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Franchising - Japan

Formation of Labour Union by Convenience Store Franchisees

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On August 4 2009 the *Kombini Kameiten Union*, a union comprised of individual owners of franchised convenience stores, was formed in Japan. On September 10 2009 the union was admitted to one of the local branches of the Japanese Trade Union Confederation, the country's largest labour union organization. The union has approximately 200 members, including franchisees of one of Japan's largest convenience store franchises. It has attracted considerable media attention and has been described as Japan's first nationwide labour union for franchisees.

The union has declared that its aims are to protect and improve working conditions and to raise the economic status of franchisees, who should be regarded as workers.⁽¹⁾ It has highlighted the social issues that convenience store franchisees face, which include:

- substantial royalties;
- over-proliferation of stores belonging to the same chain, which puts too much competitive pressure on each franchisee;
- accounting methods that result in an unfair distribution of profits between franchisors and franchisees;
- increased burdens on franchisees as a result of the additional tasks imposed under franchise agreements;
- insufficient disclosure of information and explanation of risks when franchise agreements are concluded; and
- enforcement of round-the-clock operations.

The union has announced that it will use collective bargaining and other means to urge franchisors to address these issues and to put franchisees in an equitable relationship with franchisors.

In early November 2009 the union sent a formal request to begin collective bargaining with one of Japan's main franchisors. Under the Labour Union Act, an employer is required to respond to a request for collective bargaining by a party that falls within the definition of a 'labour union'.⁽²⁾ However, the franchisor refused to respond to the request, explaining that for the purposes of the act, the members of the union are not 'workers' and the franchisor is not their 'employer'. Thus, the franchisor contended that the union does not fall within the act's definition of a 'labour union'.

In response, the union asserted that convenience store franchisee owners are substantially equivalent to 'workers' within the meaning of the act, given that most franchisees have no alternative but to operate their business according to the franchisor's instructions. Therefore, the union may still file a motion for relief with the Labour Relations Commission, as the franchisor's refusal to respond to a formal request for collective bargaining could be regarded as an unfair labour practice under Article 7 of the act.

A labour union is entitled to strong protection and additional rights under the act. For example, a union has the right to demand collective bargaining with an employer, whereas an individual does not. The protection and rights afforded to a union under the act are among the motivations for forming the union. In addition, the franchisors are seeking to attract media attention and to raise public awareness of the issues concerning franchise agreements.

Since franchisees enter into agreements with franchisors as independent business owners, it is difficult to see how they can be classified as 'workers' under the act. Furthermore, few experts consider that the *Kombini Kameiten Union* meets the criteria for a labour union under the act; it appears to face a number of barriers to recognition. However, the movement for the formation of the union and collective negotiation with franchisors, and the support that the union has received from the National Labour Centre, may encourage other individuals or businesses to form similar unions, and may yet shape business operations under the franchising system in Japan. Legal practitioners, as well as franchisors and franchisees, will monitor future developments with interest.

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Endnotes

(1) The term 'worker' in the act refers to persons who live on wages, salaries or other equivalent income, regardless of the type of occupation.

(2) The term 'labour union' as used in the act shall mean any of those organizations, or federations thereof, formed voluntarily and composed mainly of workers for the main purposes of maintaining and improving working conditions and raising the economic status of the workers.

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