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# LABOR RELATIONS AND THE LAW IN SOUTH KOREA

Laura Watson

*Abstract:* This Comment looks at labor legislation's role in shaping the present state of labor relations in South Korea. A brief history of the government's symbiotic relationship with business serves as a backdrop for assessing the current laws. The laws have an employer bias accentuated by the broad administrative oversight government has over labor relations. More troublesome provisions of the laws are considered in detail. This Comment then turns to recent pro-labor changes in the laws but discusses why labor unions are unlikely to achieve full equality in labor relations at this juncture. In conclusion, this Comment makes suggestions for change based on the premise that labor negotiations should be conducted by the parties on an equal footing.

## I. INTRODUCTION

South Korea represents a modern miracle of rapid industrialization and unprecedented economic growth.<sup>1</sup> However, not all South Korean citizens have fully enjoyed the fruits of the nation's economic success. South Korean employees work under repressive labor standards<sup>2</sup> and, historically, labor unions have been subdued by government and business.<sup>3</sup> At the beginning of the nation's economic growth, the South Korean government embarked upon an economic course that promoted certain key businesses but resulted in the repression of budding labor unions.<sup>4</sup> Perhaps repression of unions did contribute to the rapidity of South Korea's economic growth, but now that South Korea is snug in its position as the eleventh largest economy in the world,<sup>5</sup> further repression does not seem justified. Nonetheless, the State has been reluctant to revise its pro-business labor laws because of its symbiotic relationship with the business community.<sup>6</sup> The nexus forged between

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<sup>1</sup> See generally EZRA F. VOGEL, *THE FOUR LITTLE DRAGONS* (1991). See also HANS LINNEMANN ET AL., *EXPORT-ORIENTED INDUSTRIALIZATION IN DEVELOPING COUNTRIES* 318-29 (1987).

<sup>2</sup> See generally HUMAN RIGHTS WATCH, *RETREAT FROM REFORM: LABOR RIGHTS AND FREEDOM OF EXPRESSION IN SOUTH KOREA* (1990); Richard Dicker, *South Korea Labor Rights Violations Under Democratic Rule*, 14 UCLA PAC. BASIN L.J. 196 (1996).

<sup>3</sup> See generally JANG JIP CHOI, *LABOR AND THE AUTHORITARIAN STATE: LABOR UNIONS IN SOUTH KOREAN MANUFACTURING INDUSTRIES, 1961-1980* (1989); GEORGE E. OGLE, *SOUTH KOREA: DISSENT WITHIN THE ECONOMIC MIRACLE* (1990).

<sup>4</sup> Young-bum Park, *State Regulation, the Labour Market and Economic Development: The Republic of Korea*, in *WORKERS, INSTITUTIONS AND ECONOMIC GROWTH IN ASIA* 149-76 (Gerry Rodgers ed., 1994).

<sup>5</sup> Michael Schuman, *International: OECD Invitation Gives South Korea an Incentive to Tune Up Its Economy*, WALL ST. J., Oct. 14, 1996, at A15.

<sup>6</sup> See discussion *infra* Section II.

business and government during the period of industrialization represents the greatest obstacle to meaningful change in the present labor legislation. By amending the laws to accord unions greater rights, the State must contend with the danger of biting the hand that feeds it.

This Comment first considers the nature and history of the business-government nexus and how labor repression was a logical outgrowth of this nexus. It then discusses the three relevant labor laws, the Labor Union Act;<sup>7</sup> the Labor Dispute Mediation Act;<sup>8</sup> and the Labor and Management Council Act.<sup>9</sup> This Comment will demonstrate how these statutes provide for extensive administrative oversight of labor relations. The administration has used the letter of the law to considerably manipulate union formation and give business a marked edge in labor relations. As long as the business-government nexus continues to exist, any law providing for broad administrative oversight will result in repression of labor activism. In light of this thesis, this Comment concludes by suggesting potential amendments for South Korea's labor laws based on the notion that significant changes must be implemented to insure that South Korean workers enjoy the same rights to freedom of association and collective bargaining taken for granted by workers in many other industrialized countries.

## II. KOREA INCORPORATED

South Korea (*hereinafter* Korea) can be described as a "corporatist state."<sup>10</sup> Corporatism must be distinguished from pluralism, the style of government typically associated with democracies. In a pluralistic state, law and policy result from pressures placed on a passive government by various interest groups.<sup>11</sup> In contrast, a corporatist government selects a set of policies then uses its citizens and entities as instruments to effectuate these policies.<sup>12</sup> Thus, the government in a corporatist state is highly interventionist. It chooses goals and then uses its citizenry to implement them.

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<sup>7</sup> NODONG CHOHAPOŔP [Labor Union Act] (1997) [*hereinafter* Labor Union Act].

<sup>8</sup> NODONGCHAENGUI CHOCHONGPOŔP [Labor Dispute Mediation Act] (1987) [*hereinafter* Labor Dispute Mediation Act].

<sup>9</sup> NOSAHYŔPUIHOEPŔP [Labor-Management Council Act] (1987) [*hereinafter* Labor-Management Council Act].

<sup>10</sup> CHOI, *supra* note 3, at 11.

<sup>11</sup> *Id.* at 5-6.

<sup>12</sup> *Id.*

Following the Korean War, the corporatist Korean government opted to transform its agrarian economy into an industrial one.<sup>13</sup> The State aggressively pursued export-oriented industrialization by strongly encouraging the development of labor-intensive manufacturing industries.<sup>14</sup> Huge conglomerates, called "chaebols," arose during this period.<sup>15</sup> The government, which owned and controlled the banks, inspired the formation of chaebols by subsidizing them through preferential credit, low-interest loans, and tax incentives.<sup>16</sup> The State also kept wages relatively low by directly engaging in wage setting.<sup>17</sup>

A business-government nexus was forged by the State's active intervention in business matters. Government "rewarded" entrepreneurs who complied with its policies by publicly honoring them and, of course, permitting them to become wealthy.<sup>18</sup> In return, the government received legitimacy and political support from the chaebols.<sup>19</sup> During the early years of industrialization, the chaebols were primarily instruments of state power. The State dominated the direction of industrialization and chaebols were compelled to comply or lose their preferential economic treatment.<sup>20</sup> However, as chaebols' economic prominence increased, the puppet-master relationship transformed into a relationship based on mutual dependence.<sup>21</sup> Chaebols now exert considerable political influence, especially those that have a highly collaborative relationship with the state.<sup>22</sup>

The State's collusion with business has led to severe repression of workers' rights to organize and engage in collective action.<sup>23</sup> The State had twin motives in repressing these rights. First, suppression of unions helped

<sup>13</sup> LINNEMANN ET AL., *supra* note 1, at 319.

<sup>14</sup> *Id.* at 319-23.

<sup>15</sup> VOGEL, *supra* note 1, at 61.

<sup>16</sup> *Id.*

<sup>17</sup> See Taigi Kim, *Human Resource Management for Production Workers in Large Korean Manufacturing Enterprises*, in *INDUSTRIALIZATION AND LABOR RELATIONS* 216, 220 (Stephen Frenkel & Jeffrey Harrod eds., 1995). See also Park, *supra* note 4, at 156-58.

<sup>18</sup> CARTER J. ECKERT ET AL., *KOREA OLD AND NEW: A HISTORY* 405 (1990).

<sup>19</sup> See Richard F. Doner & Gary Hawes, *The Political Economy of Growth in Southeast and Northeast Asia*, in *THE CHANGING POLITICAL ECONOMY OF THE THIRD WORLD* 145, 155 (Manochehr Dorraj ed., 1995). The Korean government has always needed the appearance of legitimacy because, until 1987, it was an authoritarian regime. ECKERT ET AL., *supra* note 18, at 347-87. The first democratic election was held in 1987, but Korea is still trying to shake off its authoritarian past. *Id.*

<sup>20</sup> LINNEMANN ET AL., *supra* note 1, at 322-23.

<sup>21</sup> See CHOI, *supra* note 3, at 208.

<sup>22</sup> *Id.* at 98.

<sup>23</sup> This is true despite the fact that, in Korea, these rights have attained constitutional status. HANKUKHÖNPÖP [KOREA CONST.] art. 33(1) ("To enhance working conditions, workers shall have the right to independent association, collective bargaining and collective action.").

insure that industrial strife would not hamper the State's goal of pursuing export-led production.<sup>24</sup> Secondly, the State enriched its symbiotic relationship with the business community by using its police power to maintain workplace order.<sup>25</sup> For labor advocates, this latter motive may be much more disturbing. Because Korea has already achieved economic success, suppression of unions is no longer necessary as an end in itself. However, by subduing workers to placate employers, the government has created an environment where business has never had to seriously deal with unions.<sup>26</sup> Since most employers probably expect that favoritism in labor relations will continue, if the government makes significant legislative concessions to labor unions, business is likely to resist these changes.<sup>27</sup> Consequently, the State may have to separate itself from corporate influences before it can institute changes that accord workers full rights.

Repression of labor has been both direct and indirect. The latter type of repression arises from the labor laws themselves and is discussed in the next section. The more direct forms of repression also deserve comment to demonstrate the present essence of labor relations. Some of the more notorious tactics utilized by the government have included brutal police intervention during strikes,<sup>28</sup> widespread arrests of union members,<sup>29</sup> and kidnappings followed by brainwashing at so-called "purification camps."<sup>30</sup>

Even when the State's intervention is not direct, it implicitly encourages employers to use self-help to deter union activity. For example, employers are permitted to hire management thugs called *kusadae* to threaten and assault union organizers.<sup>31</sup> The government has also aided employers by compiling black lists identifying employee troublemakers.<sup>32</sup> Additionally, the government attempts to incite public disapprobation for union activities by blaming unions for any economic downturn experienced by the nation as a whole and concomitantly presenting union members as selfish and

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<sup>24</sup> Park, *supra* note 4, at 152.

<sup>25</sup> OGLE, *supra* note 3, at 59-61.

<sup>26</sup> See Jong-il You, *Labour Institutions and Economic Development in the Republic of Korea*, in WORKERS, INSTITUTIONS AND ECONOMIC GROWTH IN ASIA, 177, 205 (Gerry Rodgers ed., 1994).

<sup>27</sup> The government has made moderate amendments to its labor laws in the past few years. Employers' resistance to the laws have resulted in a high level of conflict. *Id.*

<sup>28</sup> OGLE, *supra* note 3, at 60.

<sup>29</sup> Dicker, *supra* note 2, at 208.

<sup>30</sup> OGLE, *supra* note 3, at 55.

<sup>31</sup> *Id.* at 61-62. *Kusadae* means "Save Our Company Group."

<sup>32</sup> Hagen Koo, *The State, Minjung, and the Working Class in South Korea*, in STATE AND SOCIETY IN CONTEMPORARY KOREA 131, 148 (HagenKoo ed., 1989).

individualistic.<sup>33</sup> Although kidnappings and purification camps seem to be a remnant of Korea's authoritarian past, violent strikebreaking, arrests, and scapegoating of unions persist in modern Korea.<sup>34</sup> Any thorough examination of Korea's present labor relations must be conducted against this backdrop of overt, extralegal discouragement of union membership and activity.

### III. RELEVANT LABOR LAWS

Facially, Korea's labor laws do not appear particularly biased against unions. In fact, the initial Labor Union Act passed in 1953 resembled the United States' pro-labor Wagner Act of 1935.<sup>35</sup> However, the laws must be understood within their proper context. Prosecutorial discretion and selective enforcement have been continuous problems.<sup>36</sup> In addition to these administrative shortcomings, the laws themselves reflect a pattern of labor repression and pro-employer state policy.

#### A. *The Labor Union Act*

The Labor Union Act provides for extensive administrative oversight of every stage of union activity. In order to be recognized as the employees' bargaining representative, the union must report to the administrative authority and submit information including union title, location of its office, number of members, names and addresses of officers, and the title of its federation.<sup>37</sup> Any changes in this information must be submitted to the administrative authority within fifteen days.<sup>38</sup>

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<sup>33</sup> HUMAN RIGHTS WATCH, *supra* note 2, at 29-30. See also CHOI, *supra* note 3, at 13 (discussing government's attempt to instill its brand of work ethics in employees).

<sup>34</sup> During a three week period of intense labor unrest following passage of a pro-business law in December 1996, the government rather unsuccessfully attempted to use all three of these tactics. Police armed with tear gas were used to break up demonstrations. Ju-Yeon Kim, *Korean Protests Mushrooming Into Political Crisis*, WASH. POST, Jan. 12, 1997, at A28. Prosecutors issued arrests for several union officials and President Kim Young Sam asked the nation, "If business fails, where will the workers be? You must let businesses live . . . Those with whom the workers and firms should be competing with are their foreign counterparts." David Holley, *S. Korean Strikes in Crucial Phase, Analysts Say Asia: President Kim Rejects Unions' Demands to Scrap New Law Making it Easier to Lay Off Workers*, L.A. TIMES, Jan. 7, 1997, at A12.

<sup>35</sup> CHOI, *supra* note 3, at 85. Labor Union Act, *supra* note 7. 25 U.S.C. §§ 151-69 (1996).

<sup>36</sup> Hwang-Joe Kim, *The Korean Union Movement in Transition*, in ORGANIZED LABOR IN THE ASIA-PACIFIC REGION 133, 148 (Stephen Frenkel, ed. 1993) (although the law prohibits unfair labor practices, employers have been able to commit them with "virtual impunity").

<sup>37</sup> Labor Union Act, *supra* note 7, art. 13(1).

<sup>38</sup> *Id.*

The administrative authority is defined as the mayor of Seoul, the mayor of the situs of the workplace, or the provincial governor.<sup>39</sup> With the exception of the mayor of Seoul, these officials are presidential appointees rather than elected representatives.<sup>40</sup> Thus, members of the electorate have no ability to directly influence the administrative authorities by using the franchise to eject administrators who make biased decisions or to attempt to elect candidates who represent their interests.

An administrative authority has three options when it receives an application for recognition from a union.<sup>41</sup> First, it can recognize the union; second, it can refuse to recognize the union; or third, it can delay recognition until the union completes a request for more thorough information. Often, "the routine decision to recognize a union is a disguised political decision."<sup>42</sup> When an administrator postpones recognition, it usually "warns" the employer of the employees' organizing attempts thereby giving the employer an opportunity to use self-help to break up the union before it is officially recognized.<sup>43</sup> The delaying tactic has also contributed to the widespread problem of company unions. Because multiple unions per shop are basically prohibited,<sup>44</sup> once the employer is warned of imminent unionization, it can quickly register a faux union while the real organizers attempt to comply with the law's cumbersome requirements.<sup>45</sup>

Once a union is certified, administrative oversight does not cease. Unions are required to enact by-laws<sup>46</sup> and submit them to the administrative authority.<sup>47</sup> The administrator then interprets the by-laws and has power to make unilateral amendments with permission of the labor committee if it determines that the laws "conflict with laws and

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<sup>39</sup> *Id.*

<sup>40</sup> HUMAN RIGHTS WATCH, *supra* note 2, at 111.

<sup>41</sup> Labor Union Act, *supra* note 7, art. 12 (Supp. 1997).

<sup>42</sup> CHOI, *supra* note 3, at 103.

<sup>43</sup> *Id.* at 102.

<sup>44</sup> Labor Union Act, *supra* note 7, art. 5(1) (Supp. 1997). Despite the ban on multiple unions, workers recently achieved a significant victory when the government agreed to officially recognize the formerly illegal Korean Confederation of Trade Unions as an alternative to the much more moderate Federation of Korean Trade Unions ("FKTU"). Michael Schuman & In Kyung Kim, *South Korea Passes Watered-Down Labor Legislation*, WALL ST. J., Mar. 11, 1997, at A19. The FKTU was initially a sham union set up by the government and, hence, many workers question whether it really advances their interests. See OGLE, *supra* note 3, at 12-13.

<sup>45</sup> OGLE, *supra* note 3, at 58-59.

<sup>46</sup> Labor Union Act, *supra* note 7, art. 14 (Supp. 1997).

<sup>47</sup> *Id.* art. 13.

regulations relating to labor."<sup>48</sup> The union must also keep extensive records<sup>49</sup> that are subject to inspection at any time by the administrative authority.<sup>50</sup> This unlimited right to inspect union records is especially significant because the administrator is given concomitant authority to unilaterally abrogate or modify any resolution or measure taken by the union if it "conflicts with laws and regulations related to labor or the by-laws . . . ."<sup>51</sup> Additionally, unions' financial records are audited every six months, or more frequently at the discretion of the auditor.<sup>52</sup> Employers' documents and records pertaining to labor relations do not seem to be similarly scrutinized.

The administrative authority also has ultimate veto power over the terms of a collective bargaining agreement. The employer and union must submit their agreement to the administrator within fifteen days of its execution.<sup>53</sup> Pursuant to a resolution of the labor committee, the administrator may change or cancel terms that it deems "illegal or unjustifiable."<sup>54</sup> Since the State has previously capped wages, any term providing for greater wages than those set by the State would be invalidated as illegal. Under the statute, the term does not need to be illegal to be rendered void; "unjustifiable" agreement provisions may also be struck.<sup>55</sup> "Unjustifiable" does not describe a precise standard and an administrative authority could presumably determine for himself which provisions are "unjustified."

### *B. The Labor Dispute Mediation Act*

Considering the government's extensive control over the substantive terms of agreements, one should not be surprised to learn that the collective bargaining process has not led to concrete changes in the workplace. With the State backing it up, the employer has little incentive to earnestly face the union across the bargaining table. Thus, workplace gains have generally not

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<sup>48</sup> *Id.* art. 12.

<sup>49</sup> *Id.* art. 14.

<sup>50</sup> *Id.* art. 13(2).

<sup>51</sup> *Id.* art. 21. The legislature has essentially given the administrators superior authority to interpret and apply the union's own by-laws by permitting the administrators to define when a union's activities contravene its laws.

<sup>52</sup> *Id.* art. 25.

<sup>53</sup> *Id.* art. 31(2).

<sup>54</sup> *Id.* art. 31(3).

<sup>55</sup> *Id.*



arisen from collective bargaining but rather from industrial action followed by negotiations.<sup>56</sup> Since strikes and demonstrations have traditionally been the only means for unions to achieve real gains, Korean unionists have earned a reputation for being extremely militant.<sup>57</sup> However, the government has the capacity to counteract unions' disruptive industrial actions by intervening through the Labor Dispute Mediation Act.

Under the Act, a union must disclose its intention to strike to the employer, the labor committee, and the administrative authority.<sup>58</sup> After disclosure, the union is required to "cool off" for ten days before instituting the strike.<sup>59</sup> Thus, unions are legally precluded from exerting economic pressure by "springing" strikes on employers. During the ten-day interim, the employer may plan retaliatory measures although the employer is not legally permitted to lock out its workers until they have officially struck.<sup>60</sup> The administrative authority has broad statutory authority to suspend acts of dispute that constitute "acts of violence or subversion"<sup>61</sup> or an act that "suspends, discontinues or obstructs the normal maintenance and operation of facilities installed for safety protection at factories, workplaces or any other places of work . . . ."<sup>62</sup> Presumably, the administrative authority could wholly prevent a certain industrial action by declaring it illegal within ten days after the union discloses its intention to engage in the action.

The Act mainly focuses on resolving disputes once they have arisen. Although the employer and union can agree to utilize their own dispute resolution mechanisms,<sup>63</sup> the government generally plays a central role in dispute resolution. The statute provides for a two-step cooperative process. First, the parties to the dispute will attempt conciliation.<sup>64</sup> The conciliator is chosen by the labor committee<sup>65</sup> and has authority to compel production of

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<sup>56</sup> Kim, *supra* note 36, at 154.

<sup>57</sup> See *South Korea: Not So Militant*, ECONOMIST, June 10, 1995, at 35 (discussing the illegal activities of a "dissident" unrecognized labor organization and the approximately 3500 "illegal" strikes in 1987). See also John Burton, *News: Asia Pacific: South Korea Faces Bout of Labour Unrest*, FIN. TIMES, June 20, 1996, at 4 (outlining the militant activities of the Korean Confederation of Trade Unions to demand recognition).

<sup>58</sup> Labor Dispute Mediation Act, *supra* note 8, art. 16.

<sup>59</sup> *Id.* art. 14.

<sup>60</sup> *Id.* art. 17.

<sup>61</sup> *Id.* art. 13(1).

<sup>62</sup> *Id.* art. 13(2).

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* arts. 18-21.

<sup>65</sup> *Id.* art. 18(1)-(2). The labor committee first prepares a list of possible conciliators then chooses from among the names on its list in the event of a dispute.

witnesses or evidence.<sup>66</sup> If conciliation is unsuccessful, the dispute proceeds to mediation.<sup>67</sup> A three-person mediation panel hears the parties' arguments<sup>68</sup> then issues a written recommendation to the parties.<sup>69</sup> The recommendation becomes binding if the parties accept it.<sup>70</sup> The labor committee can order binding arbitration in lieu of conciliation and mediation if the dispute involves a public utility, both parties request arbitration, or one party requests arbitration pursuant to the terms of a collective bargaining agreement.<sup>71</sup>

Korea's dispute resolution machinery seems just and workable and, indeed, it would be just if the State were neutral like the statutory scheme suggests. However, because the State is in collusion with business, unions are disadvantaged when the State intervenes in disputes. The Act's provisions on emergency mediation best illustrate the potential for abuse. The Minister of Labor has discretion to order mediation if "acts of dispute are related to a business of public interest, or it is of such scope or character that there exists a danger which might substantially impair the nation's economy or endanger the daily life of the general public."<sup>72</sup> Once emergency mediation is ordered, both parties must suspend all acts of dispute.<sup>73</sup>

If the Labor Committee determines that mediation "is unlikely to be obtained," it will order binding arbitration.<sup>74</sup> Both mediation and arbitration are conducted by the Labor Committee.<sup>75</sup> Thus, once the Minister of Labor decides that an emergency exists, he can force the union to submit a dispute to a panel of arbitrators likely to be biased in favor of the union's opponent. The broad definition of "emergency" means that several industrial disputes may be channeled to arbitration under the emergency mediation provisions of the Act. Historically, compulsory arbitration has negatively impacted wages and working conditions.<sup>76</sup> Unions perceive mandated dispute resolution as "a government device to suppress the labor movement."<sup>77</sup> Thus, forcing a union to arbitrate over a strike may effectively stymie the union's attempts to obtain better working conditions. Of course, the union may decide to ignore the

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<sup>66</sup> *Id.* art. 19.

<sup>67</sup> *Id.* arts. 20, 22.

<sup>68</sup> *Id.* arts. 23(2), 26.

<sup>69</sup> *Id.* art. 28.

<sup>70</sup> *Id.* art. 29.

<sup>71</sup> *Id.* art. 30.

<sup>72</sup> *Id.* art. 40.

<sup>73</sup> *Id.* art. 41.

<sup>74</sup> *Id.* art. 43.

<sup>75</sup> *Id.* arts. 42, 44.

<sup>76</sup> See CHOI, *supra* note 3, at 272.

<sup>77</sup> *Seoul Threatens to Act on Planned Strikes*, ASIAN WALL ST. J., June 20, 1996, at 4.

government's order and continue striking once emergency mediation is decreed. However, this may be risky because when a union does not comply with an order of emergency mediation, or any other section of the Act, it is technically breaking the law and the State is legally justified in using police force to break up these "illegal" strikes and arrest participants.

### C. *Labor Management Council Act*

The Labor Management Council Act requires employers with greater than a certain number of employees to set up intraoffice consultation committees.<sup>78</sup> These committees must have an equal number of employee and employer representatives<sup>79</sup> and must consult about productivity, workers' welfare, prevention of labor disputes, procedures for resolving employee grievances, safety and health concerns, personnel matters, and "[o]ther matters concerning labor-management cooperation."<sup>80</sup> The employer is also required to set up a grievance committee for the processing of employee complaints.<sup>81</sup> The language of the Act is deliberately non-preemptive of collective bargaining agreements<sup>82</sup> and in unionized workplaces, employee representatives sitting on the council must also be union members.<sup>83</sup>

Despite its non-preemptive language, the Act has significantly undermined the collective bargaining process. This is partially because employers prefer to "consult" with employees rather than bargain with the union.<sup>84</sup> In fact, the government passed the Act with the intention of eventually replacing unions with labor-management councils.<sup>85</sup> There is no evidence to suggest that labor-management councils actually improve labor-management relations. For example, productivity committees have been totally ineffective because management does not value employee input and workers are basically disinterested in participating.<sup>86</sup> Because many issues are subject to "consultation," including industrial disputes,<sup>87</sup> the operation of

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<sup>78</sup> Labor-Management Council Act, *supra* note 9, art. 4(1). Presently, an employer with 50 or more employees must set up a council. *OECD Economic Surveys, 1995-1996, Korea*, at 104, OECD (1996).

<sup>79</sup> Labor-Management Council Act, *supra* note 9, art. 6(1).

<sup>80</sup> *Id.* art. 20.

<sup>81</sup> *Id.* arts. 24-26.

<sup>82</sup> *Id.* art. 5.

<sup>83</sup> *Id.* art. 6(2).

<sup>84</sup> Kim, *supra* note 36, at 148.

<sup>85</sup> You, *supra* note 26, at 184.

<sup>86</sup> Kim, *supra* note 17, at 230-31.

<sup>87</sup> FREDERIC C. DEYO, *BENEATH THE MIRACLE: LABOR SUBORDINATION IN THE NEW ASIAN INDUSTRIALISM* 137 (1989).

the current Act denies employees the opportunity to choose a strong representative that can proficiently defend employee interests against management decisions. Thus, even though labor-management councils might be positive innovations in many countries,<sup>88</sup> they cannot be used to advance employee interests in environments where workers have traditionally been silenced and mistreated.

#### IV. MODERN STATUS OF KOREAN LABOR RELATIONS

As long as the government-business nexus persists, laws providing for broad administrative oversight of labor relations will result in labor repression. Until recently, unions lacked the capacity to affect labor legislation through political channels because they were precluded from engaging in any political activity, including campaign funding.<sup>89</sup> In the Spring of 1997, the ban on political activity by unions was lifted.<sup>90</sup> Now unions can directly influence the political process by publicly and financially supporting labor-friendly political candidates. However, the symbiotic relationship between government and business continues to be a formidable obstacle. Thus far, union pressure alone has not sufficed to alter the basic elements of Korean labor relations. As this portion of the Comment discusses, international pressure has been a major factor in forcing the Korean government to rethink its stance. Continuing international pressure combined with unions' increased political capacity could potentially result in genuine change to the nation's labor legislation.

##### A. Unions and Political Influence

Throughout Korea's post-war history, labor unions have been politically weak.<sup>91</sup> The truism, "he who has access has influence,"<sup>92</sup> is particularly apt to describe Korean labor relations; employers have been able

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<sup>88</sup> See COMMISSION ON THE FUTURE OF WORKER-MANAGEMENT RELATIONS, FACT FINDING REPORT 29-57 (1994) (considering the feasibility of worker-employer committees in United States' workplaces with a brief discussion of these committees in Europe).

<sup>89</sup> Labor Union Act, *supra* note 7, art. 12 (repealed 1997). Workers still may not form unions for the primary purpose of furthering political goals. *Id.* art. 2(4).

<sup>90</sup> Theresa Watanabe, *S. Korea Revises Disputed Labor Law Asia: Bill Offers Expanded Union Rights. Compromise is Likely to Ease Anger that Triggered Widespread Strikes*, L.A. TIMES, Mar. 11, 1997, at A9.

<sup>91</sup> CHOI, *supra* note 3, at 5.

<sup>92</sup> DAVID TRUMAN, THE GOVERNMENTAL PROCESS 264 (1971).

to shape the progression of labor relations because they have directly influenced the lawmakers whereas workers were explicitly prohibited from collectively pursuing change. Several ramifications arise from this circumstance. The obvious ramification is that, because employers are not banned from making political contributions and otherwise influencing policy, unions had no opportunity to counteract the damage that employers were wreaking on worker rights.

The ban on political activity also affected union structure and goals. Unions have organized at a grass roots level because attempts to organize large umbrella organizations resembled illicit political activity.<sup>93</sup> Unions followed the tenets of business, or economic, unionism. This means that unions sought to attain purely economic, apolitical goals such as wage increases or shorter work days.<sup>94</sup> Unions' emphases on apolitical goals is exemplified by the fact that, until recently, they used strikes and demonstrations to compel wage increases but never to change the nation's labor laws.<sup>95</sup> Thus, unions have not influenced national labor policy because "the legislative process has provided labor with no means to wield influence with regard to the basic labor laws."<sup>96</sup>

Since unions have had no direct voice in the formation of labor policy, most of their strikes and demonstrations can be viewed as reactions in response to laws and policies that were passed without their input or support.<sup>97</sup> Thus, the government somewhat contributed to Korea's notorious militant labor dissidence by forcing unions to resort to strikes to effectuate change. If the lift of the ban on political activity permits unions to engage in meaningful political input, the country may see a notable decrease in the incidence of disruptive industrial action.

The lift of the ban on political activity seemed almost inevitable. Already, unions were beginning to orient themselves towards more political goals rather than focusing entirely on narrow, economic goals.<sup>98</sup> Three

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<sup>93</sup> CHOI, *supra* note 3, at 93. Unions' political isolation is heightened by a law that prohibits third parties, such as church groups or student activists, from intervening in labor disputes. Labor Union Act, *supra* note 7, art. 12.

<sup>94</sup> CHOI, *supra* note 3, at 107-11.

<sup>95</sup> See *id.* at 295. Unions recently struck over a law that displayed "arrogance and antagonism toward just one side [prompting] a public fury and the biggest labor strikes in the nation's history." Teresa Watanabe, *S. Korea Summit May Not Do Trick Asia: President Kim and Political Foes Meet in an Effort to End Labor Unrest. A Key Union's Agreement to Any Accord Remains a Question Mark*, L.A. TIMES, Jan. 21, 1997, at A14.

<sup>96</sup> CHOI, *supra* note 3, at 256.

<sup>97</sup> *Id.* at 265.

<sup>98</sup> Koo, *supra*, note 32 at 156-67.

reasons exist for unions' broadening of objectives. First, even though Korean workers have experienced substantial wage increases over the past decade,<sup>99</sup> the Korean workweek is long and accident rates for workplaces are very high compared to other modern industrialized nations.<sup>100</sup> Thus, to improve the quality of life within the workplace, unions had to pursue goals that looked beyond pure monetary compensation.

The second reason unions have shifted away from purely economic goals is the increasing unionization of white collar workers who entered the labor relations arena with a greater political agenda.<sup>101</sup> The influx of white collar workers into unions also placed unions in the mainstream and helped unions gain the support of Korea's growing middle class.<sup>102</sup> The greater participation of middle class protestors in demonstrations also indicates that a greater portion of the Korean workforce is angered and frightened by the government's business-friendly legislation.<sup>103</sup>

The third reason for greater political focus by unions is the relatively high education of the Korean workforce.<sup>104</sup> The increase in education has led to greater assertiveness and confidence by Korean employees and has largely contributed to the development of a class consciousness.<sup>105</sup> Thus, workers have begun to see themselves as part of a larger struggle and have started to concentrate on widespread change rather than purely immediate problems in individual workplaces.

The relatively high education of Korean workers combined with the increasing unionization of white collar sectors means that unions may become particularly apt at influencing the political process. Now that the ban on political activity has been lifted, workers may be able to mobilize and actually impact politics. However, unions may still be somewhat hindered in their efforts to change labor policy at the legislative level. As mentioned previously, unions are accustomed to organizing at the grass roots level.<sup>106</sup>

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<sup>99</sup> From 1985 to 1995, Korean wages increased almost sevenfold, rising from \$1.23 per hour in American dollars to \$7.40 per hour. *Outlook; Labor: We're No. 13*, U.S. NEWS & WORLD REP., Sept. 23, 1996, at 24.

<sup>100</sup> Alice H. Amsden, *Asia's Industrial Revolution*, DISSENT, Summer 1993, at 324, 327.

<sup>101</sup> Koo, *supra* note 32, at 157.

<sup>102</sup> You, *supra* note 26, at 200. See also Steven V. Brull & Catherine Keumhyun Lee, *Why Seoul is Seething: Koreans Want the Mismanaged Chaebol to Share the Economic Pain*, BUS. WK., Jan. 27, 1997, at 44 (participation of middle class protestors in demonstrations indicates that a greater portion of the Korean workforce is angered and frightened by the government's business-friendly legislation).

<sup>103</sup> Brull & Lee, *supra* note 102, at 44.

<sup>104</sup> Kim, *supra* note 17, at 222.

<sup>105</sup> You, *supra* note 26, at 204.

<sup>106</sup> See *supra* text accompanying note 93.

Although class consciousness is developing, most unions are strongest and most vocal within the individual workplace. Although localized unions have successfully banded together in strikes to create nationwide economic strife, more pervasive change may not occur unless unions are able to organize nationally and agree on an agenda that can be pursued through legislative channels. The two legal umbrella organizations, the Federation of Korean Trade Unions and the Korean Confederation of Trade Unions,<sup>107</sup> must attempt to combine the efforts of their local member unions to effect real political change.

### B. *Corruption Persists*

Although the lift of the ban on political activity is a significant positive change for labor unions, the persistence of the government-business nexus and the superior financial resources of business necessitate greater change if unions are to affect the laws that govern them. The government-business nexus is alive and well; one need only look into Korea's very recent past to find examples of corruption arising from this collusive relationship. In August of 1996, two former presidents and several chaebol heads were criminally prosecuted for numerous acts of corruption and bribery.<sup>108</sup> Although the mere fact of prosecution denotes desirable change, many commentators believe that the administration that investigated the corrupt business leaders did so merely to appease Korean citizens and that any punishments rendered were merely symbolic.<sup>109</sup>

The evidence suggests that the administration that conducted the prosecutions has also been involved in corruption. In February 1997, when a large national steelmaker, Hanbo, went bankrupt, Korean citizens and international observers discovered that the nation's fourteenth largest chaebol had been receiving loans from the government-operated bank long after its potential for bankruptcy had become apparent to lenders.<sup>110</sup> The government's decision to finance the dying conglomerate was the consequence of "corruption and cronyism" and demonstrated that the nation's

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<sup>107</sup> See *supra* note 44.

<sup>108</sup> Catherine Keumhyun Lee, *Unfinished Business: Kim Sends the Chaebol a Message*, BUS. WK., Sept. 9, 1996, at 56. Among those punished were the chairmen of Samsung and Daewoo, two of Korea's four largest chaebols. *Id.*

<sup>109</sup> See *id.* at 57.

<sup>110</sup> Michael Schuman, *Corruption in South Korea Isn't Gone Yet: Hanbo Scandal Shows Kim's Reform Falls Shy of Goals*, WALL ST. J., Feb. 24, 1997, at A18. Koreans have dubbed the scandal "Hanbogate." *Id.*

banks "pay more attention to their borrowers' political connections than to their ability to repay."<sup>111</sup> Thus, unions are entering the political game as infants in relation to employers whose positions and influence are well established.

### C. *The Current Law*

The most recently enacted labor law represents another example of employers' advantage over unions in political matters. The law was passed in a covert pre-dawn legislative session excluding opposition members of the National Assembly.<sup>112</sup> The law was the clear result of chaebols' lobbying efforts.<sup>113</sup> It gave unions no immediate rights while making it easier for employers to lay off workers.<sup>114</sup> Prior to passage of the law, employers had to obtain court orders before they could lay off employees.<sup>115</sup> The law also permitted employers to increase the already lengthy work week and to replace striking workers, a previously prohibited practice.<sup>116</sup> In return, the ban on political activity by unions was lifted<sup>117</sup> and unions were permitted to organize on an industry-wide level,<sup>118</sup> but enactment of these provisions was postponed for at least three years.<sup>119</sup>

Although the law was described as a "slap in the face to both its own workers and international public opinion,"<sup>120</sup> it did give unions the opportunity to demonstrate their indirect political power. After three weeks

<sup>111</sup> Mark L. Clifford & James Lin, *Meltdown in Seoul: Hanbo's Fall Shakes the System*, BUS. WK., Feb. 10, 1997, at 50.

<sup>112</sup> Kevin Sullivan, *Thousands of Strikers Demonstrate in Seoul; Workers Protest New Labor Legislation*, WASH. POST, Dec. 30, 1996, at A14.

<sup>113</sup> Catherine Keumhyun Lee & Sheri Presso, *Crunch Time for the Chaebol: Widespread Strikes Could Thwart an Effort to Cut Costs*, BUS. WK., Jan. 13, 1997, at 16. See also Sullivan, *supra* note 112, at A14 ("Labor leaders see the bills as unfair collusion between the government and the country's immensely powerful corporations").

<sup>114</sup> Ju-Yeon Kim, *Seoul Police Loose Tear Gas on Protesting Workers*, WASH. POST, Dec. 29, 1996, at A25.

<sup>115</sup> Michael Schuman & In Kyung Kim, *South Korea Passes Watered-Down Labor Legislation*, WALL ST. J., Mar. 11, 1997, at A19.

<sup>116</sup> *Labor Unions Launch Nationwide Protest Strikes*, Korea Herald, Dec. 27, 1996, available in 1996 WL 15360619.

<sup>117</sup> *Id.*

<sup>118</sup> David Holley, *S. Korean Strikes in Crucial Phase, Analysts Say Asia: President Kim Rejects Unions' Demand to Scrap New Law Making it Easier to Lay Off Workers*, L.A. TIMES, Jan. 7, 1997, at A12.

<sup>119</sup> *Id.*

<sup>120</sup> *South Korean Workers Protest Law, Law Would Make It Easier to Have Layoffs in Asian Country*, CHARLESTON GAZETTE & DAILY MAIL (WV), Dec. 28, 1996, at P3A (statement made by labor advisory group to the OECD).



of strikes and a three billion dollar loss to the national economy,<sup>121</sup> the President repealed the bill and passed a new one that revoked the provision making it easier to lay off employees and immediately lifted the ban on political activity.<sup>122</sup>

The repeal of the original bill was a significant victory for unions. However, the mere fact of repeal should not lead to the conclusion that the strength of unions was the sole, or even the primary, reason that the business-friendly law was overturned. Pressure from the OECD was a major reason behind the law's abolition. Korea joined the OECD on October 11, 1996.<sup>123</sup> Months before Korea's admission to the Organization, other OECD member nations expressed misgivings about Korea's labor laws<sup>124</sup> since they provide workers with comparatively few protections.<sup>125</sup> After Korea was admitted, the OECD placed continuous pressure on it to amend the troublesome portions of its laws.<sup>126</sup> After the National Assembly passed the law in December of 1996, the head of the OECD's Trade Union Advisory Committee asked the President for a veto.<sup>127</sup> After the President signed the bill into law, the OECD continued to express its disapproval.<sup>128</sup>

As the foregoing incident illustrates, international pressure can be a vital force in ensuring that unions are accorded full rights in Korea. Mere pressure from the unions would probably have been insufficient to turn over the unpopular law. Unless the OECD or other international organizations, such as the International Labor Organization,<sup>129</sup> persistently intervene at this juncture, labor repression is likely to continue.

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<sup>121</sup> Watanabe, *supra* note 90, at A14.

<sup>122</sup> *Id.* The new law also legitimated the formerly outlawed Korean Confederation of Trade Unions. See *supra* note 44.

<sup>123</sup> Tatsuji Nagata, *South Korea's OECD Membership Signals Its Growth*, MAINICHI DAILY NEWS, Nov. 14, 1996, available in WESTLAW, Papersap Database. Korea was the second Asian nation to join the OECD; Japan has been a member since 1964. *Id.*

<sup>124</sup> John Burton, *Asia Pacific: South Korea Faces Bout of Labour Unrest*, FIN. TIMES, June 20, 1996, at 4.

<sup>125</sup> See *OECD Economic Surveys 1995-1996: Korea*, *supra* note 78, at 105-06.

<sup>126</sup> *Labor Unions Launch Nationwide Protest Strikes*, *supra* note 116.

<sup>127</sup> *South Korean Workers Protest Law, Law Would Make It Easier to Have Layoffs in Asian Country*, *supra* note 120.

<sup>128</sup> *S. Korea OKs Replacement for Unpopular Labor Law*, CHI. TRIB., Mar. 11, 1997, at 9.

<sup>129</sup> Korea has been a member of the International Labor Organization ("ILO") since 1991 even though the ILO's governing body deems several of Korea's labor laws to be in violation of fundamental rights contained in the ILO's constitution. Dicker, *supra* note 2, at 204.

## V. SUGGESTIONS FOR CHANGE

As mentioned previously, the lift of the ban on political activity represents significant forward progression in Korea's labor laws.<sup>130</sup> However, for labor repression to be alleviated, administrative oversight of labor relations must be lessened. This section discusses remedies to some of the problematic provisions of the laws discussed in Section III. The solution is fairly simple: give the unions greater autonomy to conduct their affairs and diminish the government's role in all stages of labor relations. This autonomy could be advanced through three changes.

Many internal union affairs now under direct administrative control should be placed beyond the scope of governmental authority. Reporting and investigation requirements<sup>131</sup> should cease once a union is certified and the administrative authority should not be permitted to compel submission of documents<sup>132</sup> absent substantiated allegations of wrongdoing by the union. If the administrative authority is stripped of its power to scrutinize union documents, it necessarily follows that it will no longer have the right to interpret and unilaterally amend union by-laws.<sup>133</sup> These limitations on administrative control are needed to secure unions' right to self-govern internal affairs.

Next, collective bargaining agreements should be treated like contracts between the employer and the union, not the employer, the union, *and* the state. A collective bargaining agreement should not be subject to administrative review unless a dispute arises under its terms and the agreement contains no machinery for dispute resolution, or the parties disagree on what procedures the agreement actually prescribes. The present law, permitting the State to strike terms of the agreement,<sup>134</sup> infects the bargaining process at its primal stage. The State's one-sided intervention eradicates the employer's incentive to bargain seriously. Even if a concession to labor does creep into the agreement, the employer may be saved by the State's erasure of the term. These consequences of the current laws have prevented collective bargaining agreements from becoming tools of change within the workplace. Since the collective bargaining agreement is the desirable end product of the union's collective strength, it is essential that

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<sup>130</sup> See *supra* text accompanying notes 89-107.

<sup>131</sup> Labor Union Act, *supra* note 7, arts. 13, 25.

<sup>132</sup> *Id.* art. 25.

<sup>133</sup> *Id.* art. 21.

<sup>134</sup> *Id.* art. 31(3).

negotiations be conducted on equal footing with minimal impediment to compromise.

When the collective bargaining process collapses, unions may resort to the ultimate economic weapon: the strike. An effective strike will economically injure the employer thereby increasing the union's bargaining power. Often, the timing of the strike will be a determinant in its effectiveness. Since a union must forecast its intention to strike to the State and the employer ten days prior to taking action,<sup>135</sup> it is prevented from using the strike to its utmost advantage. The employer has ample time to institute retaliatory measures which, though technically illegal, are unlikely to be prosecuted due to selective enforcement of the laws.<sup>136</sup> The employer's opportunity to strategize before an impending strike removes the sting from any legal strike. Thus, unions are barred from using collective bargaining and legal economic action to further their goals.

Lastly, the State should actively urge unions and employers to utilize their own dispute resolution machinery. The State's dispute resolution machinery should only be used in case of default, i.e., when the parties fail to include their own procedures for dispute resolution in the collective bargaining agreement. Employers will then be forced to address issues internally by an unbiased decision-maker or neutral mediator. The very existence of neutral dispute resolution mechanisms may deter employers from taking actions that would clearly violate provisions of the collective bargaining agreement or constitute unfair labor practices. Unfortunately, the State's present intervention has created an atmosphere where employers do not portend punishment for wrongdoing and unions do not enter the dispute resolution process in anticipation of victory.

## VI. CONCLUSION

South Korea's economic growth since the Korean War has been phenomenal. The so-called "economic miracle"<sup>137</sup> would probably not have been possible without the close cooperation of business and government. Korea's regard for fundamental human rights has also grown, but this is a fairly recent trend. Most of the nation's post-war history is marked by violent labor repression and subversion of individual workers' basic rights. The

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<sup>135</sup> Labor Dispute Mediation Act, *supra* note 8, art. 16.

<sup>136</sup> See Kim, *supra* note 36.

<sup>137</sup> OGLE, *supra* note 3.

current laws arose out of this period of labor suppression. These laws not only reflect the power disparities between employers and workers but also perpetuate the imbalanced system. Until the bias is removed from the labor laws, unions will be barred from taking giant strides to improve employment conditions and must instead achieve their workplace gains by Lilliputian steps.

Now that unions are permitted to engage in political activity, they have the opportunity to directly influence labor legislation. The previously politically weak organizations would be able to use this new power to workers' tactical advantage. In addition, the ILO and the OECD should continue to pressure Korea into fulfilling workers' rights to unionize and participate in collective action. A primary goal of unions and international organizations should be to urge Korean government to leave labor relations to the parties involved. Many of the problems inherent in the current laws would be eliminated if the government relinquished its extensive control over labor relations. Even though corruption and business-government collusion cannot be eradicated overnight, their presence need not infect labor affairs. The government should exit the arena of labor affairs and permit unions and employers to negotiate on even ground. This can be achieved by shearing the present laws of many of their administrative oversight provisions and retaining government intervention only as a means of last resort.

