

High Labor Standards and High High Labor Flexibility: The Case of the Fair Labor Standards Law in Taiwan

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Abstract

Economists often advocate the deregulation of labor laws and increased labor market flexibility as the best policy for promoting economic development. In Taiwan, the FLSL is known for its high standards and rigidity and yet employers in Taiwan are able to maintain high flexibility. How this can happen? In this paper we use the banking industry as an example to illustrate how employers in the banking industry are able to adjust their business strategies and labor requirements quickly in order to meet the rapidly changing external economic environment.

Key words: labor standards, labor market flexibility, banking industry, Taiwan

1. Introduction

During the last two decades economists from several international organizations have been advising governments in developing countries to deregulate their labor relations laws and to increase their labor market flexibility as they deem these to be the most suitable policies for achieving a high rate of economic growth and a low rate of unemployment (Freeman 2009). In Taiwan, the Fair Labor Standards Law of 1984 is known for its high standards and its rigidity. For example, the Fraser Institute (2005) ranked Taiwan's labor market 62nd among some 100 countries that they surveyed in 2005. Lee (2008) utilized data collected by Botero (2004) and, by constructing a labor market flexibility index and a social security index, found that labor standards were higher in Taiwan than labor standards in most market economies in the world, including France and Germany (see Appendix 1). Since 2000, the government has revised the FLSL on several occasions in order to make the regulations more flexible. For example, in 2000 the government amended part of the FLSL and made it more flexible in terms of work hours, and in 2004 the government again amended the FLSL and made its pension program portable and more flexible. Nonetheless, employers in Taiwan still complain about the high standards and the rigidity of the FLSL and have demanded that the government deregulate it further. It is the purpose of this paper to use the banking industry as an example to illustrate what the government, employers and employees in Taiwan have done in order to meet the rapidly changing external economic environment even though the FLSL is rigid and excessive in terms of its standards. The structure of this paper is as follows. In the following section we first describe the changes in the industrial environment in the banking industry and then what the government, employers and employees have done in order to meet the ever changing external economic environment along with a rigid labor law with its excessively high standards, and finally what lessons we can learn from the Taiwan experience.

2. Changes in the Banking Industry Environment

Traditionally, banking was a very conservative industry in Taiwan, largely because, up until 1992, all of the banks in Taiwan were owned by the government, including the commercial banks, specialized banks, cooperative banks and the financial department of the general post office and its branches. Within such a monopolistic environment, there was no particular need for these banks to provide high quality services to their customers. The monopolistic environment and the high profitability made it easy for employers in this industry to comply with the high standards of the FLSL.

Since 2000, however, this situation has changed because the government wanted Taiwan's economy to be more globalized and liberalized. In fact, in 1989 the government amended the Banking Law by permitting the establishment of private commercial banks, and privatized most of the government-owned banks, with the ultimate aim of enhancing the competitiveness of the banking industry. With this and other encouraging policies, the number of financial institutions in Taiwan increased rapidly. As the figures in Table 1 illustrate, in 2008 there were 37 banks and 3,405 branches in Taiwan. Some experts in this industry point out that today it is not the lack of competition in this industry that is the problem, but instead there are too many banks and financial institutions and there is too much competition in Taiwan. With the excessive number of financial institutions, there is inevitable cut-throat competition in both price (interest rates) and non-price items (service charges, guarantee fees, and so on), resulting in low loan prices, poor service, low profits and an inability to compete in the international market.

Table1: Number of banks, branches and employment

Period	2000	2001	2002	2003	2004	2005	2006	2007	2008
Domestic Banks	53	53	52	50	49	45	42	39	37
Foreign Banks	39	38	36	36	35	36	33	32	32
Total Branches	2763	3074	3136	3242	3256	3307	3349	3396	3405
Employment (persons)	121912	125917	127111	132842	141722	147530	145913	144839	143789

Source: FSCEY (2009). *Monthly Overview of Banking Sector* (February).

The government then initiated several policies aimed at enhancing the competitiveness of the banking industry, one of which was to privatize the government-owned banks. Consequently, First Commercial Bank, the International Commercial Bank of China, Chang Hwa Commercial Bank, Hua Nan Commercial Bank and the Taiwan Small and Medium Business Bank were all privatized in 1998, while in 2000 Chiao Tung Bank and the Farmers Bank of China were both privatized through a reduction in government holdings. By 2000, private banks had become the backbone of the financial system in Taiwan with the total number of private banks far exceeding that of government-owned banks.

In order to help private banks to make up for their deficiencies resulting from their lack of economies of scale, the government enacted the Financial Institutions Mergers Act in December 2000 and the Financial Holding Company Act in 2001. Since then, through the integration of a total of 68 related enterprises, 14 financial holding companies have been established. The government also implemented further measures aimed at liberalizing Taiwan's financial markets, as follows:

1. Liberalization of both the qualifications for establishment and the scope of business of the local branches of foreign banks;
2. The lifting of the ceiling on the foreign equity-holding ratio in any given local financial institution;
3. The disposal of the limitation on stock holdings for foreign portfolio investment starting from 1 January, 2001; and
4. The opening up of reinsurance, insurance intermediation and insurance auxiliary services to foreign institutions.

Many of Taiwan's domestic banks have also transformed themselves, adopting a universal banking system which enables them to cover a wide range of business, including banking, securities transactions, investment management and insurance business. Banks have also accelerated the implementation of electronic banking programs so as to provide rapid, low cost and convenient services to their customers.

3. Problems Related to Changes in the Industrial Structure

The changes in the economic environment within the banking industry have led to changes in the characteristics of the workforce, as well as the emergence of new types of labor problems and new forms of industrial and employment relations. These new labor problems are:

3.1 Increasing employment insecurity

In the past, the internal labor market in the banking industry was strong. Banks usually hired workers who were fresh out of school to work at entry level as bank tellers and as they received more on-the-job training and accumulated experience in their positions, they were gradually and systematically promoted to higher management positions until they finally retired from the bank. In short, employment in the banking industry was very stable and secure. To workers in other industries, these jobs were considered to constitute a 'golden rice bowl'. Nevertheless, as the banking industry has become more globalized and liberalized, the economic superiority enjoyed by bank employees has started to erode.

As banks became more customer-oriented, as soon as they started venturing into other new areas, employees needed to acquire new skills, new knowledge and new attitudes, since the working experience accumulated in the past had become much less relevant to their new jobs. Thus, employers began adopting early-separation programs with the aim of removing some of their older employees who had difficulties acquiring the necessary new skills, knowledge and attitudes. The banks now required younger and better-educated workers who were trained in sales, management information systems, insurance, security, accounting and finance. Hence, the labor turnover rates in the banking industry started to rise rapidly (NFBEU, 2008, Yearbook of Taiwan Bank Employees).

3.2. Changes in the pay system

A seniority-based wage system was prevalent in the banking industry, with employees' salaries being raised automatically, along with their seniority, as they accumulated more and more experience in their jobs. Today, however, as the banks are expanding further into other business areas, and as the technology used in the banks is constantly changing, prior experience has become less relevant, resulting in new types of pay systems, such as skill-based and performance-based pay systems, being introduced into the banking industry. For bank employees who had grown accustomed to stability, this constantly changing, highly competitive working environment was now somewhat alien to them.

3.3. Diversification of the workforce

A long-standing tradition among banks was to recruit employees fresh out of college who had majored in banking, finance, economics or other related fields. They then received on-the-job training and were promoted to higher positions through the internal labor market. In recent years, however, the banks have started recruiting large numbers of new employees with MBA (Master of Business Administration) degrees. These newly-recruited employees usually have specialized training in business administration, business finance, mathematics, statistics, or management information systems, and they are no longer taken on as entry-level bank tellers, but instead, are entered directly into management training programs; in other words, internal promotion is no longer the route to senior management. The American Express Bank, for example, places its newly-recruited MBA holders into 'management associate' positions, while the Hong Kong and Shanghai Bank places such MBA holders into management trainee positions from which they can directly achieve management positions after several months of orientation training. The introduction of e-business programs within the banking industry, as well as automated teller machines (ATMs) and other automatic banking programs, has rendered many of the previously important skills obsolete; thus, the skills that are required by the banks today have become increasingly oriented towards computer programming, customer relations and sales, skills which are also commonly required in other industries. Bank-specific skills are, therefore, disappearing within the banking industry.

3.4. No more lifelong employment for senior managers

In the past, it was invariably the case that the banks' senior managers were promoted from within and generally looked forward to lifelong employment. Today, the situation is quite different, since high-ranking managers can be replaced at any time through external recruitment. These days, it is not unusual for senior managers who had worked extremely hard to successfully complete a merger to suddenly find themselves out of a job and, as a result, face the need to switch to another bank, or even

another occupation or industry for employment. The net result of such changes in management practices has been the loss of loyalty among senior managers and staff towards their banks.

3.5. The increase in employment flexibility

In order to reduce employment costs, banks are increasingly adopting policies to promote employment flexibility, such as flexible working hours, short-term and fixed-term employment contracts and outsourcing, leading to considerable increases in the numbers of temporary 'dispatch' workers being used. Permanent jobs are now reserved for highly professional core employees, while many of the clerical and low-level positions are increasingly being outsourced.

A survey conducted by the Council of Labor Affairs found that banks are hiring greater numbers of dispatch workers for the purpose of meeting business fluctuations (51%), reducing wage costs (51%), cutting fringe benefit costs (37%), reducing training costs (21%), reducing severance and pension costs (42%) and avoiding labor disputes (23%). Dispatch workers are usually found in administrative work (56%), accounting and financial work (9%), personnel (5%), information management (5%) and repair and maintenance work (2%)(CLA 2001).

3.6. The segmentation of the workforce

Jobs within the various banks had, in the past, been characterized by vertical integration, with any experience gained from a lower-ranking job also being of value in a subsequent higher-ranking position; thus, employees continued to be promoted through the internal labor market. However, the various jobs in the banks today have been totally redesigned, and are divided into so-called 'front office' and 'back office' work, with 'front office' workers being in charge of sales, and thereby entitled to performance pay, while workers in the 'back office' are regarded as support staff, and as such, are not entitled to bonuses or performance pay. Consequently, employment within the banks is now segmented into primary, secondary and temporary dispatch workers.

4. Responses to the Changes by Employees and Employers

4.1 Forming unions

In response to the threat to the security of their jobs arising from mergers and the reorganization of banks, employees within the banks have come together to form their own unions. The first union specifically for bank employees in Taiwan, the Taipei Business Bank Employee Union, was formed in 1988 in direct response to an announcement by the bank of a policy to reduce year-end bonus payments and because of a delay in promotions. The new policy was specifically aimed at reducing costs; however, there had been no pre-warning of this proposed policy, nor had there been any consultation process with the bank's employees. Five employees within the bank decided that it was necessary to initiate such a union for their own protection, and it was subsequently certified by the Taipei City Government in 1989. Other bank employees followed soon afterwards, and by the end of 1989, four unions had been formed specifically for bank employees, with a further five unions being formed in 1990, two in 1991, six in 1993 and three in 1994; all of these were craft unions.

Later on, industrial unions were also formed in 18 other banks, resulting in a total of 38,241 individual union members by the year 2000 (NFUBE 2001). In March 1991, bank employees in Taipei, Kaohsiung and nine other unions together filed a petition to the CLA to form a federation of bank employee unions, which was finally certified by the government in 2001. By 2005, this federation had 22 affiliated industrial unions and 19 craft unions with a total of 50,000 individual members (NFUBE 2008). The federation, and the individual unions within it, together aimed to advance the interests of their members in a number of areas, as follows:

4.2. Negotiating Collective Bargaining Agreements

Collective bargaining agreements were regarded as an appropriate means of tackling the problems arising from mergers, acquisitions and privatization. For example, when the Fubon Financial Holding Company acquired Taipei Bank in 2003, the First Bank Employees' Union

negotiated a collective agreement with Fubon which stipulated both the scope and the conditions under which Fubon could change employees' working rules and conditions, early separation, the transfer of employees within Taipei Bank and the relocation of Taipei Bank employees to other subsidiaries of the Fubon Holding Company without union consensus. Fubon consented to this agreement, and indeed honored it. However, there is considerable doubt among many observers as to whether Fubon would ever agree to extend this agreement once it expires, and indeed, whether other banks would ever sign this type of agreement which is strongly in favor of employees.

Further examples of the use of collective agreements by unions to resolve the problems arising from mergers comes from the acquisition of Kaohsiung Bank by First Bank in 2001 and the acquisition of the General Bank by Chinatrust Bank in 2003.

Prior to its acquisition, Kaohsiung Bank employees formed a union and negotiated a collective agreement under which the union recognized First Bank's full right to restructure Kaohsiung Bank, but that First Bank would be required to consult with the union prior to the implementation of any new personnel policies.

Prior to acquiring the General Bank, Chinatrust Bank had reached an agreement with the General Bank union that it would buy back the lifetime employment contracts for laid-off employees (in order to attract good employees from other banks to switch to the General Bank during the early stage of its establishment, the owners of the bank had promised all newly-recruited employees that they would be granted an employment contract to the age of 60 or 65). Thus, General Bank employees were concerned as to whether Chinatrust would honor these contracts after the acquisition, and thereby guarantee their employment to the age of 60 or 65. An agreement was finally reached which stated that when Chinatrust did decide to lay off any of the workers with a lifetime employment contract, these employees would have to be paid a lump sum payment equivalent to the following formula:

“For those employees with more than 10 years of service, the payment was to be $2N+4$ months of the employee's monthly salary prior to the layoff, whilst for employees with 5 to 10 years of service, the formula was $N+2$, where N is the number of years of service with the General Bank. Examples of this in practice were that if Chinatrust Bank wished to lay off any employees with 'lifetime employment guarantees' prior to their 60th birthday: (i) those with 15 years service with the General Bank would be entitled to a lump sum payment of 34 months salary ($2 \times 15 + 4 = 34$); and (ii) those with 9 years service with the General Bank would be entitled to a lump sum payment of 11 months salary ($9 + 2 = 11$) (NFBEU, 2003).”

4.3. Acquiring New Skills for Alternative Employment Opportunities

Most of the bank employees in Taiwan today recognize that both employment stability and lifetime employment are gone forever, and that the rapidly changing economic environment and advances in technology are part of modern everyday life; therefore, they realize that the best way for them to protect themselves is to pick up new skills and upgrade their knowledge so as to be able to meet the ever changing requirements of both banks and other financial institutions, or to seek out new careers in different industries or occupations. Thus, many of these bank employees are now attending various occupational licensing classes both on and off the job.

A survey conducted in 2003 showed that most bank employees were attempting to gain certification in various fields including: (i) life insurance licenses (since most of the banks have now expanded their business to include various types of insurance services); (ii) internal

control licenses (since banks are increasingly being controlled by holding companies, and, as a result, internal auditing has become an important function of the banks); and (iii) financial planning licenses (given that banks are now more customer-oriented, they are providing much more advice to customers on lifetime financial planning matters; this has therefore become a very lucrative area of the business both for the bank, and for their employees, because the latter receive commission on the financial plans adopted by the customers). There is also growing popularity among bank employees to acquire security management licenses. In 2008, many bank employees were seeking various financial licenses from mainland China so that they could expand their career choices including working in mainland China due to the poor employment conditions caused by the 2008 worldwide financial crisis.

4.4. Increasing Adoption of High Performance HRM Practices

Employers in the banking industry are quickly realizing that the best way and the only way to deal with this rigid labor law with its high standards is to upgrade the quality of their workforces and their labor productivity, as well as maintain the company's labor standards beyond and above the legal standards. In this way, their labor practices will not be limited by the legal standards anymore. Many banks have thus started to upgrade their personnel departments into human resource management departments and to hire professionals with special training in HRM to work in these departments. The Polaris Financial Group, for example, invited a former HRM VP to serve as a consultant and set up a one week HRM training program for the upgrading and internationalization of their HRM department. A special training institute has also been set up in Taiwan that provides a large number of programs with certification for the purpose of upgrading the staff members of all banking institutions in Taiwan. Many banks have also introduced modern management tools such as ERP, the balanced score card, and performance evaluation schemes to their workplaces. Overall, HRM is playing a much more important role in the banking industry than before.

5. Conclusions

Faced with the high standards and rigidity that characterizes the labor law in Taiwan, the government, employers and employees have responded in the following ways. First, government officials have sometimes turned their heads the other way when they find certain parts of the law to be clearly impractical. Secondly, the government has tried to revise the FLSL from time to time and to make the regulations more workable and more flexible. Third, employers have attempted to introduce more high performance HRM practices and modern management techniques into their workplaces for the purpose of upgrading the productivity of bank employees so that they can afford to pay the higher labor costs resulting from the higher standards of the law. Fourth, as employers have responded to the high costs arising from the high standards of the labor law by reducing the number of people employed or by introducing more employment of a temporary or atypical nature, to protect their jobs employees have responded by participating in more training courses, such as training courses with certification to upgrade their skills. Some of them have also moved into different occupations or industries to obtain more stable jobs. Fifth, although some employees have formed and joined unions and engaged in collective bargaining, this approach has thus far not proved to be an effective way of protecting the employees' employment stability or working conditions. Sixth, some of the employees have gone so far as to take their employers to court for violating the employment law. However, this has also not proved to have been an effective way for them to protect themselves from being laid off or having other discriminatory action taken against them. A study conducted by Lee showed that in 90 percent of the court cases the employees lost, or else no specific action was taken by the Court against the employers (Lee 2008).

The lessons that can be learned from the Taiwan experience include the following. A labor law that has very high standards does not mean better protection for the workers; it is the enforcement of the law that is all the more important. Secondly, when faced with excessive regulation in some aspects of the labor relations law, government officers should relax their enforcement in certain instances when they find that certain parts of the law are definitely impractical and unenforceable. Thirdly, the government should revise its labor relations laws more frequently so that they can more closely reflect the rapidly changing economic environment. Fourth, when faced with excessively high standards and unrealistic labor laws, employers should take the high road, which means that they should adopt high

performance HRM practices as quickly as possible and ensure that their own work standards are above and beyond the legally enforceable standards.

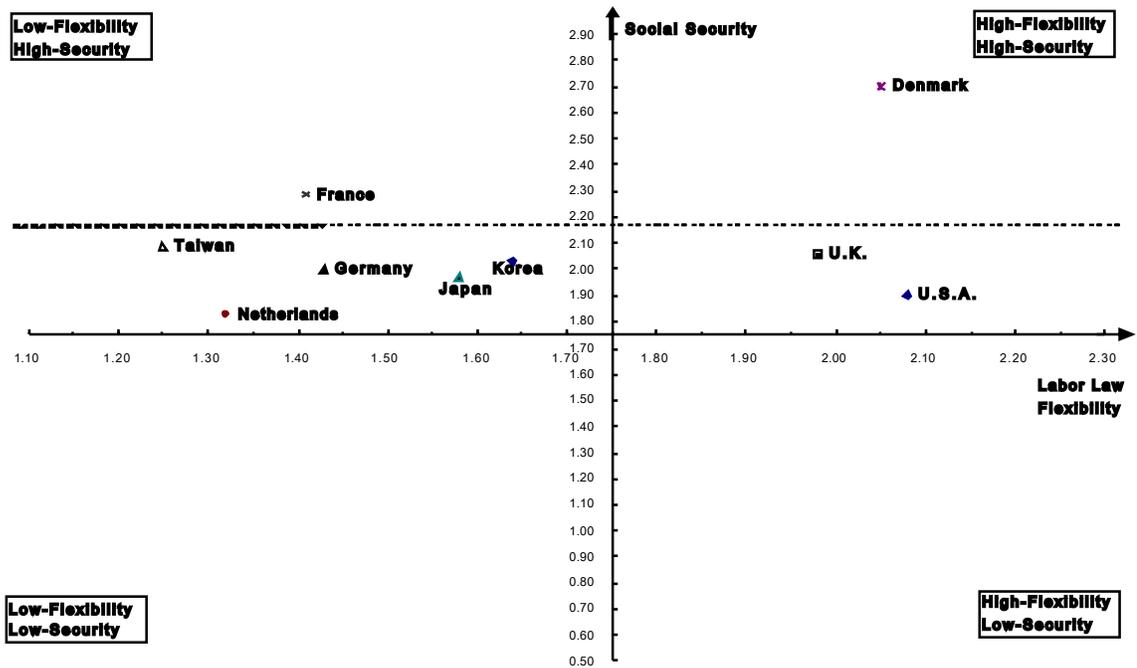


Figure 1

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