

Overtime Activists Take on Corporate Titans: Toyota, McDonald's and Japan's Work Hour Controversy

Charles Weathers and Scott North

Japan's long work hours generate high human and economic costs. Even between 2002 and 2008, when Japan enjoyed a growing economy, the media regularly reported cases of workers felled by strokes and heart attacks or driven to depression or suicide by unrelenting job demands. Work hours are a major impediment to equal opportunity, since working mothers cannot devote the long hours expected of professional employees and so must opt for low-paying, low-status jobs. Family life is affected because many younger persons postpone or abandon hopes of marriage and children as they sacrifice personal lives to stay employed. Further, while long work hours and *karō* (overwork) are common in many countries, notably the US and Britain, in Japan *karōshi* (death from overwork) has been officially recognized as a medico-legal phenomenon for two decades, and has spawned a social movement to combat it.¹

Japan's employers and conservative policymakers have long held that the country's pattern of incremental and consensual policy making is effective in improving employment conditions, while avoiding the economic rigidities of Western nations. The result since the 1950s has been labour legislation that consistently lags behind labour market trends, or seeks merely to defuse complaints from trade partners that poor labour standards constitute unfair trade practices.² Work-hour-related policy making closely matches this pattern: long work hours have provoked consistent attempts at reform since the late 1960s, and reformers made several significant revisions to labour laws between 1987 and 1993, but failed to significantly affect actual practice. While many large manufacturing firms did reduce work hours around this

¹ Robert Scott North, "Karōshi Activism and Recent Trends in Japanese Civil Society: Creating Credible Knowledge and Culture," *Japanstudien, Jahrbuch des Deutschen Instituts für Japanstudien*, vol. 11 (1999), pp. 79-103.

² Mine Manabu, "Nihon ni okeru rōdō shakai seisaku no wakugumi to sono hendo" [The Structure of Japan's Labor-social Policies and Changes Therein], *Ohara shakai mondai kenkyūsho zasshi*, no. 456 (November), pp. 1-11.

time, they were reacting not to legislation, but to labour shortages and criticism of Japan's work practices, or to economic stagnation.³ Some official statistics, along with numerous reports of uncompensated overtime, suggest that work hours lengthened over the past decade, despite a record-long six-year economic expansion that should have generated pressure for improving work conditions. Workplace stress-related illnesses and deaths are at record high levels⁴ and growing public awareness of problems has brought demands for improvement.

This paper examines court cases targeting two major corporations, Toyota and McDonald's, that have played important roles in defining the ongoing controversy. Plaintiffs demanded compensation for grievous injuries caused by overtime work that the companies required yet refused to offer compensation for or, in the former case, even acknowledge. More important to the families and supporters than financial gain was recognition that the companies' practices consistently endangered employees. The trials ended (in November 2007 for Toyota and January 2008 for McDonald's) in rulings so clear-cut that several major corporations felt strong pressure to revise personnel practices—yet they did so without significantly changing actual work conditions.

To understand this outcome, we examine key linkages between socio-economic conditions and the court cases. First, with reference to literature on Japanese civil society and alternative unions, we examine the strengths and weaknesses of the policymaking and reformist forces. Then, we integrate our findings with recent investigations by non-academic specialists, deepening our understanding of why long work hours are deeply embedded in Japanese workplace culture. These insights underlie the subsequent analysis of the two cases, demonstrating why they could help reshape public discourse without significantly influencing management practice.

Japan's Long Work Hours

In contrast to the Ministry of Health, Labour and Welfare's (MHLW) Monthly Labour Survey figure of 1980 hours, Morioka Kōji, Japan's leading work hour scholar, calculates the country's 2006 average annual hours of work per worker at 2288 (nearly 700 hours more than the EU average of 1600), including 408 hours of overtime.⁵ On average, only 161 hours of overtime

³ Daniel H. Foote, "Law as an Agent of Change? Governmental Efforts to Reduce Working Hours in Japan," in Harold Baum ed., *Japan: Economic Success and Legal System* (Berlin: Walter de Gruyter, 1997), pp. 251-301.

⁴ Kenji Iwasaki, Masaya Takahashi and Akinori Nakata, "Health Problems Due to Long Working Hours in Japan," *Industrial Health*, vol. 44 (2006), pp. 537-540.

⁵ Morioka Kōji, *Rōdō konpuraiansu no jittai to saabisu zangyō* [Labor Compliance and Unpaid Overtime], report presented for Hatarakikata Net Osaka, Osaka (10 April 2008).

are paid, leaving unpaid “service overtime” of 247 hours per full-time worker. At the average overtime wage of 1970 yen per hour (including the 25 percent premium), service overtime amounts to a loss of 539,780 yen (about US\$5400) per worker per year. Only 19 percent of Japanese workers do no overtime; one study found that, excluding service overtime, overtime averages roughly 40 hours per month.⁶

In 2001, a MHLW medical commission reported finding a clear connection between Japan's long work hours and both mental and physical illness.⁷ Furthermore, employment conditions are believed to have worsened during the early 2000s, as employers continued to hold down hiring of regular employees, turning instead to ever-greater numbers of low-paid non-regular workers (including part-timers, fixed-term contract workers and agency temporary workers). According to survey information compiled by the Cabinet Office, over 80 percent of regular workers in 2006 experienced work-related fatigue and stress, while 67 percent of regular workers in 2007 believed that job burdens and responsibility were greater than five years earlier.⁸ Further, applications for official acknowledgment of overwork-induced mental illness increased 67 times from 1998 to 2008, a result, presumably, of higher awareness as well as deteriorating conditions.⁹

Reasons for pervasive overtime derive from the logic of the employment system. Overtime is regarded as a virtual condition of employment for *seishain* (regular employees), based on the assumption that a worker's job and livelihood security are closely tied to that of his/her firm.¹⁰ Therefore, employees accept some degree of overtime (often on a routine, daily basis, but sometimes imposed without notice), enabling companies to simultaneously provide job security while minimizing labour costs. *Seishain* enjoy job security because personnel adjustment is primarily achieved not by dismissing regular employees but by reducing overtime and dismissing non-regular workers. Japanese courts have supported the logic of strong security in exchange for strong commitment: they have sharply restricted the right of dismissal, but also ruled that *seishain* who refuse employer directives (notably for overtime or difficult transfers) may be liable for termination, even when the employer's stance is unduly harsh.¹¹ In addition,

⁶ Ogura Kazuya, “Contemporary Working Time in Japan: Legal System and Reality,” *Japan Labor Review*, vol. 3, no. 3 (2006), p. 12.

⁷ Cited in *Kōsei rōdō hakusho* [Welfare and Labor White Paper] 2007 edition (Tokyo: Gyōsei), p. 63.

⁸ *Kokumin seikatsu hakusho* [Japanese Lifestyle White Paper], 2007 edition (Tokyo: Shadan hōjin jiji kakuho sha), pp. 170-72.

⁹ *Nikkei*, 4 August 1998, p. 34.

¹⁰ Labour economist Hisamoto Norio observes, “It is natural in contemporary Japanese society that people who work only 40 hours a week (in short, people who leave work at 5 pm) are not accepted as *seishain*.” *Seishain runesansu* [Regular Worker Renaissance] (Tokyo: Chūko Shinsho, 2003), p. 53.

¹¹ Hisamoto, *Seishain runesansu*, pp. 52-53.

many workers accept unpaid overtime as a necessary condition of “regular” (secure) employment, and rely on overtime pay to supplement somewhat low base salaries.

Strong job and livelihood security are supposed to justify long work hours (as well as obligations such as sudden transfers, regardless of impact on family life) but the foundations for security have weakened drastically since the early 1990s. Jobs are only as secure as companies, yet a globalized economy renders vulnerable even the strongest firms—as demonstrated by Toyota’s late 2008 and early 2009 announcements of large losses, followed by reductions of jobs and pay. Stronger cost pressures and labour market deregulation have led employers to sharply increase the hiring of non-regular workers. As a result, the number of non-regular workers increased by 3.97 million from 1997 through early 2004, while 4.32 million regular worker jobs were lost.¹² Increased use of non-regular workers often creates heavier workloads for the remaining regular workers, who are expected to make up any shortfalls without concern for time. To a surprising degree, their extended hours are worked gratis.

Most major labour unions accept the logic of commitment in exchange for security, and are unwilling to press strongly for work hour reduction. For many years, it was not major unions or politicians, but the Ministry of Labour (merged in 2001 into the Ministry of Health, Labour and Welfare) that pressed for employment reforms, such as work hour reductions, a minimum wage, and equal employment opportunity for women. Indeed, major unions in the late 1980s resented the labour ministry for being slow (as they saw it) to take up the work hour issue, yet they themselves remained ambivalent, partly because of the reliance of many union members on overtime allowances.¹³ Furthermore, nearly all major unions have close ties to management, inhibiting them from demanding improved work conditions.

In contrast, Japan’s small but energetic community unions pride themselves on protecting individual workers and seeking social justice.¹⁴ However, they too have failed to effectuate broad labour reform, one well-reasoned explanation being a lack of strong social movements that could provide effective support.¹⁵ Indeed, remaining unaligned and autonomous is normal for highly ideological civil society groups, which are wary of

¹² Ministry of Health, Labour and Welfare, *Rōdō keizai hakusho* [Labor Economics White Paper] (Tokyo: Government of Japan, 2005), p. 278.

¹³ Foote, “Law as an Agent of Change?” pp. 257-60, 294; Frank J. Schwartz, *Advice & Consent: The Politics of Consultation in Japan* (Cambridge, UK: Cambridge University Press, 1998), pp. 139-40, 145-46.

¹⁴ Kinoshita Takeo, *Kakusa shakai ni idomu union* [Unions Challenging Social Inequality] (Tokyo: Kyohei shobo, 2007).

¹⁵ Akira Suzuki, “Community Unions in Japan: Similarities and Differences of Region-based Labour Movements between Japan and Other Industrialized Countries,” *Economic and Industrial Democracy*, vol. 29, no. 4 (November 2008), pp. 492-520.

attracting the attention of the Japanese state.¹⁶ Consequently their impact is limited to redefining acceptable practices rather than reshaping policy. Likewise, workers have generally been excluded from the list of powerful, policy-making economic interest groups.¹⁷ While these views are insightful, our analysis of two cases through which public opinion was aroused and practices challenged suggests two different nuances. First, community unions themselves may function much like social movements. As we shall see, a social movement played a lead role in the Toyota case, while a community union played a similarly broad role in the McDonald's case, from providing personal support to the plaintiff to waging a broad social campaign. Further, civil society groups have often significantly influenced corporate behaviour but, in the United States and Japan at least, have been unsuccessful in changing fundamental personnel or labour practices.

How Firms Avoid Paying Overtime Wages

Building upon an analysis by lawyers specializing in unpaid overtime claims and an emerging literature on Japan's deteriorating employment conditions,¹⁸ we have devised a representative list of the main techniques used by Japanese companies to extract overtime, both paid and unpaid, from workers.

- 1) Deny that overtime occurs, or deny responsibility.
- 2) Assign some tasks on an informal basis so that they are not included in formal work hour calculations.
- 3) Manipulate employment categories to exempt workers from overtime rules.
- 4) Set high quotas (*noruma*) and leave criteria for evaluations (*satei*) vague.
- 5) Claim that overtime premiums are included in base pay or that payment of a "management allowance" eliminates need to pay overtime allowances.
- 6) Purposefully hire too few regular workers and hire a larger proportion of non-regular workers.
- 7) Inculcate company norms regarding status and productivity.

¹⁶ Apichai Shipper, "Foreigners and Civil Society in Japan," *Pacific Affairs*, vol. 79, no. 2 (2006), pp. 269-289.

¹⁷ Yutaka Tsujinaka and Robert Pekkanen, "Civil Society and Interest Groups in Contemporary Japan," *Pacific Affairs*, vol. 80, no. 3 (2007), pp. 419-437.

¹⁸ Kawamura Manabu, "*Rōdō jikan seido to kigyō no kisei nogare ni tai suru hōritsu-hanwei no kangaekata*" [Laws and Court Decisions Regarding Overtime Regulations and Corporate Attempts to Evade Them], report presented for Hatarakikata Net Osaka, Osaka (10 April 2008). While work conditions have long been attacked by left-wing critics, the recent deterioration of employment conditions led the mainstream media to begin regularly producing critical articles and books from late 2005. Exemplifying the trend are Kazama Naoki and Kobayashi Miki, investigative reporters and authors of well-regarded books cited in this article.

As seen in our cases, these practices are woven into dense webs of values and constraints that create powerful internal and external pressures on employees to work long hours. While there is pressure to do overtime in other countries as well, the particular means outlined here tend to rely heavily on manipulation of Japanese social norms and aspirations.

Case Studies: Toyota and McDonald's

Judges issued clear decisions in support of plaintiffs in cases regarding uncompensated work time at Toyota and McDonald's, two of the world's most prestigious corporations. The industries (manufacturing versus fast food) and the jobs (quality control specialist versus fast-food store manager) involved in these cases differed greatly, yet there were important similarities in the practices both companies used first to extract overtime, and then to resist pressure for reform.

Toyota¹⁹

Toyota's prominence in the global auto industry rests on economies inherent in a system that raises productivity by reducing waste—including the time "wasted" by workers in moments between assembly tasks.²⁰ Between 1991 and 2005 the firm increased domestic production from 3.15 million vehicles produced by 75,266 workers (41.9 vehicles per worker) to 3.86 million vehicles produced by 65,798 workers (58.7 vehicles per worker), while 67 workers reportedly died of overwork, and 247 more suffered work-related depression or major injuries.²¹ Corporate responsibility was clearly implicated in several cases recognized by the Labor Standards Inspection Office as eligible for workers' compensation payments. Many other cases are suspected, but not reported or confirmed.²²

Uchino Kenichi was a third-generation Toyota man and devoted employee. He held the rank of EX (expert), and was a group leader for quality control in the firm's Tsutsumi autobody parts factory in Aichi Prefecture from 1989. In 2001, Uchino was assigned to analyze production defects while working long days in alternating shifts, 6:15 a.m. to 5:15 p.m. one week, and 4:10 p.m. to 1 a.m. the next. During late 2001, he was devoting nearly all his waking hours to efforts to resolve numerous quality problems concerning a new model.

¹⁹ This account draws from the published court ruling, personal communications and public presentations by Uchino Hiroko and community union official Sakurai Zenkō (both on 21 June 2008, and transcribed in "*Toyota jidōsha no kōjō de*" [At Toyota Automobile's Factory], *Shokuba no jinken*, no. 43 (September 2008), pp. 17-37.

²⁰ Jeffery K. Liker, *The Toyota Way* (New York: McGraw-Hill, 2003).

²¹ *Ekonomisuto*, "Karōshi taikoku" [Land of *Karōshi*], 25 July 2006, p. 20.

²² Companies often deny responsibility for work-related accidents and illnesses in order to hold down costs, such as insurance premiums, and protect image.

On 9 February 2002, at 4:40 a.m., Uchino collapsed at his desk while working overtime on the night shift. At Toyota, dialing 119, the Japanese emergency services number, does not bring the municipal ambulance. Instead, the corporation's own ambulance is summoned. Ambulance personnel did not take Uchino's pulse. They transported him to Toyota's own hospital, ten kilometres away, rather than to any of the several public hospitals in the city equipped to handle emergency cases. Uchino, 30 years old, was pronounced dead on arrival of heart failure.

In the month prior, Uchino had, by his wife's careful estimate, worked just over 315 hours, including 144 hours of overtime. Although he collapsed at work in front of his boss, Toyota would later claim that virtually all the overtime hours were spent on either voluntary activities or "socializing" with co-workers. Quality control (QC) activities are conducted during off-work hours, and Toyota claimed that participation was voluntary. However, participation in QC circles was included in worker evaluations from the time of their introduction in the early 1960s. The maximum two-hour-per-month token payment did not cover the long hours devoted by many workers.²³

As a QC group leader, Uchino Kenichi was responsible for organizing after-hours QC sessions. He often worked at home drafting and revising documents, including drawings and narrative explanations, detailing production problems and their proposed solutions. Asked why he took such painstaking care, his wife, Hiroko, said, "He said that unless he spent time making these documents perfect, his periodic evaluations and standing in the company would suffer."²⁴ Toyota's continuous improvement practices rely heavily on such unrecorded and unpaid overtime.

Hiroko noticed her husband looking fatigued in the last six months of his life. Convinced that his death was due to overwork, she filed a claim for benefits with the Labour Standards Inspection Office in Toyota City in March 2002. Toyota did not initially object to either the filing or her claim that he worked 144 hours of overtime in the last month of his life, but soon reversed its stance to deny the charges. The company's union followed suit. In late November 2003, the Labour Standards Inspection Office accepted the firm's assertion and rejected Hiroko's claim. Later, it was revealed that officers in the Labour Standards Inspection Office who handled her application accepted golf outings and other favours from Toyota around the time they were reviewing the Uchino case.²⁵ Furthermore, the plaintiff side learned that Labour Standards Inspection Office officials leaked information to

²³ *Asahi shinbun*, 22 May 2008, p. 1.

²⁴ Personal communication, Osaka, 21 June 2008.

To differentiate husband from wife, activists commonly used the Uchinos' first names in accounts of the case. We follow their practice.

²⁵ *Asahi shinbun*, 27 April 2007, p. 9.

Toyota's personnel department about workers who reported illegal or dangerous practices.²⁶

Following the rejection of her claim, Hiroko contacted Toyota Union and Rengō, the leading national labour federation (to which Toyota Union and all other major autoworker unions are affiliated). As it became clear that the unions would not act, Hiroko contacted *Hatarakumono no inochi to kenkō wo mamoru sentaa* (Center to Protect the Lives and Health of Working Persons), a national network of labour activists, which provided her with extensive legal and personal assistance for the next several years.

Activists helped Hiroko to file a demand to reinvestigate the case with the Aichi Prefecture Labour Standards Bureau in January 2004. However, the Labour Standards Bureau's decision, handed down in late March 2005, simply reiterated the Labour Standards Inspection Office's conclusion that the death was not work-related, so compensation was denied. After her April 2005 appeal to the Central Worker's Compensation Insurance Board in Tokyo was rejected, Hiroko hired a lawyer and filed an administrative suit in District Court in July 2005 seeking reversal of the decisions of MHLW and the Toyota City Labour Standards Inspection Office. It is nearly impossible to have severe penalties imposed on managers or firms, but the Uchinoshinos, like many families who pursue *karōshi* claims, hoped to gain, not just compensation, but acknowledgement that a loved one's death was caused by overwork.

Because of Toyota's powerful influence in the Nagoya region, Hiroko came under intense pressure to retract her suit. Toyota City is dependent on automobile manufacturing for more than 95 percent of its industrial output, and the city's mayors and many of its city assembly members have come from Toyota.²⁷ Virtually everyone Hiroko knew—her father-in-law, Kenichi's grandfather, and her neighbour—was associated with Toyota. Prior to marrying, Kenichi and Hiroko worked in the same section at the plant. Kenichi's father initially supported her claim, but later backed away. If surviving family members of victims of accidents and abuse refrain from filing compensation claims and lawsuits, Toyota helps them find work. In the few instances where survivors have pressed claims, they have done so privately and the cases have ended quietly in mediated settlements, dampening negative publicity. By pressing her suit openly, Hiroko risked becoming a pariah in her community.

The Toyota Trial

The issues in the two-and-a-half-year-long trial (July 2005–November 2007) were: How much overtime did Kenichi work? And, was there a cause-and-

²⁶ *Shokuba no jinken* 2008, pp. 18-19.

²⁷ Kamata Satoshi, "Toyota: Suicide and Worker Depression at the World's Most Profitable Manufacturer," *Japan Focus*, available online at <<http://japanfocus.org/>>, 2004 (accessed 10 October 2008).

effect relationship between his work and his death—what level of stress did that number of hours and the intensity of his work occasion?

Hiroko calculated Kenichi's hours of work on the basis of her considerable knowledge of Toyota practices and her recollection of his activities, supplemented by receipts from convenience stores, which he visited on his trips to and from work. Co-workers testified that they and Kenichi stayed at the office until dawn whenever they worked the night shift, but claimed they were just "shooting the breeze." Although intended to support Toyota's claim, this testimony backfired because the judges deemed it unreasonable for anyone whose shift ended at 1 a.m. to stay until dawn just for the sake of casual conversation. Hiroko contended that Kenichi's long hours were forced on him by the demands of the Toyota Production System. She testified that he told her his dream was to drive home after the night shift with his headlights on, meaning before sunrise.

Hiroko and her legal team argued that Kenichi performed, in addition to his formally assigned tasks, five types of work that should have been counted in his working hours: soliciting and evaluating written suggestions (contributing additional suggestions himself to compensate for shortfalls by other workers); preparing for, leading, and keeping detailed records of twice-monthly Quality Control Circle meetings; preparing materials for and participating in group leader meetings (in 2001, he also produced these meetings' bulletins); leading traffic safety for his section, which entailed collecting employees' monthly reports of hazardous or inefficient traffic situations within the plant and drafting proposals for improvement, as well as twice-monthly traffic safety meetings and follow-up reports; and serving as worker representative to the Workplace Council. Hiroko and her supporters argued that, in cases like Toyota's, where the union is a company union and discussions at the Workplace Council meetings revolve around "labour-management trust and mutual responsibility," council meetings should be considered work. Finally, a considerable portion of the work, especially preparation of reports and materials, was conducted at home. Toyota regarded these five tasks as non-compensable and did not count them toward overtime.

In the 41-page decision handed down on 30 November 2007,²⁸ the three-judge panel wrote that Kenichi's death was the product of long hours, intense work and related stress. The court criticized the Labour Standards Inspection Office for accepting Toyota's claim that Kenichi stayed at work to engage in casual conversation, and found that his "work duty" included four of the five categories of workplace activity generally performed outside of regular working hours.

²⁸ Nagoya District Court, 30 November 2007.

Despite omitting participation in the Workplace Council and related activities, and some of the work done at home, the court nevertheless found that Kenichi worked 106 hours and 45 minutes of overtime in the month prior to his death. Because Toyota did not use a timecard reader in Kenichi's workplace the court gave primacy to Hiroko's estimate of her husband's hours, rejecting the company's contention that it did not know whether he was working during times when he remained in the factory after his shift officially ended.

Although far less than the 144 hours of overtime that Hiroko claimed, 106 hours far exceeded the 80 hours per month standard that the Ministry of Health, Labour and Welfare has established as the "*karōshi* line," the level beyond which compensation is likely to be granted for claims of death due to overwork. In addition to recognizing his death as *karōshi*, the court's reversal of the previous administrative rulings established an important legal precedent by recognizing that rotating between day and night shifts compounded the effects of fatigue, increasing the danger to Kenichi.

Finally, the court recognized organizational pressure as the reason for Kenichi's long hours. Although Toyota and other Japanese companies have long held that time spent drafting suggestions for improving production processes and participation in quality control circles are "self-improvement," the court found such activities should be compensated because they contribute value to the company. That they are company-supported and also part of the basis for employee evaluations supports characterizing them as what the labour scholar Kumazawa Makoto calls "coerced volunteerism."²⁹

Toyota dismissed the court decision, declaring that Uchino worked no more than 52 hours of overtime in his last 30 days at work. When Hiroko filed for survivor compensation following the trial, the Workers' Compensation Insurance Board calculated the family's payment using Toyota's 52-hour figure instead of the court's 106-hour figure.³⁰ Outraged by this refusal to recognize the court decision, Hiroko and her supporters appealed to the Ministry of Health, Labour and Welfare, eventually gaining a meeting with the minister, Masazoe Yoichi on 9 January 2008. Expecting only *aisatsu* (ritual greetings), the minister was taken aback by Hiroko's direct questions about how the government and Toyota could ignore the court's decision, but promised to look into the situation. Subsequently, compensation was based on a figure of 85 hours of overtime.

²⁹ Kumazawa Makoto, *Nihon-teki keiei no meian* [The Light and Dark of Japanese-style Management] (Tokyo: Chikuma shobo, 1989).

³⁰ Compensation payments are calculated as a percentage of the average salary and bonus paid during the last three months of life. The number of hours of overtime recognized thus has a significant impact on compensation.

*McDonald's*³¹

McDonald's Japan was founded in 1971 by legendary entrepreneur Fujita Den, whose innovative strategies reaped massive profits. High profits in turn made possible high compensation and an esprit de corps that promoted employee acceptance of rather harsh working conditions. As competition intensified after 2000, however, McDonald's Japan's performance weakened, and 2002 became the company's first loss-making year. Fujita resigned and was replaced in 2004 by Harada Eiko, hired away from Apple Japan by the US headquarters. Unlike most of McDonald's overseas operations, McDonald's Japan under Den operated fairly independently of the US parent, but Harada promptly implemented the harsh cost-cutting measures and aggressive revenue-boosting strategies preferred by the parent firm. He reduced the number of regular employees by some 200 (about 70 percent of McDonald's Japan's restaurants are directly managed by the corporation rather than franchisees) and increased revenues by reducing prices and steadily lengthening operating hours, including increasing the number of restaurants operating 24 hours. Although they increased sales volume, these measures also reduced profits since the additional customers could not offset the higher operating costs and reduced margins. However, they benefited the American parent firm, which derived higher royalties from the larger gross revenues. The new practices also worsened working conditions, leading to quits well beyond the "voluntary" quits demanded by Harada.³²

On 10 May 2005, McDonald's employee Takano Hiroshi visited the offices of Tokyo Kanrishoku Union, claiming that he had never been paid for hundreds of hours of overtime work.³³ He was a model employee, but dangerous health problems and a series of chance events led him to contact a union. Like many of McDonald's regular employees, Takano first worked for the company as a crew member (a part-time or *arubaito*³⁴ employee). He became a regular employee in 1987, and in 2000 was promoted to *tenchō* (branch or outlet manager). In July 2004, Takano took charge of his fourth restaurant, located in Kumagaya City, in Tokyo's northern hinterlands. As

³¹ Main sources include presentations by Makoto Abe on 19 August 2006 (transcribed in "*Tenchō datte rōdōsha da!*," *Shokuba no jinken*), no. 43 (November 2006), pp. 21-40) and on 8 May 2008; Tokyo Kanrishoku Union, *Gisō kanrishoku* [False mid-level managers] (Tokyo: Popura sha, 2008); NHK nabakari kanrishoku shuzaihan, *Nabakari kanrishoku* [Name-only managers] (Tokyo: NHK shuppan seikatsujin shinsho, 2008); and interviews with involved persons, including Takano Hiroshi (Tokyo, 27 June and 24 July 2008).

³² *Nikkei*, 17 June 2008, p. 13. Interview, Denta Yuji, new member organizing director for Rengō Tokyo, in Tokyo, 27 June 2008. Rengō Tokyo, a branch of Rengō, established McDonald's Union in May 2006, but has struggled to recruit members.

³³ *Kanrishoku* is roughly equivalent to mid-level manager. Tokyo Kanrishoku Union is a community union representing around 700 primarily white-collar employees, about half of them *kanrishoku*.

³⁴ An *arubaito* is a part-time worker, usually young and typically a student. *Paato* are also part-timers, generally housewives or older women.

the sole regular employee, Takano was responsible for both opening and closing the restaurant. Consequently, he typically woke at 4:10 a.m. to make the long drive to his restaurant, arriving by 5:30 a.m. to prepare for a 7 a.m. opening. A “veteran *arubaito*” arrived at 10 a.m., allowing Takano to nap in his car for an hour, resting for the peak 11 a.m. to 2 p.m. period. On days when the veteran *arubaito* failed to show up, Takano rested and ate lunch in the back of the restaurant, ready if necessary to interrupt his break to help the crew. After 6 p.m., when business slacked off, he took his second break of the day and had dinner. The restaurant closed at 11 p.m., and Takano did the books while an *arubaito* cleaned up. Sometime after midnight he headed home (or, on occasion, slept in his car).

This harsh schedule was dictated in large part by McDonald’s strict performance monitoring system (*gyōseki kanri seido*), which mandates sales and profit performance objectives. Takano’s restaurant, which needed a crew of five, often operated short-handed, but the performance monitoring system constrained the ability of *tenchō* to make adjustments such as offering higher pay to ensure adequate staffing. The workload was further increased by McDonald’s Japan’s strategy of adding items to the menu on a temporary basis every six to eight weeks. From 2000 to 2005, there were nearly 100 such short-term items, requiring constant adjustments in ordering, cooking, and staff training. Takano’s situation worsened when competing fast-food restaurants opened nearby, and when the mad-cow disease panic broke out, scaring away customers. Finally, tighter controls over *tenchō* instituted under President Harada reduced flexibility. Takano, for example, was forced to discontinue some successful promotional practices.

In 2004, Takano logged over 1200 hrs of overtime, including 137 in his heaviest month, and once worked 63 consecutive days. He missed important family events, and was once forced at the last minute to cancel a family vacation planned months earlier when a part-time employee failed to show up for work. Worse, Takano was unable to devote time to a son with behavioural problems.

Inevitably, Takano’s body began to break down. In January 2005, he suffered a back injury, the result of constant lifting and long hours spent standing. However, management refused to allow him time off for hospitalization and recuperation because there was no other regular employee available to manage the restaurant. In April 2005, Takano, noting numbness in his hand, was diagnosed as having suffered a mild stroke.

A series of coincidental events then led Takano to consult Tokyo Kanrishoku Union, one of Japan’s most prominent community unions. Soon after the stroke, the local Labour Standards Inspection Office conducted unannounced inspections on several McDonald’s outlets, including Takano’s, and ordered improvements in personnel practices. Management promptly leveled a strong accusation against Takano, believing that either he or his wife had made the complaint triggering the inspection. This was a logical

assumption because surprise working condition inspections frequently result from complaints by employees or their spouses. However, Takano has steadfastly insisted that neither he nor his wife took this step; the timing of the inspections following closely upon the stroke was apparently coincidental. One other factor influenced Takano's decision to consult the union: his younger brother was one of the union's officials.

Ignoring the union's demand for grievance negotiations was not a viable option under Japanese labour law, so McDonald's sought instead to suppress Takano. On four different occasions managers harangued Takano for three to four hours, either at his workplace or at corporate headquarters in Shinjuku, in central Tokyo, demanding that he quit the union and accusing him of slandering the firm. In part because of support from his brother, Takano stood firm.

Negotiations between Takano, represented by Tokyo Kanrishoku Union, and McDonald's commenced on 30 June. The case eventually went to trial since the company refused the union's main demand: that overtime allowances be paid to *tenchō*. Not too surprisingly, McDonald's has also never agreed to the second demand, an apology for "coercive policies." However, the union enjoyed success with its third major demand: that wage regulations be enforced for part-time and regular non-*tenchō* staff. McDonald's had squeezed unpaid overtime from employees by having them work 20 to 25 minutes beyond their officially allotted hours, then calculating pay by rounding to the nearest hour. (Tokyo Kanrishoku Union officials were well aware of the practice because some had children who had worked as McDonald's *arubaito*.) The management side appeared genuinely surprised to learn that the practice was illegal, and readily agreed not only to revise time-keeping practices but to pay crew members overtime allowances for the previous two years at a cost of 3.4 billion yen. The firm also agreed to begin paying late-night allowances to *tenchō*.

During the second round of negotiations, according to Abe, McDonald's executives initially conceded that *tenchō* were not high-ranking *kanri kantokusha* (managing supervisors), but were then ordered by the American headquarters to stand their ground. The Japanese managers thereupon asked for a month to convince US corporate headquarters, only to use up three months without gaining a change in stance. McDonald's Japan thereupon assumed the hard-line position that it maintains to the present, insisting that *tenchō* are managing supervisors, exempt from overtime regulations as set forth in Clause 41 Number 2 of the Labour Standards Law. In addition, management rebuffed all attempts at compromise, including the labour side's request for a change in labour management practice instead of back pay.

Meanwhile, McDonald's claimed that Takano's case was isolated and that his long work hours reflected inefficient work practices. Harada stated, "Next time, the headquarters needs to be better able to grasp the conditions in the

workplace. But we have no intention of following up for people who are unable to produce results.” Charges of inefficiency may have unsettled Takano, who said, prior to the start of the trial, “Among the *tenchō*, there were other people who did the work better [than me].”³⁵ Nevertheless, the corporation assigned a second regular employee to Takano’s restaurant, greatly reducing his work hours by the time the trial started.

Following the breakdown of negotiations, the trial began on 30 November 2005 in Tokyo District Court. Takano’s supporters were always confident of victory because plaintiffs had won 30 of 33 related cases beginning in 1956, including 3 involving *tenchō*. Tokyo Kanrishoku Union’s Abe stated just before the trial began that legal precedents virtually guaranteed a plaintiff victory.³⁶

The trial’s core issue was whether *tenchō* were managing supervisors. (In contrast to Uchino’s trial, the number of work hours was not an issue.) The law is written in general terms, but courts use three main criteria to determine whether classifications are valid. Managing supervisors should have (1) considerable autonomy in managing their own work time, (2) strong authority in supervising personnel and other firm operations, and (3) management-level status and compensation. True supervising managers should meet all three criteria, but the judge ruled that none applied, noting that Takano punched a time clock, had no authority over hiring of other regular workers, and did not decide opening hours, menu items or prices.

Further, average yearly pay for McDonald’s Japan’s *tenchō* was about 7.07 million yen in 2005 (roughly US\$60,000). The court noted that McDonald’s *seika-shugi* (performance-based) pay system put the salaries of about 10 percent of *tenchō* below that of “first assistant,” the regular worker rank just below *tenchō*, while another 40 percent of *tenchō* earned only 440,000 yen more than first assistants, insufficient to justify managing supervisor classification.³⁷ Furthermore, many *tenchō* earn only slightly more than part-timers when their pay is calculated on an hourly basis. In one case, a court found that a McDonald’s *tenchō*’s actual wage was just 670 yen per hour, below Tokyo’s minimum wage of 708 yen.³⁸ Finally, McDonald’s Japan’s 2785 directly managed restaurants employed 2,555 regular workers, of whom 1715 were *tenchō* (some manage multiple outlets), while another 277 employees had ranks higher than *tenchō*. The court found that these distorted proportions indicated that *tenchō* did not have true managing supervisor status. McDonald’s was ordered to pay Takano 7.5 million yen for unpaid overtime.

³⁵ Both citations from page 35 of *Nikkei bijinesu*, “*Shain ga kowareru*” [Employees Break Down], 24 October 2005, pp. 30-43.

³⁶ Abe Makoto, interview, Tokyo, 8 November 2005.

³⁷ Natsume Ichirō, “*Nabakari kanrishoku’ ranzō he no keishō*” [Sounding the Alarm on ‘Name-only Managers’], *Hiroba yunion* (September 2008), p. 29.

³⁸ *Nikkei*, 1 February 2008 (evening edition), p. 1.

Aftermath

Both the Toyota settlement (announced 30 November 2007) and the McDonald's decision (28 January 2008) were headline news and the subject of celebratory editorials. Several major companies that rely heavily on *tenchō* labour, notably 7-11 Japan, the nation's largest convenience store chain operator, immediately announced plans to change personnel practices as a result of the outcome of the McDonald's trial. Similarly, many of the nation's largest manufacturing firms began to revise or reconsider QC compensation practices.³⁹

Despite the surge of optimism prompted by these worker victories, the actual impact of the court rulings was limited. This was partly because neither Toyota nor McDonald's accepted the decisions. Instead, they took steps to protect their images. Toyota disputed the court's finding on Uchino's work hours, but in May, announced that it would pay overtime for QC activity as required.⁴⁰ At the same time, it declared that time spent on QC would be reduced. Employees required to participate would be delimited to reduce impact on wage costs. Despite the court ruling and subsequent internal changes at Toyota, critics argue that much of the preparatory work for QC meetings will likely continue to go unpaid because it is often done at home. Toyota seems to have accepted that QC activity is "work," but still strives to keep it off the books. In McDonald's case, there was "almost no" impact among McDonald's employees because management controlled the flow of internal information. As one union official explained, "CEO Harada said [to employees], Takano and the unions 'are damaging the company brand.'"⁴¹

In the public realm, however, McDonald's belligerent stance and refusal to compromise, despite the weight of legal precedents, unintentionally strengthened anti-excess work hour campaigners by leading to a decisive court decision.⁴² The publicity effect was strengthened because several similar cases generated a stream of publicity. In many cases, including a well-publicized dispute involving retailing clothing chain Konaka, the core issue was, as for Takano, misclassification of *tenchō* as managing supervisors.⁴³ The resulting media coverage helped to make *nabakari kanrishoku* (manager in name only) a national buzzword, and to encourage people to contact community unions and labour rights groups about rights of employees. Employees started new unions at Kentucky Fried Chicken Japan (where they quickly won a back overtime pay settlement) and other restaurant chains,

³⁹ *Asahi shinbun*, 19 July 2008, p. 13.

⁴⁰ *Asahi shinbun*, 22 May 2008, p. 1.

⁴¹ Interview, Kurihara Hiroaki, McDonald's Union senior official, Tokyo, 24 July 2008.

⁴² McDonald's immediately appealed the decision, though with no chance of winning, it swallowed an out-of-court settlement that conceded all significant issues on 18 March 2009.

⁴³ Tokyo Kanrishoku Union, *Gisō kanrishoku*, pp. 70-85.

while four former McDonald's *tenchō* filed a lawsuit in Tokyo District Court on 21 March demanding back overtime pay.

Still, the number of assertive workers remained small, and by May a counter-trend had already emerged. Some companies announced plans to introduce overtime allowances, but designed them so that little or no additional payment occurred. Harada, for example, announced that McDonald's would pay overtime allowances but substantially reduce job pay, leaving actual pay the same. Similarly, Konaka began paying overtime but reduced other allowances. As newsweekly *AERA* sarcastically put it, the situation had merely shifted "from 'managers in name only' to 'overtime allowances in name only.'"⁴⁴

Outcomes and Analysis

Despite the great differences in the two companies involved and in their financial conditions, the two cases demonstrate great similarity in the means used by managers to pressure or compel employees to work service overtime. Six of the seven means previously outlined were used by both firms, as discussed in this section.

No. 1: Deny that overtime occurs. Both companies denied that their practices caused overtime. In addition, both presented dubious records or testimony, as the court ruled in Toyota's case, and as indicated in records held by Rengō Tokyo. The latter show that McDonald's reports hours well below those reported to it by *tenchō*. Moreover, many *tenchō* report fewer hours than they actually work, because reporting all hours would not raise pay, and might get them labeled as inefficient. In addition, many Japanese companies cap overtime pay, regardless of hours actually worked.

No. 2: Assign tasks informally. QC activities are one way that this is performed, especially by manufacturing firms. Although officially voluntary, participation at Toyota and many other firms is considered in performance evaluations. A 2004 survey by the Japan Union of Scientists and Engineers found that many companies paid only nominal allowances and that 30 percent of respondents paid nothing at all.⁴⁵

No. 3: Manipulate employment categories. Defining who is exempt from overtime pay was the main issue in the McDonald's case, which showed that the company's *tenchō*, though formally ranked as *kanrishoku*, routinely performed a wide range of mundane duties unpaid. Takano's title mattered little as he was forced to perform virtually all duties in the restaurant. Uchino, as an EX, was expected to strive for virtual perfection without regard for

⁴⁴ Katagiri Keiko, "Makku Harada-shachō no hyōban" [Mac President Harada's Reputation], *AERA*, 2 May 2008, p. 27.

⁴⁵ *Asahi shinbun*, 22 May 2008, p. 1.

time. Both men routinely covered shortfalls for absent or under-contributing subordinates by doing additional work.

No. 4: Set high quotas and use vague evaluation criteria. Both the Toyota Production System and the McDonald's performance monitoring system set exacting standards that frequently force employees to devote their own time to solving problems and meeting targets. Similarly, many service sector companies use bonuses to pressure workers to pursue difficult-to-achieve performance targets.⁴⁶ Furthermore, Japanese employers increasingly assign quotas to raise the productivity of low-paid non-regular workers, though penalties are far more common than rewards.⁴⁷

No. 5: Claim that overtime premiums are included in base pay or management allowances. This practice does not apply to our cases, but 7-11 Japan and Takefuji are among the prominent firms known to use this approach.⁴⁸

No. 6: Deliberately understaff, employ non-regular workers. Toyota has been a pioneer in squeezing higher productivity out of ever fewer employees. In the case of non-production personnel like Uchino, Toyota compensated for lack of staff by expecting workers to voluntarily (or unofficially) contribute long hours.

Because non-regular workers are generally not expected to work overtime, their increased employment often increases the amount of overtime that regular workers are likely to work.⁴⁹ Low-paid, poorly motivated non-regular workers in service-sector positions frequently go absent or quit suddenly, forcing the remaining regular workers to cover their work.⁵⁰ As seen above, this situation was a constant problem for Takano. Ninety-five percent of McDonald's employees were non-regulars in 2007.⁵¹

No. 7: Inculcate corporate values. Uchino Hiroko observed that Toyota employees commonly internalize the company's philosophical stance that quality control activities are voluntary self-improvement rather than work time.⁵² Further, Toyota is a national icon, and its global success is often seen as a justification of its particular vision of Japanese values, in which loyalty—to

⁴⁶ Kobayashi Miki, *Rupo: 'seishain' no wakamono-tachi* [Report: 'Regular Worker' Youth] (Tokyo: Iwanami shoten, 2008).

⁴⁷ *Nikkei*, 7 November 2008 (evening), p. 17.

⁴⁸ Kawamura Manabu, "Chingin fubarai zangyō nezetsu no tame ni—Takefuji zangyō fubarai jiken ni furete" [Getting Rid of Unpaid Overtime: Clues from the Takefuji Case], *Geppō shihō shoshi*, no. 401 (July 2005), pp. 16-21.

⁴⁹ Low pay notwithstanding, growing numbers of non-regular workers are becoming subject to over-work. Some are simply in a weak labour market position, while others work furiously in efforts to convince firms to hire them as regular workers. See *Asahi shinbun*, 14 June 2008, p. 34; and Kobayashi Miki, *Rupo: Seishain ni naritai* [Report: I Want to Become a Regular Employee] (Tokyo: Ei shobo, 2007).

⁵⁰ Kobayashi, *Rupo: Seishain no wakamono-tachi*, 2008.

⁵¹ *Nikkei*, 23 September 2007, p. 1.

⁵² Corroborated in Liker, *The Toyota Way*, 2003.

superiors and the organization—is the highest virtue. Rengō Tokyo's Denta observed that many of McDonald's *tenchō* regard themselves as managers because the company encourages this belief during training, and because they perform tasks such as keeping books and supervising employees—and simply because they want to believe themselves managers.⁵³

Competition consciousness is powerful as well. Toyota and other Japanese manufacturers have long excelled at instilling competition consciousness towards both domestic and international competitors, while McDonald's encourages it among employees by posting evaluation results and other personnel-related information. Further, leading corporations use their elevated status and high wages to heighten motivation. At Toyota even union leaders challenge complaining workers, "Find me a company that will hire you for the wages you're being paid now."⁵⁴ Several years of falling wages notwithstanding, the average pay of McDonald's *tenchō* remains the highest in the industry. *Tenchō* in some chains have lower pay and better work conditions, but those in the most marginal chains earn little more than 4 million yen, and routinely handle decidedly unmanagerial tasks such as garbage disposal.⁵⁵

In addition to these seven corporate techniques for extracting overtime, our cases and others indicate that bullying and intimidation are often used to forestall and suppress complaints about work hours. Uchino Hiroko faced community pressure to drop her suit. McDonald's managers criticized Takano publicly, claiming that his long hours reflected his inefficiency, and then tried to browbeat him into quitting the union.

What Do These Cases Imply?

The two cases demonstrate the alignment of forces in Japan's work-hour controversy. First, since neither politicians nor major unions have ever pressed the issue seriously, plaintiffs must seek support from activists and lawyers committed to protecting workers' rights. Aggrieved employees sometimes commence the process by contacting community unions or labour rights groups, as Uchino Hiroko and Takano Hiroshi did. Others contact lawyers directly through labour-issue hotlines. Both Tokyo Kanrishoku Union and Center to Protect the Lives and Health of Working Persons naturally passed main responsibility to lawyers as the cases went to trial, but remained involved in the larger struggles against excess work hours by conducting demonstrations and other activities to raise public awareness. These groups also provided crucial personal support to the plaintiffs, in part by putting them in contact

⁵³ Interview, Denta.

⁵⁴ Kamata, "Toyota," 2004.

⁵⁵ *Nikkei*, 17 June 2008, p. 13.

with other aggrieved workers and with groups such as the Association of Families Concerned with *Karōshi*. This psychological support helped them to endure pressure to drop the cases from either the community (in Hiroko's case) or fellow workers (in Takano's case).

A major problem for activists is that cases often turn on technical issues, undermining efforts to promote systemic reform. The Toyota case hinged on defining what should be considered work, which required a detailed understanding of the Toyota Production System. Uchino Hiroko had to sue to bring the Toyota definition into question before an impartial judge, and then had to force the government to recognize the court's ruling. She did not sue Toyota itself, though the plaintiff team implicitly sought to impugn some of the company's core personnel practices. She later demanded payment for the unpaid work, and, through her lawyer, has continued to negotiate with the company to change its practices.⁵⁶ Similarly, the McDonald's case hinged on the definition of "supervising manager" rather than the fact that Takano nearly suffered disabling injury or death. This led to errors in media reports over whether the McDonald's trial concerned work hours or manager status—it was about both, but technically it only concerned the latter. Hence, a major limitation of these and many other lawsuits is that they attack the overwork problem only indirectly and in piecemeal fashion.

Major unions and government agencies that should, in principle, support work hour reform have in practice often been passive or even obstructive. Both Toyota Union and Rengō failed to take action in support of Uchino, while the Toyota City Labor Standards Inspection Office clearly supported the position of management and accepted favours from it. Furthermore, the Labor Standards Inspection Office Chief who refused Uchino's application and was later found to have accepted favours was reinstated following a temporary demotion.⁵⁷ Labor Standards Inspection Office guidance was merely ineffective in the McDonald's case—ironically, union officials believe it would never have gone to trial had the agency forced McDonald's to amend practices rather than simply issuing an easily ignored recommendation (*kankoku*). Bowing to pressure to strengthen rules on work hours, the Ministry of Health, Labor and Welfare in October 2008 issued new guidelines for defining managing supervisors, but the standards were so weak that infuriated unions and lawyers demanded their retraction.⁵⁸ An exception to the pattern of major union disinterest was Rengō Tokyo, which provided support for the plaintiff side. The union emphasizes cooperative resolutions of disputes, but operates more independently of managers than most Rengō-affiliated unions.

⁵⁶ Personal communications, Uchino Hiroko.

⁵⁷ *Asahi shinbun*, 12 April 2008, p. 9.

⁵⁸ *Asahi shinbun*, 25 October 2008, p. 19.

Certainly, Japanese activists have had some important successes, but not in challenging corporate control of work forces. Andrew Gordon found that activists have forced significant shifts in practice by steel corporations, notably regarding environmental issues, yet have had very little impact on corporate practices since the mid-1950s.⁵⁹ A similar pattern can be identified regarding the giant American retailer Wal-Mart, which uses labour management practices strikingly similar to those of Japanese firms. Over the past five years, pressure from civil society groups has forced Wal-Mart to make important changes in corporate practice, particularly employee health policies and, again, environmental issues, yet its control of the work force currently remains unchallenged.⁶⁰

Despite the limited results, it is still important to understand why these two cases generated tremendous publicity while the vast majority of the hundreds of deaths ruled *karōshi* or *karōjisatsu* (suicide due to overwork) every year generally garner much less press coverage. The global stature of both corporations was important, of course, and so was timing, because long work hours are now widely recognized as a major socioeconomic problem. Recognized cases of *karōshi* have risen steadily since the term was coined in 1978, reflecting rising awareness and litigation-forced changes to the standards for granting compensation, rather than actual changes in work conditions. Accordingly, since 2003 the government has become somewhat more assertive about conducting unannounced inspections, levying fines, and making recommendations for improvement. Nevertheless, the emphasis is still on guidance, and penalties remain symbolic. Similarly, major unions are introducing programmes to combat excess work hours, but in a cautious and non-confrontational manner.

Probably more important, the mainstream media began launching regular exposés of deteriorating workplace conditions around the latter half of 2005. Uchino Hiroko used this favourable public climate in her campaign. Her meeting with Minister Kawazoe kept media attention on Toyota's dangerous work practices and its refusal to acknowledge them. In McDonald's case, the financial stakes drew media attention since McDonald's paid a large settlement to its part-time workers, and could still find itself liable to pay around 10 billion yen (90 million dollars) for unpaid overtime to *tenchō*. The mass media focused attention on the cases and their implications for months, thanks in part to allegations of continued mistreatment of workers at Toyota⁶¹

⁵⁹ Andrew Gordon, *The Wages of Affluence: Labor and Management in Postwar Japan* (Cambridge: Harvard University Press, 1998).

⁶⁰ Like Toyota, Wal-Mart is free from the influence of (independent) unions. See Nelson Lichtenstein, ed., *Wal-Mart: The Face of Twenty-first-century Capitalism* (London: The New Press, 2006).

⁶¹ *The Japan Times*, 13 September 2008, available at <<http://search.japantimes.co.jp/cgi-bin/nb20080913a1.html>>.

and a steady stream of reports of overwork deaths and community union-backed resistance among *tenchō*.

Awareness of the work hour issue was heightened in late 2006 and early 2007, when the business community and government attempted to pass the so-called “white-collar exemption,” legislation that would have eliminated mandatory overtime allowances for most white-collar workers. Backers claimed a white-collar exemption would reduce work hours by making work more flexible and by eliminating the incentive to seek overtime allowances. Initially, few people took notice of the policy, but activists and the media moved quickly to raise public consciousness,⁶² and then had little difficulty winning over the mass of white-collar workers, 70 percent of whom would have lost their overtime benefits under the first iteration of the plan. Opposition was further stimulated when Okutani Reiko, a business representative in the Ministry of Health, Labour and Welfare’s labour policy deliberative council, uttered a series of inflammatory opinions, including, most notoriously, “Managers don’t tell anyone to work to death, do they? To some degree, *karōshi* included, I think health is a matter of individual self-management.”⁶³

The clear public opposition to white-collar exemption led the government to abandon the proposal in January 2007. Neoliberal politicians and many business leaders began to back away from previous calls for labour market deregulation.⁶⁴ However, their change in stance was probably intended to appease the public rather than strengthen employee protections. The true stance of neoliberal political and business leaders became evident in December 2008, when the ruling Liberal Democratic Party agreed to raise the current overtime premium from the current 25 percent to 50 percent in April 2010, but only for overtime in excess of 60 hours per month (less would continue to draw only 25 percent). The original proposal set out an 80-hour overtime threshold, but opposition parties, pointing out that this was the “*karōshi* line” at which health is regarded as seriously endangered, forced them to adopt a lower figure.

Conclusion

The attention accorded to the Toyota and McDonald’s cases is indicative of growing public discontent with excessive and unpaid work hours. However, the two cases also demonstrate the major obstacles facing plaintiffs, even when clearly dangerous violations of work standards occur. Both plaintiffs covered here, for example, endured abuse from community and company,

⁶² Kazama Naoki, *Koyō yukai* [Employment Meltdown] (Tokyo: Tōyō Keizai Shinposha, 2007), pp. 206-209.

⁶³ Kazama, *Koyō yukai*, p. 224.

⁶⁴ Igarashi Jin, *Rodō sai-kisei* [Labor Re-regulation] (Tokyo: Chikuma shinsho, 2008).

and both companies committed violations, including falsification of records, that went unpenalized. Facing almost no risk, firms have little legal or financial incentive to monitor work time properly.

It is true that Takano's lawsuit could yet bring significant change to the restaurant-bar and other sectors employing large numbers of *tenchō*. So far, however, companies have merely dampened the impact of legal rulings through nominal adjustments of pay and other personnel practices. Moreover, McDonald's Japan, after several years of shaky performance, announced record profits for 2008, enabling management to claim vindication for its aggressive cost-cutting strategy. Toyota, on the other hand, suffered its first loss-making year in decades, but reacted by reducing jobs and pay—in short, its ability to adjust labour costs means that payment of QC allowances will not hurt the bottom line.

Finally, the analysis concurs with other studies suggesting the limits of activist pressure. Strongly motivated plaintiffs supported by effective civil society groups defeated two of the world's largest corporations, forcing both to admit to some degree of malfeasance. Nevertheless, the failure of major unions or the government to follow up the rulings softens the power of these victories. Campaigners for shorter work hours will need to build broad coalitions to protect workers and effectively regulate the length of the working day.

Osaka City University and Osaka University, Osaka, Japan, July 2009