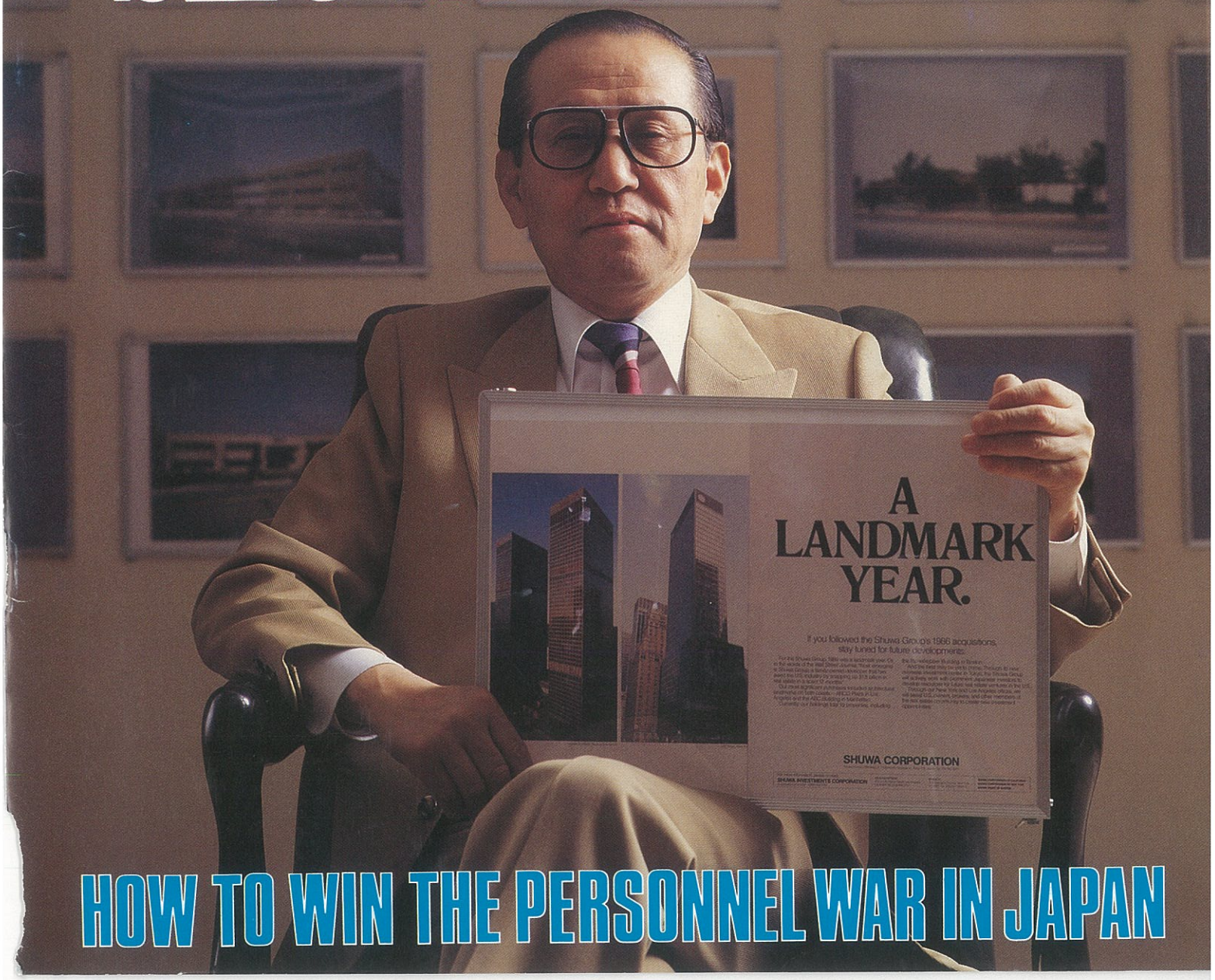
昭和9年6月11日第三種郵便物認可
毎月1日発行昭和62年3月1日発行◎第55巻第917号

TOKYO Business Today

A MONTHLY MAGAZINE OF JAPAN'S BUSINESS & FINANCE

MARCH 1987

THE SHUWA SHOGUN



HOW TO WIN THE PERSONNEL WAR IN JAPAN

WINNING THE PERSONNEL WAR: RULES OF EMPLOYMENT

If you have a hard time sleeping at night, take home your Rules of Employment. They are boring and not much fun to read, but if they have been strategically formulated, they are the key document to assisting you in winning the personnel war.

By Thomas J. Nevins

The employer is free to write them, and you should not ask your employees (or even your managers) to do the initial draft or make changes in that it's pretty difficult to be objective when the subject under consideration is directly affecting one's own benefits, job security, etc.

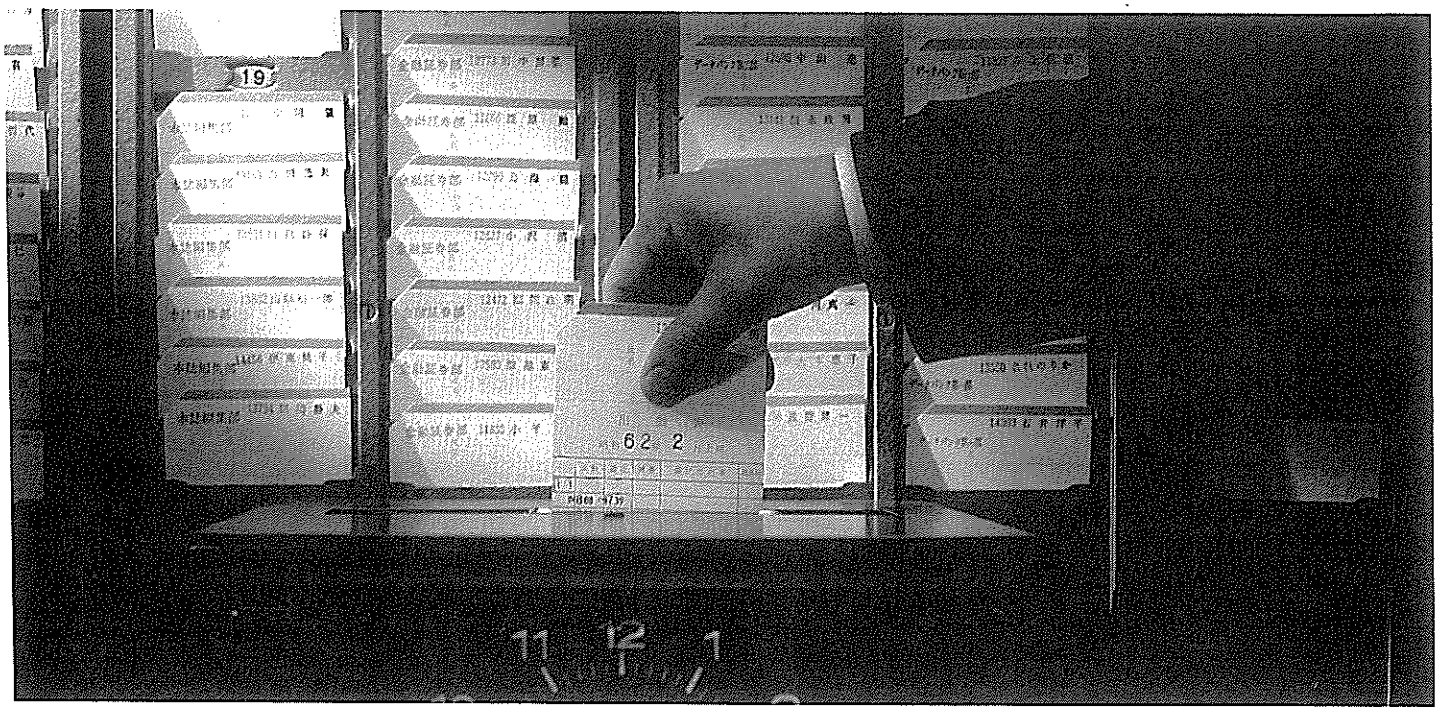
Article 89 of the Labor Standards Law reminds us that these rules are legally required when a firm reaches a head count of 10. The rules must be submitted to the Labor Standards Office along with an "ikensho" or statement of opinion from "a majority representative" of the employees. In reality, in most cases the majority representative is or should be a helpful and effective assistant in the general affairs or personnel department. There can be disagreement on this statement of opinion, but the inspectors at the Labor Standards Office are required to accept the rules unless they contain illegal clauses or, more specifically, clauses which provide benefits inferior to those in the Labor Standards Law.

Article 89 stipulates that Rules of Employment should cover virtually all rules of the work place, or practices, policies and benefits affecting employees. While the Rules of Employment take legal precedence over the individual contract, if there is a union, any collective bargaining

agreements will take legal precedence over the same position held in the Rules of Employment. This means that an employer must first attempt to negotiate over a change in a collective bargaining agreement. And after in fact doing this in good faith, we have guided our clients to move on to making the necessary changes by introducing them as adjustments in the Rules of Employment, maintaining that this was unavoidable in that impasse was reached after adequate collective bargaining negotiations.

The Right Rules Give Leverage on 60-70 Percent of Your Costs

Although the Labor Standards Law requires that Rules of Employment be created after reaching a head count of 10, firms find themselves in a Catch-22 situation, in that in order to apply for placing their employees on the government insurances, the social insurance office will usually require the submission of Rules of Employment. Thus in reality most firms find that it makes sense to create their Rules of Employment even before they hire their first employee, so that there are no special problems and no need to do special "grandfathering" later on. It is also a strategically smart idea to create the Rules first, in that by definition it precludes employee involvement, which is the wisest way to get these key benefits set up. After all, personnel costs generally amount to anywhere from 60 to 70 percent or more of operating costs. Rules of Employment are important because compensation design, the quality of the lump sum retirement benefit, and such key policies as those affecting paid holidays, sick leave, whether or not leave of absence for sickness, etc., is paid , as well as critical operation points, such



as the existence of good, tight probationary and transfer clauses, and the ability to control behavior, discipline, and dismiss are all set out and defined in this most strategic (but inevitably most dull and uninteresting) document.

What Are Some Simple Checks You Can Make to Evaluate Your Own Company's Rules of Employment ?

See if they are making special provisions instructing you to establish contracts for temporary employees while at the same time creating the right expectation in the minds of contract employees regarding their lack of entitlement to such expensive benefits as bonus, lump sum retirement benefits, pay increases, family, housing, meals, and other allowances, etc. You should have a probationary clause of at least three months, and this should be renewable for another three months when in doubt.

It is perfectly legal to work employees from 9:00 to 6:00 with an hour off for lunch; although a more common schedule might be 7:75 actual working hours, rather than 8 actual working hours. If you are only working from 9:00 to 5:00, however, I would suggest that many outside Japanese and other parties will be frustrated with switchboards closing down, as will internal managers who will be faced with the problem of their support staff going home early. Note that when it comes to paying overtime, the Labor Standards Law itself would hold that unless an employees actions are visible throughout the day, or unless his supervisor has specifically requested that extra work be done, and / or given written permission for overtime, there would be no reason to pay overtime to, for example, salesmen and other outside field staff, or even to in-office staff who may not be working efficiently during the day. There is no reason why the overtime rate should be over 25 percent unless there is an overlap with over eight hours of work and midnight labor after 10:00 p.m.

While there may be large Japanese employers and a number of multinational firms who do not cut back pay when employees exceed the number of paid annual holidays accrued, the vast majority of smaller Japanese employers will cut back a day's pay for sickness, or absence for any other reason, exceeding the number of annual paid holidays accrued. Probably not to do so is unfair to the responsible employees who maintain their health and always come into work rain or shine. This is a simple procedure, and you will be surprised how much attendance will improve. You can base the deduction calculation either on the number of days in each month or on a consistent factor of say 21 or 22 days per month. Thus 1/21 of monthly pay would be deducted.

Most Japanese firms, large and small, as well as multinationals, do not provide for a certain number of sick days. Paid annual leave must be used for the odd cold. Although there will be provisions for extended leave of absence for sickness or other reasons, note, however, that the employer is not legally required to pay an employee for off-the-job sickness or disability. And by all means, make sure that if you are making the employee's salary whole up to a certain number of months based on years of service (a maximum of six months after ten years of service should be reasonable), make sure that you claim the 60 percent of the standard remuneration salary tables which are due you from your employer contributions to the statutory social insurances, and don't tolerate the likely refusal you may encounter from the office — it's got to be unconstitutional highway robbery, and when pressed they will pay ! They may initially argue that they won't meet their obligation because you are !

As for the legalities of working hours and paid holidays, it is legal to

work employees up to 48 hours a week, or eight actual working hours six days a week, providing one day of paid leave is provided. This day, of course, does not have to be Sunday, and in fact, even the national holidays are not Labor Standards Law holidays and need not be given. Likewise, if your Rules of Employment provide for a "kyujitsu furikae" or holiday change clause, it is even possible to switch a holiday with a working day without paying the holiday overtime premium of 25 percent. The law also provides minimum paid holiday protection, stipulating that the first year no paid annual leave need be given, and after 80 percent attendance the first year, only six days need be given the second year, with an additional day for each year of service. We would certainly not recommend this, however, it is sufficient to meet these minimum standards. It is common practice to give as much as 8 to 12 days of paid annual leave in a multinational firm on a monthly prorated basis even from the first year. Also nowadays employees don't much like working on Saturday, and you will lose a number of candidates when recruiting if you insist on Saturday work.

With the Equal Opportunity Employment Law in effect from April 1st, 1986, the maternity leave clauses changed with the necessity to provide up to 10 weeks of maternity leave if requested for multiple pregnancies and with a mandatory requirement on the employer to provide for six weeks of maternity leave after childbirth (even if the young mother wanted to return to work earlier). Note, however, that the strategically smart firm will probably not guarantee full salary during these maternity leave periods but rather will do as most Japanese firms do, providing no pay, with the employee drawing on the 60 percent benefit from the social insurances.

Good Rules Are a Source of Control and Power

A key strategic area of Rules of Employment should be good duties and obligations clauses which can be tied in as grounds to the gradual disciplinary clauses of the sanctions section of the work rules. Duties and obligations should talk about more than items such as coming to work on time or maintaining corporate matters confidential. There should be an emphasis on stipulating requirement for efficiency, high levels of performance, and cooperation with fellow workers as well as responsibilities for improving one's own skills and training others, etc.

One of the most important strategic points in Rules of Employment is whether or not there are adequate detailed disciplinary measures with strategically formulated grounds to take disciplinary action against employees. Without going into too much detail, one key area absent in almost all Rules of Employment, but one that has given us tremendous leverage in working with our clients when it comes to weeding out poor performers, or in one sense terminating without terminating, is the creation of language which allows the employer to adjust the job function or demote and permanently change the work assignment, thus justifying a permanent reduction in pay, which can superseded the Labor Standards law limitation of one-tenth of remuneration during the pay period for a specific disciplinary infraction. In other words for a specific transgression, the statute itself only talks about a cut of one-tenth of monthly pay. But sometimes an employer must go beyond this in order to effectively reorganize and rejuvenate the organization and more particularly certain poor performers. There is no law which says this can be done and no law which says it can't. The right language in the Rules of Employment helps, and

beyond that, it is a question of strategically finessing it and managing it in your firm.

Change Your Rules of Employment and Practices as Required

On the compensation or salary regulation side of your Rules of Employment, make sure that the language does not indicate that there will be an automatic salary increase each year. Rather it should be termed a "salary adjustment." Particularly if you're not paying bonus and various Japanese style allowances, be sure and have the nonpensionable salary component percentage stipulated in the Rules. Likewise, bonus regulations with a performance range can be provided if you don't have them.

Make sure that you do not limit your reasons for dismissal to disciplinary reasons or the ten or so grounds which have become universally recognized as grounds for dismissal in Japan. It is a matter of common sense, and it is obvious that those grounds, such as serious lying on resume, theft, violence in the work place, etc., need not even be stipulated, and rather you should be concerned with language that talks about performance, ability, work efficiency, ability to learn and adapt to new skills and jobs, and even more subjective calls, such as inability to cooperate and get along with coworkers or lack of effort or application to the task at hand.

It is the rare employee who steals and can be expelled from an organization for that reason. Rather the problems facing the largest Japanese firms where there is underemployment, and also a number of multinational firms, is management's inability or lack of propensity to seize the initiative and to order the work habits of mangers and employees such that there is enough effective hustle to compete, grow and profit in this difficult marketplace.

Check and make sure your retirement age is not 65, and remember that in Japan 60 is just gradually becoming the predominant retirement age, where 55 had been the rule in the past. If for some reason your retirement age is 65, you should certainly consider freezing years of service, freezing pay, and / or even cutting pay after age 60 (or even age 58 or so) in order to cut costs, save on the retirement liability and make room for new blood in line management positions.

Although the Rules of Employment will largely take the place of the individual employment contract with a new recruit, make sure that the individual contract is also set up right. If you have a performance range on a summer and winter bonus, make sure you don't stipulate in the contract a total annual income figure. Rather mention that the monthly salary and allowances will be X, and with a targeted (but possibly fluctuating) bonus payment of X months, your annual income should be approximately X. Also be sure not to limit or define the duties of the employee in the contract, as it will then become difficult to, for example, get a secretary to do something other than "reception, writing correspondence, translating, reception duties, and filing" or whatever else you specifically designated. Also don't forget to mention about the probationary clause and your right to transfer in terms of either job function or place of work.

Home Your Rules into Your Most Strategic and Effective Management Tool.

Perhaps most importantly, remember that if your current Rules of Employment are not doing for you what they could be and should be, the employer is free to adjust them and change them. It has always amazed me how little energy and attention is placed on these Rules of Employment. Yet as soon as an employer is hopeful to be able to dismiss an employee or, for example, discipline an employee, should there be litigation, corporate counsel and the judge will always look to see if the specific language of the Rules of Employment allows the contemplated action against the employee. Why not get your Rules of Employment honed into an effective strategic tool which will support you and back you up in taking your organization in the direction it needs to go.

(Thomas J. Nevins is President and Founder Technics in Management Transfer (TMT).)