC and US delegations consisting of various ROC Government departments and key private sector industrial figures, the state of the country's industrial relations laws is continuously brought up. Comments have been concerned primarily with current ROC labor conditions.

II. Reforms

The BLSL has two primary functions. First, the law signifies a cleansing and systemization of prior existing industrial relations law in the ROC. Second, the law improves the standards and conditions of the ROC' working environment. In these aspects, the BLSL differs significantly from the US' Fair Labor Standards Act of 1938, in that the law is of a far more comprehensive nature, but is similar in thrust to industrial relations law in Japan (see Labor Standards Act, 1947) and in South Korea (see Labor Standards Act, 1953).⁷ In some aspects, the BLSL goes beyond the regulations of Japan in that it touches

5) See Wu-cheng Yan, *The BLSL Legislation From a Policy Making Perspective* (Chinese), (Shi Ying Publishing Company, Taipei), 1985, pp. 43-52.

6) Cheng-kuang Kan et al., (Chinese), *A Study on the Improvement of the Organization and Function of Unions At Different Levels*, Taipei, 1983.

7) For a detailed comparison of the Labor Standards Laws in these three countries, see Chen-hsian Lin, (Chinese), *On Labor Standards Act, A Comparison Study of Laws in the ROC, Japan and the ROK*, 2nd Edition, (Cheng Chao Publishing Company, Taichung), 1986.

areas such as employee retirement benefits, which theoretically belong to the area of social security regulations—critical remarks of the BLSL’s “extra—territorial” aspects will be addressed later.

The BLSL represents four significant reforms over existing ROC industrial relations legislation. First, the law is far more wideranging in scope and extends more deeply into the labor environment of the country than past legislation. The law is applicable to the following industries, while prior factory and mining acts were of limited scope and industry specific. (See Article 3).

1. Agriculture, forestry, fishing and pasturage industries;
2. Mining and quarrying industries;
3. Manufacturing Industries;
4. Construction industries;
5. Water, power and gas supply industries;
6. Transportation, warehousing and communications industries;
7. Mass media industries;
8. Other Government designated industries.

For the first time, civil servants with worker’s status are also officially covered by law and are entitled to

the same treatment as regular workers, if none better exists under other legislation. (See Article 84). In addition, before the end of next year, another one million workers will be covered by this law.⁸

Second, the BLSL provides improved protection of employee’s civil rights. Past labor laws were ambiguously worded as to the extent of a regular work day and suggested that a work day could be legally extended to ten hours. Under the BLSL, the maximum work day is eight hours per day for an adult laborer, with a maximum work week of forty-eight hours per week. (See Article 30). Furthermore, the law limits and controls extension of hours, subject to consent of the labor unions and the worker concerned. (See Article 32). Under the BLSL, a worker cannot be forced to work overtime if ill health or other reasonable causes are cited as reasons. (see Article 42). In past legislation, this issue was not addressed at all. Prior to the BLSL, rest periods were mandated every five hours. Under the BLSL however, this time period has been reduced to four hours.

In the area of women’s rights, the BLSL is far more progressive than prior statutes. In the past, there were only three conditions which prevented women from working after midnight.

8) See *The Economic Daily*, ROC, (Chinese), October 3, 1986, page 2. Of a total labor force population of 7 million, approximately 3.2 million workers are now covered by the BLSL, with another 1 million expected to be covered by the BLSL by the end of next year; representing coverage of approximately 60 percent of the ROC’s workforce. See also *The Economic Daily*, ROC, (Chinese), July 30, 1984, page 1.

Now, these conditions have been tightened considerably and have increased in number. Pregnant women are not allowed to work after midnight at all now and are granted eight weeks for maternity leave after childbirth. (See Articles 49 and 50). If a pregnant female worker now requests less strenuous work and such work is available, the employer shall not reduce her wages. (See Article 51). A female worker with a nursing child must also now be provided with two thirty minute periods for nursing purposes.

Extensive coverage is also given in the BLSL to the protection of employee labor agreements. (See Articles 11, 12, 13 and 16). Prior laws covered the area of terminating labor agreements, but were never enforced.

Third, the BLSL provides increased worker benefits. In the area of additional compensation, the BLSL establishes minimum additional compensation standards. (See Article 24). In the case of unpredictable events, double wages are mandatory and the employee will be subsequently given time off as compensation. (See Article 41). In corporate bankruptcies, workers are now given priority over all creditors for the portion of overdue wages not in excess of six months wages. (See Article 28). This proviso did not exist in prior industrial relations legislation. For severance pay, the employment period used for compensation benefits has been lengthened, in comparison to past laws. (See

Article 17). Retirement benefits have been increased, by mandating a different employment beneficiary period, in comparison to prior legislation (See Article 55). In addition, a retirement fund system has been introduced, controlled by workers and employers, which did not exist before. (See Article 56). In the cases of death, disability, injury or major illness due to occupational reasons, employees should be compensated. (See Article 59). This is now stipulated in a whole chapter. Contractors and subcontractors are also included in this provision for the first time. (See Article 63).

Fourth, the BLSL provides for greater employee participation in the area of management. Employers must publically post business work rules which have been reviewed and registered by the appropriate Government authority. The content of such work rules is now detailed in such a manner that former employer arbitrariness regarding factory rules is reduced. (See Article 70).

The BLSL mandates employer-employee meetings for which such rules have been approved by the central Government. However, the functions of these meetings as well as the frequency of them is not addressed at all. (See Article 83). This law is merely a slight improvement over what followed before.

Under the BLSL, employees are given the right to complain without endangering their employment. (See Article 74). In addition, whereas

for violation of existing labor laws were solely monetary in nature, regardless of the offense committed, the BLSL stipulates various degrees of penalties, ranging from imprisonment up to five years, to no imprisonment but payment of a token fine.

III. International Comparison

Viewed at the global level, one fundamental and irreversible trend is the ever increasing extent of legalization of industrial relations. Differences in various international industrial relations laws consist more in thrust, ranging from highly general to extremely specific, as well as weighting—with some countries having highly material regulations versus more procedural measures.

The trend of industrial relations law in the industrialized world is from specific to general. This can be easily seen in Western Europe (with the exception of England), and in the United States (US).⁹

On the other hand, there is no clear global trend with regard to material versus procedural matters. For instance, in the US, which is traditionally inclined to collective laissez-faire industrial relations, approximately 80 percent of the labor force is not involved in the collective bargaining process. Actually, collective bargaining in the US is being

pre-empted by the adoption of a variety of regulatory statutes. France, on the other hand, which is well known for extensive regulation of industrial relations, has turned away from this course. According to Mr. Jean Auroux, Minister of Labor and author, the Socialist Party reforms in France during the 1980s are of such a manner that, "We prefer a law which gives a framework and which stimulates, to a law which regulates."¹⁰

In the case of the ROC, the direction of industrial relations law has been more and more toward material regulation. Again, this trend is noted in the BLSL.

The following is a comparison of key points of labor regulation with current legal standards in the ROC. Data for Western industrialized countries is derived from an Austrian study published in Vienna in 1981, based upon extensive scientific analysis using 1980 data.¹¹ Caution is warranted in studying this data. It is sometimes difficult to state exactly what "the law" is in a certain country. In the US for example, the Tenth Amendment to the Constitution reserves certain powers for the States and the Federal Government has been largely pre-empted from the whole field of industrial relations management by collective bargaining agree-

9) Simitis, *supra*, footnote, page 39.

10) Jean Auroux, "Un Nouveau Droit du Travail?" 1. Dr. Soc. (*Les Reformes-IV-Un Nouveau Droit du Travail?*) 2. *Special Issue*, 1983, as cited by Mary Ann Glendon, "French Labor Law Reform 1982-1983: The Struggle for Collective Bargaining," *The American Journal of Comparative Law*, Volume 32 (1984), page 482, footnote 206.

11) Franz Duni and Joachim Lamel, *Arbeit-und Sozialrechtliche Regelungen im Internationalen Vergleich*, (Signum Verlag, Vienna), 1981.

ments, resulting in a high degree of regulatory variety and autonomy. Data for South Korea (The Republic of Korea, ROK) is simply based on existing law and not on any particular study.

In the case of normal work hours, ROC law and ROK law stipulate a

maximum number of 48 hours per week. In actuality however, people in Taiwan average approximately 49 hours per week. Among the industrialized countries in Table below, this figure would place the ROC at the top of the list.

Table 1. Normal Work Hours, 1980
(hours per week)

Country	Law			Collective Agreement ^{f1}		
	Worker	Employee	Public Servant	Worker	Employee	Public Servant
Austria	40	40	40			
W. Germany	48	48	40	40	40	
Belgium	40	38	38			
Denmark	40	40	40			
France	40	40	40			
England	f2	f2	f2	f3	f3	f3
Italy	48	48	42	40	40	36
Holland	48	48	48	40	40	40
Norway	40	40	40			
Sweden	40	40	40			
Switzerland	45	45	44	42-44	42-44	
Japan	48	48	48	45	45	45
US	f3	f2	f2	na	40	40

Footnotes:

1. Cited only when those agreements differ from legal provisions.
2. No legal regulations.
3. Two-thirds of all workers under a 40 hour work week.
4. na=Information not available.

In the case of number of work days, the ROC averages 6 per week, with the ROK also averaging 6 per week. As is noted in Table 2 on the next page the ROC's figures are among the highest of the industrialized countries indicated. Although the BLSL does not make any differentiation as to category of workers, in actual practice, there are subtle differences involved.

In the case of overtime compen-

sation, ROC law provides at least one-third to two-thirds of normal pay for usual work days and up to double normal pay for holidays, but makes no compensation differentiation with regard to night work. In the ROK, overtime compensation is one-half of the amount of normal compensation, for all additional work normal work days, holidays or night work. The other countries data are noted in Table 3 on the next page.

Table 2: Work Days Per Week
(selected industrial sectors)

Country	Production	Commerce	Tourism	Banking/ Insurance	Public Servant
Austria	5	5½	5-6	5	5
W. Germany	5	5½	6	5	5
Belgium	5	5	5	5	5
Denmark	5	5½	6	5	5
France	5	5	5	5	5
England	5	5½	6	5	5
Italy	5	5½	5½	5	6
Holland	5	5½	6	5	5
Norway	5	5	5	5	5
Sweden	5	5	5	5	5
Switzerland	5½	5½	5½	5	5
Japan	5½-6	5½-6	5½-6	5½-6	5½-6
US	5	6	6	5	5

Table 3. Overtime Compensation
(as a percentage of normal pay)

Country	Weekdays			Sunday and Holidays			Night Work		
	Worker	Employee	Public Servant	Worker	Employee	Public Servant	Worker	Employee	Public Servant
Austria									
Law	50	50	50	50	50	100	50	50	100
Col. Agree	50	50		100-200	100		100	100	
W. Germany									
Law	25	25	25	25	25		25	25	
Col. Agree	25-40	25-40		100-200	100-200		50	50	
Belgium									
Law	25-50	25-50	0	100	100	0	25-50	25-50	0
Col. Agree		-none-			-none-			-none-	
Denmark									
Law		-none-			-none-			-none-	
Col. Agree	50-100	50-100	50-100	100	100	100	na	na	na
France									
Law	-in general	25-50-			-in general	25-50-	-in general	25-50-	
Col. Agree	na	na	na	na	na	na	na	na	na
England									
Law				-no general statements possible-					
Col. Agree									
Italy									
Law	10	10	10	10	10	10	10	10	10
Col. Agree	25	25	na	40	40	na	50	50	na
Holland									
Law		-none-			-none-			-none-	
Col. Agree.	25-50	25-50	na	100	100	na	na	na	na
Norway									
Law	40	40	40	40	40	40	40	40	40
Col. Agree	40-50	40-50	na	100	100	na	100	100	na

Sweden											
Law		-none-			-none-				-none-		
Col. Agree	50	1/95 f1	na	100	1/73 f1	na	100	1/73 f1	na		
Switzerland											
Law	25 f2	25 f2	na	50	50	na	25	25	na		
Col. Agree	25	25	na	50-100	50-100	na	50	50	na	na	
Japan											
Law	25	25	na	25	25	na	25	25	na	na	
Col. Agree	25	25	na	25	25	na	25	25	na	na	
US											
Law	na	50	50	na	50	50	na	50	50		
Col. Agree				-no general statements possible-							

Footnotes:

1. Monthly pay.
2. For overtime work that exceeds a total of 60 hours per year.
3. Information not available.

In terms of the number of vacation days per year that a worker may take off, ROC practice fluctuates between a minimum of 7 days per

year, and as many as 30 days per year. See Table 4 below. In the ROK, these figures are 3 days per year and 30 days per year, respectively.

Table 4. Minimum-Maximum Vacation Periods
(as of 1980)

Country	Law		Collective Agreement ^{f1}	
	Minimum Vacation	Maximum Vacation	Minimum Vacation	Maximum Vacation
Austria	24	30(36) f2		
W. Germany	18		24 f3	31 f3
Belgium	24	24		
Denmark	26			
France	24			
England	-no regulations-		-no general statements possible-	
Italy	30 f2	30 f2	24	na
Holland	15		21-24	27-34
Norway	24	24		
Sweden	30			
Switzerland	12(24) f2		24	
Japan	6	20		
US	-no regulations-		-no general statements possible-	

Footnotes:

1. Only cited when those agreements differ from the law.
2. Public servants.
3. On average.
4. information not available.

According to ROC law, there are 15 official holidays per year (ten national and five cultural), making the ROC one of the highest ranking

countries in comparison to those noted in Table 5 below. No data is available for the ROK.

Table 5. National Holidays
(as of 1980)

Country	Paid Holidays		
	Law	Collective Agreements	Total
Austria	13-14		13-14
W. Germany	11-13		11-13
Belgium	10	1	11
Denmark	9 ¹ / ₂	¹ / ₂ -3	10-12 ¹ / ₂
France	10		10
England		8	8
Italy	11	1	12
Holland	7		7
Norway	9		9
Sweden	1	10	11
Switzerland		8-9 ¹ / ₂	8-9 ¹ / ₂
Japan	12		12
US		7-9	7-9

With regard to compensation due to illness, ROC workers receive between 50-100 percent of their usual pay for a maximum of 30 days per illness. In comparison to the countries

noted in Table 6 below, this would rank the ROC in the middle of such a grouping. For the ROK, there are no regulations pertaining to this aspect of industrial relations law.

Table 6. Sick Pay

Country	Payment				Sick Pay		
	Highest % of Worker's Pay		Maximum Number of Days		Highest % of Worker's Pay	Maximum Number of Days	Pre-beneficiary Waiting Period
	Worker	Employee	Worker	Employee			
Austria	100	100/50	28-70	42-48/28	50-60	182 (546) f2	3
W. Germany	100	100	42	42	80	546	1
Belgium	100	100	7	30	60	364	1
Denmark	90	100	35	35	90	not restricted	0
France	90/66	90/66	30-90/30-90	30-90/30-90	50	360 (1080) f3	3
England	—	—	—	—	@60	168 f4/156 f5	3 f4/12 f5
Italy	—	100	—	90	50/66.6 f6	180 f6	3 f6
Holland	—	—	—	—	80	364	2
Norway	100	100	14	14	100	312	0

Sweden	—	—	—	—	90	not restricted	1
Switzerland	100	100	21 f7	21 f7	—	—	—
Japan	—	—	—	—	60	540	3
US	—	—	—	—	—	—	—
					(50/66.6 f8)	(182 f8)	(0-8 f8)

Footnotes:

1. For Denmark, figures are net worker's pay; for all other countries, gross figures are used.
2. Based on Association statutory decisions.
3. In the case of long-term illness (i.e., over 6 months).
4. All inclusive sick pay.
5. Ad hoc payment of sick pay.
6. Only workers.
7. Proportional (longer) payment in the case of long employment.
8. Only in 6 States.

In the ROC, there are no regulations pertaining to medical care in the factory. In the ROK, there are also no regulations governing factory

site medical facilities. Thus, any comparison with the data in Table 7 below is difficult.

Table 7. Factory Site Medical Care

Country	Is There A Legal Duty?	If Yes:	
		For What Plant?	Is There A Legal Minimum Engagement Period?
Austria f1	yes	over 750 workers f2	no
W. Germany	yes	f3	no f3
Belgium	yes	generally	no
Denmark	yes	generally, for certain branches	yes f5
France	no		
England	no		
Italy	no		
Holland	yes	over 750 workers f2	no
Norway	yes	defined by Boards	no
Sweden	no f6		
Switzerland	no f7		
Japan	yes	over 200 workers	no
US	no		

Footnotes:

1. At this time, there is a draft regulation concerning, among other things, site medical care for companies with other 300 workers.
2. A smaller number is available if there is a particular health hazard present.
3. There are guidelines/rules for professional cooperatives mandating site medical care and minimum engagement periods.
4. For example: iron and metal works; foundries; chemical industry; petroleum and asphalt industries.
5. 1.3 hours per year and worker; there is a full-time medical service personnel in any company with over 1,250 workers.
6. There are no collective agreements concerning medical care.
7. An Accident Insurance Act is being prepared which discusses site medical care.

In the ROC, there are no regulations concerning regular bonuses, in direct comparison to those countries noted in Table 8 below. Bonuses are subject to the employer's discretion,

and frequently are mandated more by the profit picture of the corporation concerned than social custom. This is the same situation in the ROK at present.

Table 8. Regular Bonuses

Country	Worker			Employee			Public Servant			Tax Benefit
	Vaca-tion	Chris-tmas	Other Occas-ions	Vaca-tion	Chris-tmas	Other Occas-ions	Vaca-tion	Chris-tmas	Other Occas-ions	
Austria	4 week payment or 1 months' earnings	4 week payment or 1 month's earnings	no	1 month's salary	1 month's salary	f1		f2		yes
W. Germany	yes	yes	na	yes	yes	—	yes	yes	—	yes
Belgium	4 week payment	—	—	—	—	—	yes	yes	yes	no
Denmark	12.5% of annual earnings f3	no	no	1% of annual earnings	no	no	1.5% of annual earnings	no	no	no
France	20-50% of monthly earnings	20-50% of monthly earnings	—	20-50% of monthly earnings	20-50% of monthly earnings	—	no	no	—	no
England					no					—
Italy	no	1 month's earnings	f4	no	1 month's earnings	f4	no	1 month's earnings	no	no
Holland	yes	yes	—	yes	yes	—				no
Norway					no					—
Sweden	12% of annual earnings	no	no	0.6% of monthly earnings per vacation day	no	no	0.036% of annual earnings per vacation day	no	no	no
Switzerland				—	—					no
Japan					—					no
US					no					—

Footnotes:

1. In some sectors, such as banking, there are special payments made for various occasions.
2. Public servants get seasonal payments which may go as high as 50% of monthly earnings.
3. No payments during vacation.
4. Further monthly earnings are given in commerce and some other sectors (14. salary).
5. — means no information available.

In the ROC, pregnancy leave is regulated by law. While there is no minimum leave period, the maximum amount of time off is 8 weeks per pregnancy. As is noted in Table 9 below, many countries in Europe

allow for a much greater time off per pregnancy than in the ROC. In contrast, ROK law stipulates a maximum period of 60 days per pregnancy.

Table 9. Pregnancy Leave

Country	Are There Any Regulations?	If Yes:		
		Duration	Is Payment Provided?	Can The Father Also Claim?
Austria	yes	up to one year	yes	no
W. Germany	yes	up to 6 months after birth	yes	no
Belgium	no			
Denmark	no			
France	no f1			
England	yes	20 weeks	no f2	no
Italy	yes	6 months during the first year	yes	yes
Holland	no			
Norway	yes	up to 1 year after birth	no	yes
Sweden	yes	180 days f3	yes	yes
Switzerland	no			
Japan	no			
US	no			

Footnotes:

1. Public servants and teachers have regulated vacation periods.
2. After the first 6 weeks, further claims can be made for up to 18 weeks.
3. Further paid exemptions are possible for up to 180 days until the 8th year of the child. Unpaid exemption is possible until the child is 1½ years old. Shortening the mother's work period by up to ½ of normal time is possible, with correspondingly reduced pay, until the child is 8.

In the case of termination periods, ROC law differentiates in length of time periods, depending on the term of employment; time periods range from 10, 20 to 30 days. In the ROK, the maximum period stipulated by law is 30 days. Both countries appear to be in line with current regulations of the nations noted in Table 10 on the next page.

In the ROC, severance compensation is covered by law. Essentially, compensation is given at a rate of one month's pay for every year employed by the terminating company. In comparison to the other countries noted in Table 11 on the next page, the ROC ranks very highly. In the ROK, there are no regulations governing severance compensation.

Table 10. Termination Periods

Country	For Workers		
	Minimum Termination Period		Differentiation For Longer Period According To:
	Employer	Worker	
Austria	14 days	14 days	company employment
W. Germany	2 weeks	2 weeks	company employment
Belgium	14 days	14 days	company employment
Denmark	1 week	1 week	company employment
France	8 days	8 days	company employment
England	1 week	1 week	company employment
Italy	6 days	6 days	company employment
Holland	f1	f1	company employment
Norway	1 month	1 month	company employment & age
Sweden	1 month	1 month	age
Switzerland	1 month	1 month	company employment
Japan	1 month	2 weeks	none
US	-no statement possible-		

Footnote:

1. Minimum period is the period between two work payments.

Country	For Employees		
	Minimum Termination Period By:		Differentiation For Longer Period According To:
	Employer	Worker	
Austria	6 weeks	1 month	company employment
W. Germany	6 weeks	6 weeks	company employment & age
Belgium	3 months	3 months	company employment & position
Denmark	1 month	1 month	company employment
France	1 month	1 month	company employment
England	1 week	1 week	company employment
Italy	1 month	1 month	company employment
Holland	f1	f1	company employment
Norway	1 month	1 month	company employment & age
Sweden	1 month	1 month	company employment & age
Switzerland	1 month	1 month	company employment
Japan	1 month	2 weeks	none
US	-no statement possible-		

Footnote:

1. Minimum period is the period between two work payments.

Table 11. Severance Compensation
(fold out)

Country	In principle, severance compensation is available for every dissolution of contract (with the exception of justified discharge or break-off by worker or unjustified worker walk out).	Severance compensation only for unjustified break-off or discharge from employer	Severance compensation only for surplus staff situation
Austria	<p>Severance compensation for worker and employee for every:</p> <p>3 service years-2 month's payment;</p> <p>5 service years-3 month's payment;</p> <p>10 service years-4 month's payment;</p> <p>15 service years-6 month's payment;</p> <p>20 service years-9 month's payment;</p> <p>25 service years-12 month's payment.</p>	—	—
W. Germany	—	<p>Severance compensation for any worker older than 18 years that has been employed for more than 6 months with the same company; if under 50 years old, maximum pay is 12 months compensation; over 50 or 55 years old, maximum pay is 15 or 18 months compensation.</p>	—
Belgium	—	<p>Severance compensation for workers of at least 6 month's pay.</p>	—
Denmark	<p>Severance compensation for employees as follows:</p> <p>12 service years-1 month's payment;</p> <p>15 service years-2 month's payment;</p> <p>18 service years-3 month's payment.</p> <p>(Workers only according to collective agreements).</p>	<p>Severance compensation for workers according to collective agreements, up to a maximum of 26 month's pay; for employees, according to the law, up to a maximum of 6 month's pay.</p>	—
France	<p>Severance compensation for workers after 2 years service with the company, in the amount of 1/10% of monthly pay (or 20 hour pay) for every service year.</p>	<p>Severance compensation for workers in the amount of at least 6 month's pay.</p>	<p>Special payment for a maximum of 12 months of a certain percentage of the last payment, reduced every 3 months in order to motivate the worker to seek a new job.</p>

England	—	Workers with at least one year of employment with a company receive a basic amount of 2 week's pay. Additional claims can be made in respect to damages or non-abiding a court order that sides with the employee. (There is a maximum amount of compensation).	Workers with at least 2 years employment with company receive half of 1 week's pay for every service year between the ages of 18-22; 1 week's pay for every service year between the ages of 23-41; 1½ week's pay for every service year between the ages of 42-60 (women) or 42-65 (men). There are maximum limits for week pay and for entire compensation.
Italy	Severance compensation for employers in the amount of 1 month's pay for every service year. (Workers only according to collective agreements).	Severance compensation for most workers in a company with over 15 workers as well as enterprises (with more factories) with over 35 workers. (Minimum amount is approx. 5 month's pay).	—
Holland	—	Severance compensation is granted by the courts; the claim amount is not fixed-age and length of employment with the company are usually considered.	—
Holland	—	Severance compensation is granted by the courts; the claim amount is not fixed-age and length of employment with the company are usually considered.	—
Norway	Severance compensation for workers over 50 years old, and with at least 10 service years, or 20 service years with no more than a 5 year interruption.	—	—
Sweden	—	Severance compensation for workers (except leading personnel) in the amount of 16 month's pay (in the case of workers with less than 5 service years), with a maximum of 48 month's pay (after 10 service years and more than 60 years old).	—
Switzerland	Severance compensation for workers over 50 years old and with at least 20 service years-in the amount of 2-8 month's pay.	—	—
Japan	na	na	na
US	na	na	na

In sum, when compared to other major industrialized countries of the West, the ROC appears to rank somewhere slightly below average, in the categories mentioned. Such a finding is quite encouraging when one considers that the ROC is still considered a developing country, with an annual per capital income of more than USD 3,000.¹² However, since the proof of the pudding is in the eating and not in the cooking, such a conclusion leaves a slightly bitter aftertaste in the mouths of those who must work in the factories of the country concerned.

IV. Practice and Remarks

In the past, several different labor laws have been enacted, but enforcement has been very poor. For example, in 1929, the Union Act was enacted, which stated that all workers should be organized into unions either on a professional basis or at the factory level. In actual fact, the degree of organized ROC labor today has never reached 25 percent of the labor force, and unions have been known for their lack of power and are not considered a serious force either in legislative matters or in industrial relations.¹³ Union growth continues at a slow pace; according to the Labor Department of the ROC's Ministry of Interior, in 1975 there were 1,255 unions, rising to a total of 1,920 in

1984.¹⁴

For over a half of a century, the ROC has had a Collective Bargaining Act, but collective bargaining has yet to play a significant role in the country's industrial life. At present, there are about 284 collective bargaining agreements in the ROC—a number that pales in comparison to the same figure in countries in Western Europe, such as West Germany.¹⁵

Factory meetings between employers and employees are few and far between. The predecessor to the BLSL, the Factory Act, was ratified, but never really enforced.¹⁶

In 1974, the Labor Safety and Hygiene Act was passed. However, since then, it has had little effect on ROC industrial life. Factory inspection and hygiene are of little interest. Just recently, two top ROC universities issued a report on sound pollution in the ROC textile industry. It was noted that among the 400,000 textile workers in the ROC, only 32 percent wear protective gear, with 45 percent exhibiting hearing difficulties. Of this number of workers, only 10 percent have sought annual hearing evaluations. In sum, unorganized unions, a legally uneducated workforce and a weak administrative infrastructure make enforcement of existing laws almost impossible.

It has been over two and one-half

12) *The Asian Wall Street Journal*, October 23, 1986.

13) See *The United Daily*, ROC, (Chinese), September 15, 1986, page 2.

14) See *The 1985 Statistical Summary*, (Chinese), ROC Ministry of Interior, Taipei, page 258.

15) See *The China Times Daily*, ROC, (Chinese), August 18, 1986, page 2.

16) See *The Economic Daily*, ROC, (Chinese), July 23, 1985, page 2.

years since the enactment of the effectiveness of this law is currently under way by various departments of the ROC's Ministry of Interior. However, more casual analyses have already been conducted by the country's press and individual academic members. These informal analyses reveal a most pessimistic picture. For example, one preliminary Government report on enforcement of the BLSL issued a year ago noted that in the areas of retirement benefits, collective bargaining and stock bonuses, the overall effect of the BLSL was actually negative in nature.¹⁷ The report stated that only 145 corporations (of over 100,000 companies surveyed) have ever held an employee-employer meeting, and only 170 have abided by the retirement regulations of the BLSL.¹⁸ In addition, the prohibition against night work is commonly ignored and corporate nursing rooms are rarely seen.¹⁹ In conclusion, at the present point of time, there is little ground for optimism that the BLSL is changing the structure of industrial relations in the ROC.

Critical remarks concerning the BLSL emanate primarily from two sources within the ROC—industry leaders and neo-classical economists. According to the country's industry leaders, the BLSL's enforcement will

raise total product costs between 10—30 percent over existing costs—possibly even higher in labor intensive industries.²⁰ For the ROC's medium and small-sized corporation who dominate the economy and who face marginally profitable futures, enforcing the BLSL creates an even heavier burden.

While sharing this view, leading ROC economists go even a step further, pointing out that the BLSL is "contrary to the principles of a free economy," in that by shifting the Government's responsibility to individual profit oriented entrepreneurs who may not be able to afford the burden, the law is draining badly needed investment capital away from the private sector. In Articles 17-20 and 55-58, the BLSL stipulated relatively high severance and retirement benefits to be paid by the employer in lieu of a national security system. In addition, Article 28, which gives employees first priority to overdue wages for up to six months in the case of corporate bankruptcies, creates another problem for the private sector since the banks involved view such a clause as contrary to their lending interests.²¹ While commenting on the drafting of the BLSL, one leading economist in the ROC, Dr. John Fei, noted that, "the road to hell is paved with good intention."²²

17) See *The China Times Daily*, ROC, (Chinese), August 18, 1986, page 2.

18) See *The Economic Daily*, ROC, (Chinese), July 23, 1985, page 2.

19) See *The Economic Daily*, ROC, (Chinese), July 25, 1985, page 2.

20) See *The Economic Daily*, ROC, (Chinese), July 23, 1985, page 2.

21) Sharp criticism has emanated from the Economic Reform Committee of the ROC's Executive Yuan; see the unpublished (Chinese) *Report of the Ad-Hoc BLSL Working Group*, Taipei, 1985.

22) See *The China Times Daily*, ROC, (Chinese), August 21, 1982, page 2.

Several ROC judicial experts in industrial relations also disagree with the BLSL's approach.²³ They feel that it aids in the materialization of the society's legal structure, making it less flexible. In reforming the country's industrial relations infrastructure, reflexive law would avoid both the characteristic inequities of laissez-faire and the arbitrariness and crudeness of direct regulatory response, inabling the State to provide a structural basis for the coordination of interaction among social sub-systems.

In effect, these critical comments point out that the BLSL is structured in such a way as to be anti-entrepreneurial in spirit and anti-risk taking in thrust—stifling industrial relations in general. The BLSL protects job seniority, limits termination benefits and ties retirement benefits to one corporation, in spite of the fact that approximately 96 percent of the ROC's corporations are small or medium in size with an average life expectancy of 15 years.²⁴

Critics allege that the BLSL also creates a boomerang effect.²⁵ They state that the law protects “marginally

productive labor,” such as women and the elderly, to a greater degree than other segments of the labor force, in turn raising product costs and the costs of hiring additional workers, which lowers overall labor productivity, forcing employer cost structure cutbacks, resulting in a higher level of unemployment—particularly among “marginally productive workers” such as women and the elderly.²⁶ It also is feared that the number of labor disputes might escalate as a result of predicted mass unemployment.

Industrialists and economists alike also insinuate that the relatively poor results of the ROC's economy in 1985 were due primarily to the effects of the BLSL. In that year, the ROC's overall unemployment rate jumped dramatically, particularly in the case of women, as Table 12 notes on the next page.

However, on a seasonally adjusted basis, such causes of alarm appear to be more relative in nature, as indicated in Table 13 on the next page.²⁷ This is particularly true in lieu of 1985's low labor turnover statistics (charted in Table 14, as

23) Yueh-chin Hwang, “Standardgesetz der Arbeitsbedingungen und Trends der Chinesischen Arbeitsbeziehung,” *Cheng-chi Law Review*, Volume 3, 1986, pp. 298-311—particularly page 306.

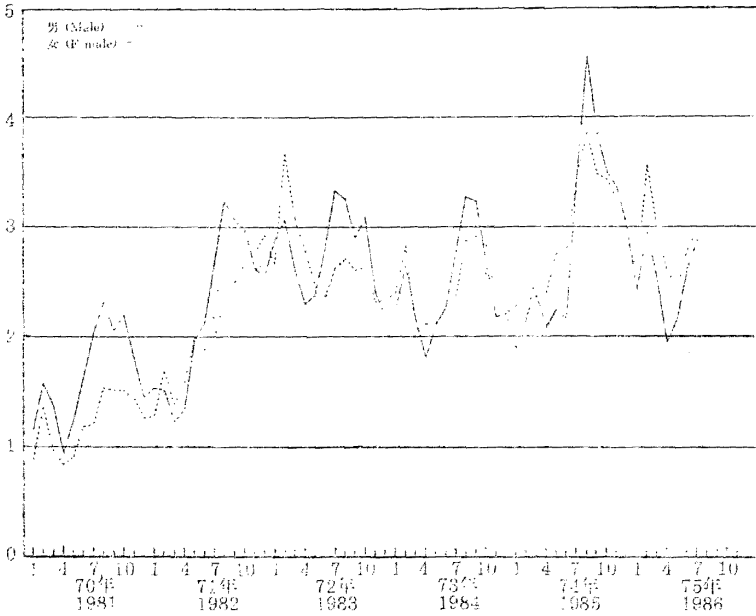
24) See Chi-ming Ho, Chi Shan and Hui-lin Wu, “A Review of the BLSL From An Economic Perspective,” *The Economic Daily*, ROC, (Chinese), August 1, 1985, page 2.

25) Terminology stems from Bulla, *Jahrbuch fur Arbeitsrecht*, 1964, page 52, while remarking on legal protection of workers.

26) See the analysis of Professor Ching-hsi Chang, “The Content and Problems of the BLSL—A Preliminary Economic Analysis,” in *1985 Symposia*, Chinese Economists Association, ROC, (Chinese), page 128.

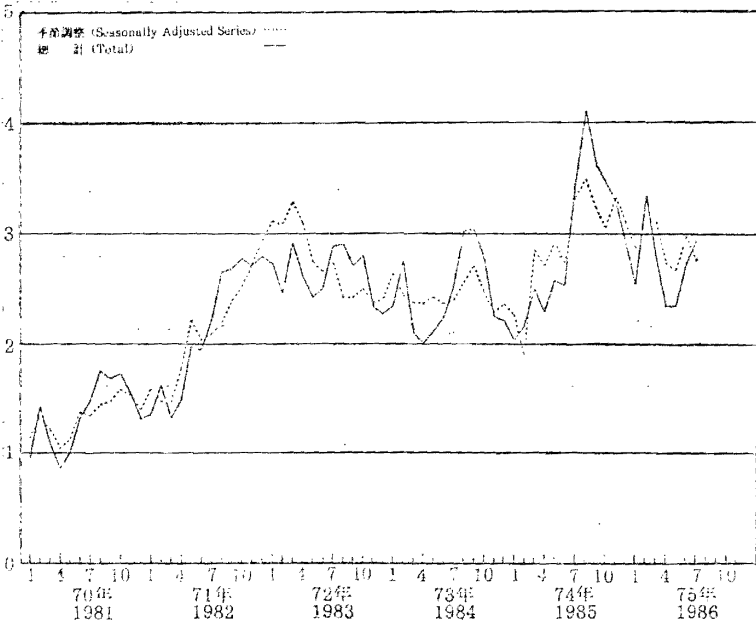
27) See “Asia's Boom Economies Face Testing Times,” *The Asian Wall Street Journal*, September 1, 1986, particularly comments by Dr. Robert Scalapino, Director of the Institute of East Asian Studies at Berkeley University, California.

Table 12: ROC Unemployment by Sex



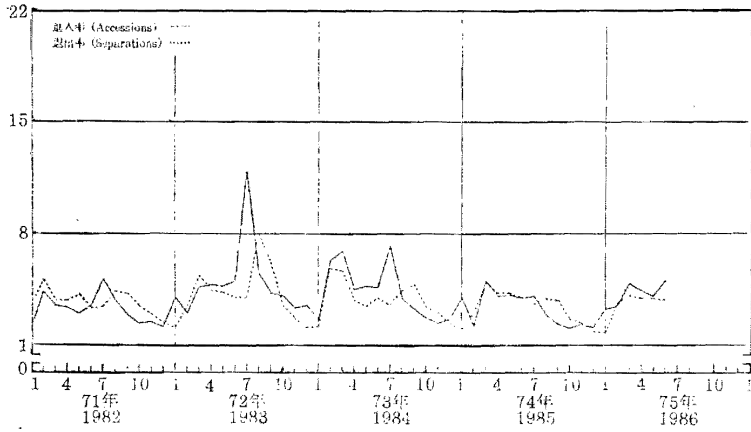
Source: *ROC Monthly Labor Statistics Report*, edited by The Statistical Board, The Executive Yuan, Volume 154, August 1986.

Table 13: ROC Unemployment Rates



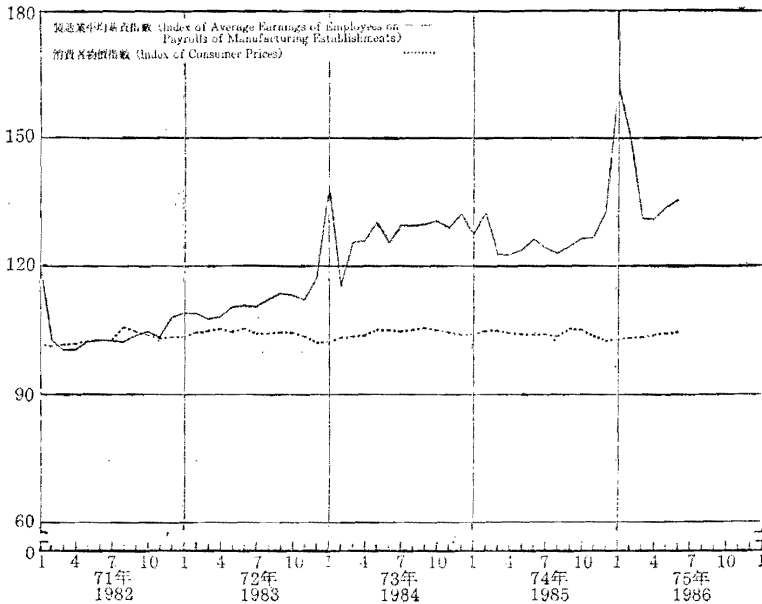
Source: *ROC Monthly Labor Statistics Report*, edited by The Statistical Board, The Executive Yuan, Volume 154, August 1986.

Table 14: ROC Labor Turnover Rates For Employees on Payrolls in the Manufacturing Industry



Source: *ROC Monthly Labor Statistics Report*, edited by The Statistical Board, The Executive Yuan, Volume 154, August 1986.

Table 15: ROC Average Earnings Indexes For Employees in the Manufacturing Sector and For Consumer Prices



Source: *ROC Monthly Labor Statistics Report*, edited by The Statistical Board, The Executive Yuan, Volume 154, August 1986.

follows), as well as the record high average earnings recorded by employees in the manufacturing sector (see Table 15, as noted).²⁸ Further non-confirmation is apparent in the economy's startling performance this year.²⁹ In the case of labor disputes, there has been no obvious rise in the number of occurrences, as noted in Table 16 below.

With regard to critical comments made by jurists, it is true that a vicious circle has been created through the increased materialization of industrial relations law, coupled with the continued existence of weak

labor unions. Additional regulation gives birth to even more rules, which in turn protects labor's interests but stifles economic growth, while allowing country's labor unions to remain weak. However, at present, the ROC does not have a choice. In the future, reforms can be implemented.

Given the merits of these arguments, over reaction to the suggestive negative effects of the BSL should be avoided. In the past, many people have thought that prohibiting children to work would collapse the economy, but history has proven conclusively that such heightened fears were

Table 16. Labor Disputes in the ROC—Causes and Total Numbers

Year	Total	Numbers of Different Disputes								
		Dismissal With Cause	Dismissal Without Cause	Request For Read-justment of Wages	Unpaid Wages	Reduction of Wages	Damages Request	Compensation for Injuries	Business Disputes	Other Disputes
1973	262	82	29	32	19	15	18	23	12	32
1974	494	182	113	27	33	5	15	47	26	46
1975	458	150	79	5	59	12	21	42	26	64
1976	371	89	52	7	49	2	13	60	18	81
1977	380	113	34	6	59	4	9	67	11	77
1978	506	187	40	10	83	8	11	44	39	84
1979	503	110	59	6	84	7	6	66	22	143
1980	700	122	93	8	140	4	31	105	34	163
1981	1,060	200	180	17	197	5	20	168	10	263
1982	1,303	782	266	2	181	8	10	164	7	283
1983	641	158	181	8	108	9	48	53	9	67
1984	906	167	38	3	182	2	330	106	77	1

Source: Department of Labor Affairs, ROC Ministry of Interior, March 1985, as noted in Table 1 of, Cing-kae Chiao, *The Protection of Labor Welfare in the ROC—With Special Reference to the Labor Standards Law of 1984*, Harvard Law School Paper, May 1986.

28) Chien-shien Wang, ROC Vice Minister of Economic Affairs, predicts 1986 GNP growth of nearly 9 percent, while Yao-tung Chao, Chairman of the ROC's Council of Economic Planning and Development sees 1987 GNP growth of 8 percent. See *The Asian Wall Street Journal*, October 20, 1986.

29) See *The Asian Wall Street Journal*, October 2, 1986 and November 11, 1986.

untrue.³⁰

In my humble opinion, many critical remarks of the BLSL should be taken seriously. I agree with Dr. John Fei in his view that the BLSL is anti-productive in economic spirit. However, the social costs of having no law instead are frequently ignored.

Caution is warranted. Not enough time has passed to accurately judge the effect of this law on the ROC's economic development or on society as a whole. There is no set of complete empirical evidence on the effects of the BLSL. There is no complete analysis of the effects of the BLSL on entrepreneurial behavior in the ROC. There is no complete study on how this law affects industrial relations in the ROC. There is not even a credible definition of what constitutes the ROC's labor market. Therefore, under such conditions, judgement of the BLSL's effects at the present time are premature and open entirely to political inference.

V. Conclusion and Outlook

In conclusion, I wish to address five key points. These points concern the future development of industrial relations law in the ROC, post BLSL enactment.

First, the BLSL is the result of long-term processes as well as social need and constitutional mandate. It goes far beyond stating minimum

standards for industrial relations in the ROC. In some sense, it takes the place of collective bargaining agreements in other countries. As a result, however, it is not entirely adaptable to specific industry needs, reflecting the ever increasing complexity of the ROC's economic and social growth. It also has negative influences on future independent union development.

Second, it will be necessary in the future to strengthen the role of unions in ROC industrial relations and to develop further the organizational parts of ROC labor law. Additional materialization is not advisable. The primary reason why the unions are currently so weak is due to their inability to strike. With the dismantling of martial law, the prohibition against strike will be gradually loosened, but not totally eradicated. This points to a slow improvement in the situation.

On the other hand, employer-employee meetings and work rules could substitute for increased union power in the developmental stage. Making these mechanisms of industrial relations work should be the most important objective at present.

Third, future development of industrial relations law in the ROC should take into serious consideration the increasingly highly technical nature of the economy's development. The Vocational Training Act of 1983,

30) Heide Pfarr, in Michael Kittner, ed., *Arbeitsmarkt-ökonomische, soziale und rechtliche Grundlagen*, (Müller Verlag, Heidelberg), 1982, page 295.

in parallel with the BLSL, should be emphasized more in the future, allowing additional, higher level training of the labor force while still employed. To compliment these two laws, a law should be enacted ensuring that employees not only cannot lose their jobs while receiving additional vocational training, but also are paid for doing so—as is the case in many countries in the industrialized West. Such a measure could also be considered in future amendments to the BLSL.

Fourth, no matter whether the law is considered good or bad, it must be enforced. Otherwise, a hedious situation develops both within and without the ROC. Within, credibility of the law in general in the public's eyes is further weakened, if the law is not enforced. Without, the ROC opens itself up to further attack from its trading partners on the issues of "unfair competition" and "mis-pricing." In either case, no enforcement will lead to a situation that is worse than not having the BLSL at all.

At present, the biggest problem with enforcement is the lack of current administrative capacity. According to the latest statistics, there are slightly more than 100 existing labor administration officials coupled with

approximately 200 factory inspectors in the ROC—in comparison to a labor force of about 7 million people.³¹ While this number must be expanded, it should be noted that even doubling this number of officials won't suffice as such an effort is a mere drop in the industrial puddle. More emphasis on workers participation and organization must be made in the future.

Finally, from a psychological point of view, it is highly damaging to have a situation continue whereby the very people who are supposed to abide by the BLSL—the country's industrialists and entrepreneurs—not only continue to criticize the law but openly express their disobedience of it. This creates a self-defeating cycle of thought which primarily reflects the imbalanced representation of different interest groups within ROC industrial life—specifically, the heavy weighting of industry leaders versus very weak unions. In addition, many of the country's work-force does not even know what the BLSL encompasses, but they have been told that "it's bad" by their employers and the media. In part, such an attitude is also a reflection of a lack of legal knowledge among the general populace. Additional education of the BLSL will bring forth a change of consciousness in this area.

31) See *The China Times Daily*, ROC. (Chinese), November 18, 1986, page 2.