

LABOUR UNION'S CHALLENGES FOR IMPROVING FOR GIG WORK CONDITIONS ON FOOD DELIVERY IN JAPAN: A LESSON FOR MALAYSIA ¹

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Abstract: The development of technology and the flexibility to work in non-traditional ways has led to the emergence of task-based gig workers and this trend has been spreading across Japan. However, the ambiguity of the legal position on app-based on-demand gig workers has led to inequalities in labour relations. This study examines the labour union actions against the employers and related bodies of the online food delivery platform Uber Eats Union to determine the current status and potential for bargaining. The union has requested collective bargaining on the Uber side, but all requests have been rejected. The admissibility of the union's actions to improve industrial relations depended on two points: the application of the worker character in the law to the delivery workers and the demand for support from other institutions. In terms of the law, the recognition of the worker status of delivery workers is a significant step towards collective bargaining with firms. The active work of the Uber Eats Union could lead to the formation of new labour unions on other platforms and the empowerment of platform workers. Based on Japan's experience, this paper also draws some lessons for Malaysia's gig economy.

Keywords: gig work, gig economy, labour union, online food delivery, collective bargaining

INTRODUCTION

The emergence of online platforms through advances in technologies such as Uber, Airbnb, and Food Panda and the rise of a labour market that embraces flexible ways of working that are not tied to a full-time opportunity have made possible a form of work known as "gig work". Whereas the concept of the gig economy traditionally referred to short-term paid employment for live performers through one-

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off gigs,⁸ the concept has been applied to a larger digital collective where intermediary platforms connect workers and end-users on a task basis.⁹ Online platforms have made it easier for buyers and sellers to connect in a huge marketplace, where more and more self-employed or freelancers are emerging and competing.¹⁰ Although different scholars have different ways of categorisation, gig work can be basically divided into two main categories: on-demand work via app and crowd work.¹¹ On-demand work is essentially a location-based service, where customer-worker matching, service selection and payment are done online, whilst the actual service, which involves physical assets, is done offline.¹² On the other hand, crowd work refers to tasks that are completed entirely online, connecting the worker with various clients through an online platform¹¹. Crowd work includes micro-tasks, which are fragmented tasks, and online freelance tasks, which are given to more specific individuals.¹³

In Japan, the tradition of stable lifetime employment is threatened by changing economic conditions and the ageing of the population, whilst it has caused a wave of part-time employment and enabled the expansion of the gig economy.¹⁴¹⁵ The growth of the gig economy in Japan can be seen from government-led policies. In 2018, the Japanese government enacted the Law on “the Development of Relevant Laws to Promote the Reform of Work Styles (Law No. 71 of 2018)”, which strengthens the respect for diversity in the way of working styles¹⁶. This law was intended to address three problems with Japan’s traditional labour system: the disparity in treatment between regular and non-regular employees, single-line career plans attached to traditional lifetime employment, and a corporate culture that encourages long working hours. Furthermore, the Ministry of Health, Labour and Welfare (MHLW) encouraged workers to take up second and third jobs by revising the existing guidelines on the promotion of second and third jobs.

According to a survey by Lancers, as of February 2021, the freelance population in Japan exceeded 16.7 million, which is approximately 24% of the working population.¹⁷ Their data also highlighted gig work is gradually gaining acceptance in Japan due to its flexibility, as 64% of respondents, out of a total of 1,549 respondents, weekly work of 10 hours or less. Moreover, the MHLW supports this freelance gig-based work as a contribution to “increasing employment of the elderly, extending healthy life expectancy, and increasing the number of workers and supporters of social security”, and has established “Guidelines for the development of a safe environment for

⁸ Antony Bryant, “Liquid uncertainty, chaos and complexity: The gig economy and the open source movement,” *Thesis Eleven* 156, no. 1 (2020), <https://doi.org/10.1177/0725513619898286>, <https://dx.doi.org/10.1177/0725513619898286>.

⁹ Sarah A Donovan, David H Bradley, and Jon O Shimabukuro, “What does the gig economy mean for workers?,” (2016).

¹⁰ A. Stewart and J. Stanford, “Regulating work in the gig economy: What are the options?,” *Economic and Labour Relations Review* 28, no. 3 (Sep 2017), <https://doi.org/10.1177/1035304617722461>, <Go to ISI>://WOS:000408619000005.

¹¹ Valerio De Stefano, “The Rise of the ‘Just-in-Time Workforce’: On-Demand Work, Crowd Work and Labour Protection in the ‘Gig-Economy’,” *SSRN Electronic Journal* (2015), <https://doi.org/10.2139/ssrn.2682602>, <https://dx.doi.org/10.2139/ssrn.2682602>.

¹² Florian Schmidt, *Digital Labour Markets in the Platform Economy: Mapping the Political Challenges of Crowd Work and Gig Work* (2017).

¹³ Richard Heeks, “Decent work and the digital gig economy: a developing country perspective on employment impacts and standards in online outsourcing, crowdwork, etc.,” *Development Informatics Working Paper*, no. 71 (2017).

¹⁴ S. Shibata, “Gig Work and the Discourse of Autonomy: Fictitious Freedom in Japan’s Digital Economy,” *New Political Economy* 25, no. 4 (Jun 2020), <https://doi.org/10.1080/13563467.2019.1613351>, <Go to ISI>://WOS:000469547500001.

¹⁵ H. Umer, “Illusory freedom of physical platform workers: Insights from Uber Eats in Japan,” *Economic and Labour Relations Review* 32, no. 3 (Sep 2021), <https://doi.org/10.1177/1035304621992466>, <Go to ISI>://WOS:000619944800001.

¹⁶ Ministry of Health, Labour and Welfare, Outline of the “Act on the Arrangement of Related Acts to Promote Work Style Reform” (Act No. 71 of 2018), (2018).

¹⁷ Lancers, “Freelance Jittai Chousa 2021 [Freelance Survey 2021],” (March 31, 2021). https://speakerdeck.com/lancers_pr/huriransushi-tai-diao-cha-2021.

freelance work" in 2020¹⁸. The MHLW's policy would be reasonable since the middle-senior age group (over 40) consist of large part of its labour market.^{19,20} This trend appears to have had some influence on the intention to move away from the seniority-based system to a performance-based system, which has long been the hallmark of the Japanese labour system. However, the increase in freelancing coupled with the need for second jobs, is considered inevitable in the current economic climate, taking into account Japan's ageing society as well as the matter that full-time job security has disappeared. According to a Ministry of Economy, Trade and Industry (METI) survey of employees²¹, around 40% of those in their 40s and 30% of those in their 50s answered that no savings has been set aside for retirement¹⁹. Furthermore, the number of corporate retirement benefit schemes is on the decline, with around 20% of firms having no retirement benefit schemes and around 60% being able to offer only a lump-sum payment²². In light of this, Millennials born in Japan between 1980 and 1995, as well as Z generation born since then will certainly face more difficulties than the baby boomers and the bubble generation.

As a pillar of social security reform, the Japanese government has revised the Act for Stabilization of Employment of Elderly Persons in April 2020. Under the revised act, employers are encouraged to provide working opportunities for the elderly workers aged between 65 and 70. In order to promote the employment of elderly workers, this revised act allows employers to employ these elderly workers as "freelance workers" without paying social security contribution. However, trade union opposed this amendment and claimed that the Japanese government forced elderly workers to work without social security protection.²³

In Japan, freelance work such as crowd work has become the mainstream of discussion on gig work, whilst on-demand work forms using online applications have not been discussed as much as the practical demands. This can be attributed to three main factors. Firstly, Japanese people tend to perceive the use of professional skills such as consultancy and counselling as a gig on the side. Secondly, in Japan, which is predominantly a Business to Business (B2B) market, the matching base for Peer to Peer (P2P) transactions, which is one of the features on app-based gig activity is still in the growth stage for on-demand apps. The third is that regulations do not support app-based gig-work, as exemplified by the failure of Uber taxi operation in Japan due to the Road Transport Law banning e-hailing.²⁴

Despite the stagnation of the e-hailing industry in Japan, online food delivery (OFD) to consumers has evolved steadily. Interestingly, Japanese food delivery services can be divided into three categories: co-op food delivery, restaurant delivery and online app delivery.²⁵ In Japan, consumer cooperatives have traditionally delivered food to private homes, and they still account for a large share of the market with internet supermarkets.²³ With the spread of technology and the development of

¹⁸ Ministry of Health Labour and Welfare, "Rousai hoken seido ni okeru tokubetu kanyu no taishou hani no kakudai ni kakaru teian iken no boshu ni tsuite [Call for Proposals and Comments on the Expansion of the Scope of Special Enrollment in the Industrial Accident Insurance System]," news release, June 29, 2020, <https://www.mhlw.go.jp/content/11401500/000644428.pdf>.

¹⁹ Lancers, "Freelance Jittai Chousa 2021 [Freelance Survey 2021]."

²⁰ Ministry of Economy Trade and Industry, "Roudou shijyou no kouzou henka no genjyou to kadai ni tuite [The current situation and challenges of structural changes in the labour market]," (April, 2019). https://www.meti.go.jp/shingikai/sankoshin/2050_keizai/pdf/005_03_00.pdf.

²¹ Ministry of Economy Trade and Industry, "Roudou shijyou no kouzou henka no genjyou to kadai ni tuite [The current situation and challenges of structural changes in the labour market]."

²² Lancers, "Freelance Jittai Chousa 2021 [Freelance Survey 2021]."

²³ K. Otsuki, & Ando, S., "Amendment of the Act on Stabilization of Employment of Elderly Persons.," *Labour and Employment Law Bulletin*. No.52 (2020), https://www.amt-law.com/asset/pdf/bulletins9_pdf/LELB53.pdf

²⁴ T. G. Altura et al., "Japan Meets the Sharing Economy: Contending Frames," Article, *Social Science Japan Journal* 24, no. 1 (2021), <https://doi.org/10.1093/ssjj/jyaa041>, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85104715016&doi=10.1093%2fssjj%2fjyaa041&partnerID=40&md5=9505093abe378e0061138875f6106fdf>.

²⁵ A Arba, "Food delivery in Japan - statistics & facts," (September 17, Statista, 2021). <https://www.statista.com/topics/8453/food-delivery-in-japan/>.

online commerce, online food delivery, which can deliver ready-made meals, is experiencing steady demand and growth in the restaurant industry and in the coronavirus (COVID-19) era. As there are three forms of food delivery in Japan, gig work as food deliverers using an online app has recently gained popularity.

Figure 1 shows the revenue generated by online food delivery in Japan. Both platform delivery and restaurant delivery are expected to continue to grow. The growth of platform delivery is particularly strong, with the total market expected to generate over US\$6 billion in revenue by 2026. Restaurant delivery is expected to grow at a slower rate than platform delivery but is still expected to generate nearly US\$ 3 billion in revenue by 2026. It can be seen that there were roughly USD 1 billion growth in total platform delivery revenue from 2019 to 2020. This can be expected as stay-home habits due to the impact of COVID-19 have increased consumer demand for platform delivery use in Japan. Furthermore, the growth in demand for traditional restaurant delivery was also higher in 2019 - 2020 than in the previous years.

Figure 1: Online Food Delivery in Japan (Revenue)²⁶

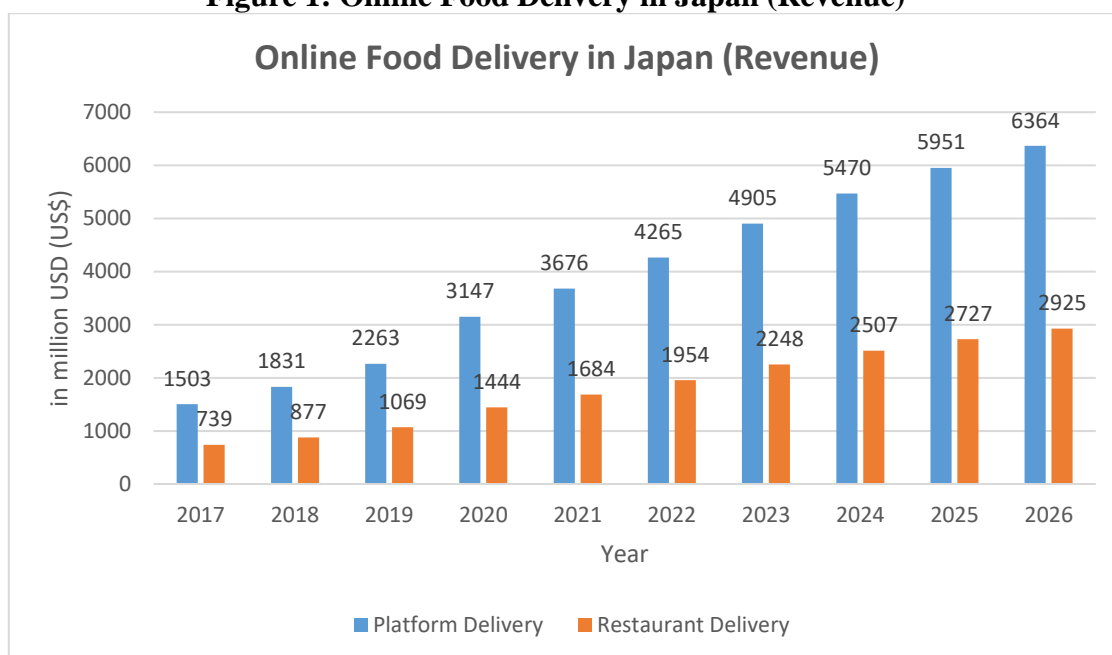
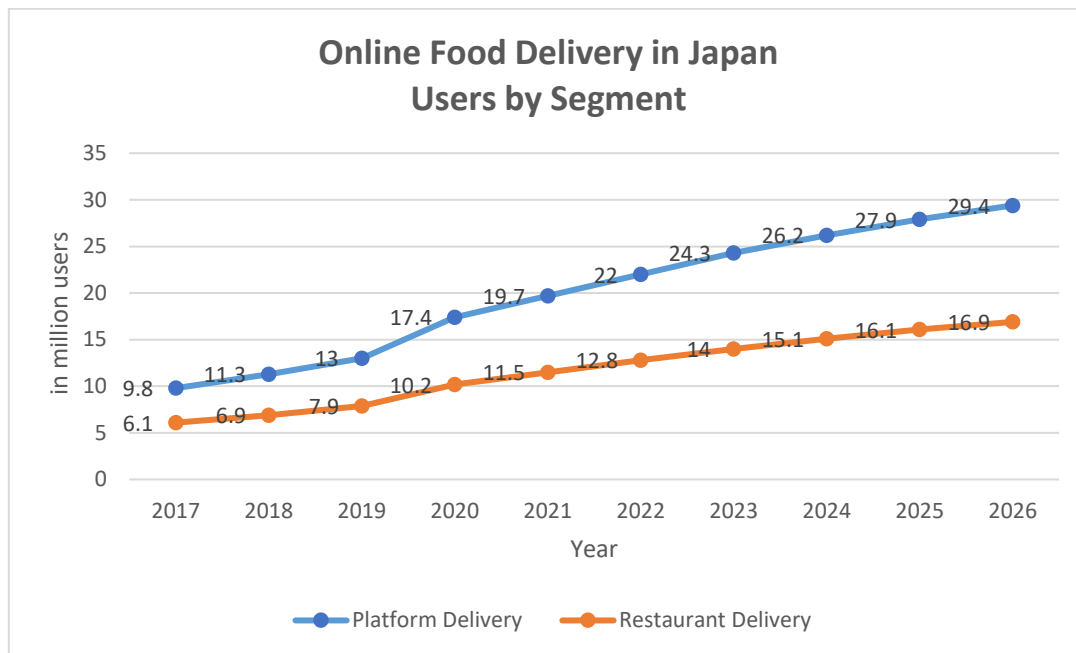


Figure 2 shows the total number of platform delivery and restaurant delivery users in 2021, with over 20 million (platform delivery) and 11 million (restaurant delivery) users respectively. By 2026, platform delivery will have more than 29 million users, and restaurant delivery will have approximately 17 million users. By 2026, platform delivery is expected to reach 29 million users, whilst restaurant delivery will have roughly 17 million users. A supplementary view to Figure 1 is that the increase in the number of users in 2019-2020 is associated with a dramatic increase in revenue for both direct platform delivery and restaurant delivery as shown in Figure 2. Although the dramatic increase in customers was temporary, it is expected that there will be a continuous increase in the number of platform delivery users and restaurant delivery users by 2026, with approximately 2 million platform delivery users and 1 million restaurant delivery users, respectively.

²⁶ Statista, "Online Food Delivery - Japan," (February 2 n.d). <https://www-statista-com.ezproxy.um.edu.my/outlook/dmo/eservices/online-food-delivery/japan>.

Figure 2: Online Food Delivery in Japan User by Segment²⁷



Regarding the usage share of online food delivery in Japan, Demae-Kan, a delivery platform originating in Japan, has the largest market share, followed by Uber Eats in 2020 (Statista, n.d.). Local delivery platforms such as Delivery and Rakuten Delivery have also gained a certain share of usage. On the other hand, Sushiro, the domestic largest sushi restaurant, has a certain share of the restaurant delivery market, and Domino's Pizza and Mc Delivery are also used to a certain extent.²⁸ However, these restaurants also have partnerships with online delivery platforms such as Demae-Kan and Uber Eats, making it difficult to calculate accurate usage data. According to the ICT Research & Consulting that surveyed 3604 people in 2021 in terms of usage share, their result was as follows: Demae-Kan (428), Uber Eats (426), Domino's Pizza (387), Pizza Hut (200), Pizza La (185), Rakuten Delivery (105), and d Delivery (84).²⁹

Contrary to the significant growth of the online food delivery platform market in Japan, there are various regulatory issues that cannot avoid gig workers, including online food deliverers. From a practical and academic point of view, positioning of gig workers is a contentious issue, and it raises a number of questions. For instance, the lack of legislation and standards^{30,31} whether they are full-time employees or independent contractors,³² minimum wages,³³ platform-dominant employment contracts, social security and safety nets³⁴ have all been addressed in previous studies. In Japan, gig

²⁷ Statista, "Online Food Delivery - Japan."

²⁸ Statista, "Online Food Delivery - Japan."

²⁹ ICT Research Consulting, "2021 nen Food Delivery Service riyou jittai chousa [2021 Food Delivery Service Usage Trends Survey]," news release, April 5, 2021, <https://ictr.co.jp/report/20210405.html/>.

³⁰ Stewart and Stanford, "Regulating work in the gig economy: What are the options?."

³¹ A. Todoli-Signes, "The 'gig economy': employee, self-employed or the need for a special employment regulation?," *Transfer-European Review of Labour and Research* 23, no. 2 (May 2017), <https://doi.org/10.1177/1024258917701381>, <Go to ISI>://WOS:000411970900006.

³² Nikos Koutsimpogiorgos et al., "Conceptualizing the Gig Economy and Its Regulatory Problems," *Policy & Internet* 12, no. 4 (2020), <https://doi.org/10.1002/poi3.237>, <https://dx.doi.org/10.1002/poi3.237>.

³³ K. Minter, "Negotiating labour standards in the gig economy: Airtasker and Unions New South Wales," *Economic and Labour Relations Review* 28, no. 3 (Sep 2017), <https://doi.org/10.1177/1035304617724305>, <Go to ISI>://WOS:000408619000006.

³⁴ A. J. Hawley, "Regulating labour platforms, the data deficit," Article, *European Journal of Government and Economics* 7, no. 1 (2018), <https://doi.org/10.17979/ejge.2018.7.1.4330>,

workers are positioned as freelancers in the broadest sense of the word, and their legal position is not really clarified based on the aforementioned guidelines for working together to create an environment in which freelancers can work safely. However, as the labour-related laws such as the Anti-Monopoly Law, the Subcontracting Law, the Labour Standards Law and the Labour Union Act,³⁵ do not explicitly mention gig workers, the actual employment criteria for gig workers are based on the discretion of the platform firms.

In the UK, Uber drivers have won their rights, including the guarantee of a minimum wage, in a court case against Uber, and the European Commission is reviewing the employment of gig workers.^{36,37} In the developed countries of the gig economy, gig workers are gradually winning their positions through a wealth of academic proposals and active practical negotiations. In Japan, online food delivery workers working for Uber Eats have established the Uber Eats Union and have been negotiating with the Uber side for better treatment.

However, in contrast to these developments, there is a distinct lack of research that identifies the current status and problems of the OFD market from the context of the Japanese gig economy. Umer¹⁵ provides the only study that follows the actions of the Uber Eats Union in Japan, but Uber Eats cannot be the sole focus of the growing OFD industry in Japan, where many different firms are competing in the market. By generalising the problems faced by gig workers in the online food delivery (OFD) industry in Japan and the flow to solve them from a larger perspective, it is possible to identify the problems that need to be overcome not only by large platform firms like Uber Eats, but also by all platform firms participating in OFD. On the other hand, the exploration of the actions of the Uber Eats Union, which is playing a pioneering role, as well as the spill over effects on workers on other platforms,³⁸ will be a significant step in improving industrial relations with platforms in gig work.

Therefore, the purpose of this paper is to present a realistic and constructive breakthrough that Japanese OFD firms can take for online distribution gig workers in Japan by properly following the actions of the Uber Eats Union. In order to achieve this objective, this article proposes three research questions as follows: (RQ1) To what extent is the Uber Eats Union in discussion with platform firms and policy makers? (RQ2) What problems have Uber Eats Union solved and remain unresolved? (RQ3) What steps can the Uber Eats Union, platform firms and policy makers take in the future to resolve industrial relations?

Focusing on the Uber Eats Union in the online food delivery sector in Japan, this article provides further insights with three new contributions to the study of the on-demand gig economy in Japan, which has been largely unexplored. First, this article examines the regulatory issues faced by gig workers on Japan's major online food delivery platforms from three perspectives: accident and injury compensation, operational transparency, and appropriate compensation. Secondly, the paper traces the process and actual outcomes of discussions with OFD platform workers in Japan about the working environment on OFD platforms. Thirdly, based on the analysis of the current situation, this paper proposes a potential plan for the future between OFD platform workers and OFD platforms in the context of the gig economy.

<https://www.scopus.com/inward/record.uri?eid=2-s2.0-85054144486&doi=10.17979%2f2fejge.2018.7.1.4330&partnerID=40&md5=a669d0dd8b9462cab581c12fb2590587>.

³⁵ Ministry of Economy Trade and Industry, "Draft Guidelines for Secure Working Conditions for Freelancers, Results of Call for Public Comments Released and Finalized Guidelines Compiled," news release, March 26, 2021, https://www.meti.go.jp/english/press/2021/0326_003.html.

³⁶ Diane Coyle, Jeremias Adams-Prassl, and Abigail Adams-Prassl, "Uber & Beyond: Policy Implications for the UK," *Available at SSRN 3823829* (2021).

³⁷ Jennifer Rankin, "Gig economy workers to get employee rights under EU proposals," *The Guardian*, December 9 2021, <https://www.theguardian.com/business/2021/dec/09/gig-economy-workers-to-get-employee-rights-under-eu-proposals>.

³⁸ Thorvaldur Gylfason and Assar Lindbeck, "Union Rivalry and Wages: An Oligopolistic Approach," *Economica* 51, no. 202 (1984), <https://doi.org/10.2307/2554205>, <http://www.jstor.org.ezproxy.um.edu.my/stable/2554205>.

The article is organised by the following sections. The first section is a literature review providing an overview of the gig economy and online food delivery. The second section is the research methodology, including data collection and analysis methods. The third section analyses the collected data and presents the actions and results of Uber Eats Union to date, the challenges and the possible plans that can be taken between the relevant parties. The fourth section presents the conclusions and directions for future research. The final section offers some lessons for Malaysia.

LITERATURE REVIEW

The literature review section provides an extensive discussion of online food delivery from the context of the gig economy. Specifically, this section refers to the basic OFD business model system, trends in OFD business in different countries and a discussion of common problems faced by OFD workers as gig workers.

ONLINE FOOD DELIVERY IN THE CONTEXT OF THE GIG ECONOMY

The rapid development of e-commerce has encouraged consumers to use online platforms with electronic payment and online delivery services, making online-to-offline (O2O) commerce more accessible to them.³⁹ The O2O form fits well with the gig based task equilibrium, creating location-based on-demand gig workers controlled through an algorithm on the application.⁴⁰⁴¹ A prime example in this O2O business model and gig economy is the OFD worker. Under the O2O business model, consumers order food online and delivery drivers pick up the food made in the restaurant and deliver it offline to the consumer. Figure 4 shows the OFD transaction mechanism.⁴²⁴³

³⁹ C. Li, M. Miroso, and P. Bremer, "Review of Online Food Delivery Platforms and their Impacts on Sustainability," *Sustainability* 12, no. 14 (Jul 2020), 5528, <https://doi.org/10.3390/su12145528>, <Go to ISI>://WOS:000555945500001.

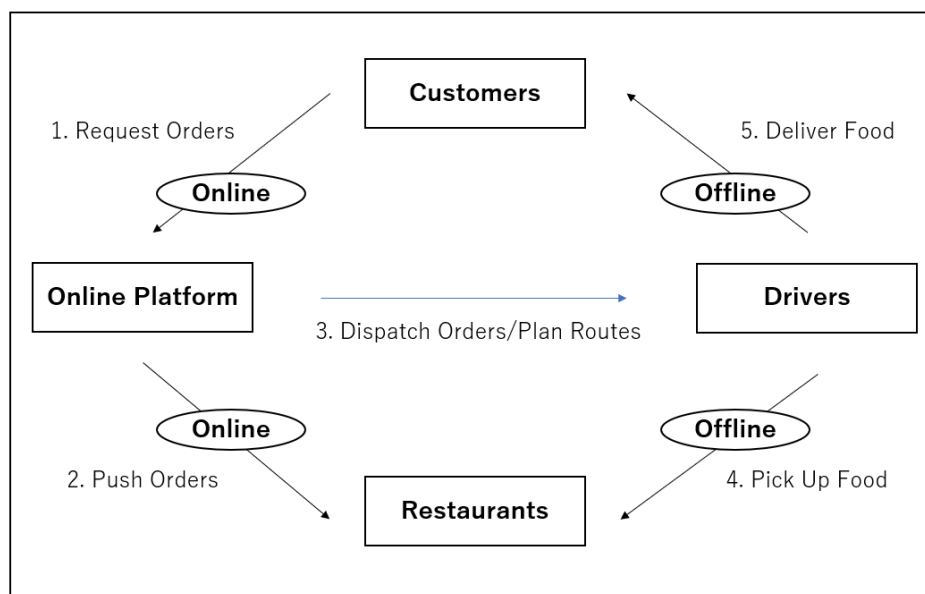
⁴⁰ De Stefano, "The Rise of the 'Just-in-Time Workforce': On-Demand Work, Crowd Work and Labour Protection in the 'Gig-Economy'."

⁴¹ Cosmin Popan, "Embodied Precariat and Digital Control in the "Gig Economy": The Mobile Labor of Food Delivery Workers," *Journal of Urban Technology* (2021), <https://doi.org/10.1080/10630732.2021.2001714>, <https://dx.doi.org/10.1080/10630732.2021.2001714>.

⁴² J. F. Chen et al., "An effective matching algorithm with adaptive tie-breaking strategy for online food delivery problem," *Complex & Intelligent Systems* (2021), <https://doi.org/10.1007/s40747-021-00340-x>, <Go to ISI>://WOS:000638041200001.

⁴³ H. Heiland, "Controlling space, controlling labour? Contested space in food delivery gig work," *New Technology Work and Employment* 36, no. 1 (Mar 2021), <https://doi.org/10.1111/ntwe.12183>, <Go to ISI>://WOS:000604553100001.

Figure 3: OFD Transaction Mechanism Adopted from Chen et al³⁶ and Heiland³⁷



This innovative business model using online applications cannot only provide an opportunity for those specialising in traditional takeaways, but also ordinary restaurants to reach more customers.⁴⁴ There are two main types of online food delivery services: fast food restaurants themselves, such as McDonald's, Domino's Pizza and Kentucky Fried Chicken, and online app platforms that mediate the delivery services of many restaurants, such as Uber Eats, Food Panda and Door Dash. Uber Eats, Food Panda and Door Dash.⁴⁵ However, whilst flexible and adaptable task-based work through apps such as OFD gig workers creates a large workforce, it can also be seen as exploitative by firms in terms of employment and social protection.⁴⁶

In some countries such as China and Australia, local firms tend to dominate online food delivery services. In the case of China, more than 400 million people are actively using food delivery apps, which generated more than 400 billion Yuan in 2019.⁴⁷ In fact, China has led online-to-offline (O2O) food delivery service with a total sales value of US\$55 billion, and its share of global O2O food delivery service is more than 50 percent.⁴⁸ Two local food delivery firms, Meituan which is operated by Tencent and Ele.me which is owned by Alibaba, dominate the local market in China.⁴⁹ In other countries, foreign firms have a dominant share in the food delivery service. In the case of Australia, an American firm, Uber Eats and a British firm, Deliveroo, have dominated its food delivery.⁵⁰ There are many other countries in which both foreign and local firms have competed in food delivery services.

⁴⁴ Yuting Wang, Hongli Wang, and Honggang Xu, "Understanding the experience and meaning of app-based food delivery from a mobility perspective," *International Journal of Hospitality Management* 99 (2021/10/01/ 2021), <https://doi.org/https://doi.org/10.1016/j.ijhm.2021.103070>, <https://www.sciencedirect.com/science/article/pii/S0278431921002139>.

⁴⁵ V. C. S. Yeo, S. K. Goh, and S. Rezaei, "Consumer experiences, attitude and behavioral intention toward online food delivery (OFD) services," *Journal of Retailing and Consumer Services* 35 (Mar 2017), <https://doi.org/10.1016/j.jretconser.2016.12.013>, <Go to ISI>://WOS:000401361800018.

⁴⁶ Coyle, Adams-Prassl, and Adams-Prassl, "Uber & Beyond: Policy Implications for the UK."

⁴⁷ Jenny Chan, "Hunger for profit: how food delivery platforms manage couriers in China," *Sociologias* 23 (2021).

⁴⁸ O. Wang and F. Scrimgeour, "Consumer adoption of online-to-offline food delivery services in China and New Zealand," *British Food Journal*, <https://doi.org/10.1108/bfj-03-2021-0208>, <Go to ISI>://WOS:000697489500001.

⁴⁹ Chan, "Hunger for profit: how food delivery platforms manage couriers in China."

⁵⁰ T. Barratt, C. Goods, and A. Veen, "'I'm my own boss ... ': Active intermediation and 'entrepreneurial' worker agency in the Australian gig-economy," *Environment and Planning a-Economy and Space* 52, no. 8 (Nov 2020), 0308518x20914346, <https://doi.org/10.1177/0308518x20914346>, <Go to ISI>://WOS:000523895400001.

In the case of India, two dominant food delivery are local firms, namely Zomato and Swiggy. These local firms have co-existed with foreign firms, namely Uber eats and Food Panda.⁵¹

Although prior researchers have highlighted a wide range of problems that gig workers face with online platform firms and policy makers, the fundamental problem exists in the ambiguity of the legal definition of a gig worker. Briefly, the adaptation of legal protection differs significantly depending on whether the gig worker is an employee or an independent contractor.⁵² If they are identified as an employee, they have access to all the safety nets, such as minimum wage, benefits and working hours, but vice versa.⁵³ Stewart identifies five steps in the legal and regulatory challenge to the gig economy: (1) adapting and enforcing existing laws, (2) clarifying and expanding the definition of gig employment, (3) creating a new category of gig worker, (4) enacting gig employment rights, and (5) redefining what it means to be an employer⁵⁴. Uber UK's recognition of drivers as employees and Airtasker Australia's guarantee of a minimum wage are examples of extending the reach of existing laws through litigation. As a short-term policy, Minter proposes that non-state actors, such as trade union supreme bodies, work with firms to promote agency recognition and enforcement in line with formal standards⁵⁵. This recognition and enforcement should normally be carried out by state bodies. Eventually, enforceable labour standards could be introduced, and gig workers could aim for minimum wages and dispute resolution through formal agreements with platform firms. These studies show that proactive action on the part of workers, including litigation and trade union action, has had some effect in improving treatment. According to Chesta, Zamponi, & Caciagli, the combination of the visibility of OFD workers in the urban landscape and the soft power they exercise over companies through the media has led to increased public attention and scale of activism⁵⁶. The reality of slow establishment of established trade unions has encouraged the formation of social movement unionism, which has succeeded in increasing solidarity among independent gig workers⁵⁷.

In addition, the sophisticated algorithms of the apps of online platform firms have a variety of effects on workers. For instance, in terms of worker activation and control structures based on highly sophisticated algorithms, Veen, Barratt, and Goods describe three points: worker control based on technological computer control, restricting worker choice through information asymmetry, and enforcing compliance with work rules through performance management intractability⁵⁸. At the same time, this algorithmic management can deactivate gig workers who do not meet certain quality standards⁵⁹. Based on these structures, gig workers are expected to remain loyal to the platform with opaque controls, whilst the platform is able to operate a business model that avoids as much as possible economic and employment risks and obligations to workers⁶⁰. Moreover, algorithmic management

⁵¹ Hemant Kumar, Muskan Jain, and Manpreet Singh Bajwa, "Online Food Delivery App 'Foodie'," *Journal of University of Shanghai for Science and Technology* (2021).

⁵² Koutsimpogiorgos et al., "Conceptualizing the Gig Economy and Its Regulatory Problems."

⁵³ Jeremias Prassl and Martin E. Risak, "Uber, Taskrabbit, & Co: Platforms as Employers? Rethinking the Legal Analysis of Crowdwork," *Comparative Labor Law and Policy Journal* 37 (2016).

⁵⁴ Stewart and Stanford, "Regulating work in the gig economy: What are the options?."

⁵⁵ Minter, "Negotiating labour standards in the gig economy: Airtasker and Unions New South Wales."

⁵⁶ R. E. Chesta, L. Zamponi, and C. Caciagli, "LABOUR ACTIVISM AND SOCIAL MOVEMENT UNIONISM IN THE GIG ECONOMY. Food delivery workers' struggles in Italy," *Partecipazione E Conflitto* 12, no. 3 (2019), <https://doi.org/10.1285/i20356609v12i3p819>, <Go to ISI>://WOS:000500487700010.

⁵⁷ Chesta, Zamponi, and Caciagli, "LABOUR ACTIVISM AND SOCIAL MOVEMENT UNIONISM IN THE GIG ECONOMY. Food delivery workers' struggles in Italy."

⁵⁸ A. Veen, T. Barratt, and C. Goods, "Platform-Capital's 'App-etite' for Control: A Labour Process Analysis of Food-Delivery Work in Australia," *Work Employment and Society* 34, no. 3 (Jun 2020), <https://doi.org/10.1177/0950017019836911>, <Go to ISI>://WOS:000533980900002.

⁵⁹ A. J. Wood et al., "Good Gig, Bad Gig: Autonomy and Algorithmic Control in the Global Gig Economy," *Work Employment and Society* 33, no. 1 (Feb 2019), <https://doi.org/10.1177/0950017018785616>, <Go to ISI>://WOS:000458198400004.

⁶⁰ Veen, Barratt, and Goods, "Platform-Capital's 'App-etite' for Control: A Labour Process Analysis of Food-Delivery Work in Australia."

creates a social detachment and irregular working hours for gig workers and induces a sense of social isolation⁶¹. The platforms' clever gimmicks force gig workers into social isolation and indirectly inhibit solidarity between workers in the same situation.

RESEARCH METHODOLOGY

This paper is based on secondary data collection and purely secondary data analysis on Uber Eats Union. In order to increase the accuracy of the data collection, the qualitative research has been conducted by referring to all the archives officially published by Uber Eats Union on their website and newspaper articles. However, as the information on the official website and the newspaper articles are written in Japanese, the online English newspaper articles of Kyodo News are also used as supplementary sources.

UBER EATS UNION

The Uber Eats Union is a trade union formed on 3 October 2019 for the working conditions of delivery workers at Uber Eats in Japan. Platform workers, including Uber Eats delivery workers in Japan, are not covered by labour laws and therefore cannot receive social protection or adequate benefits. Therefore, the Uber Eats Union is a benchmark organisation that aims to improve the working conditions of Uber Eats delivery workers through collective bargaining and other means, and as a result achieve a legal system that applies to all platform workers. This labour union functions via three main pillars: compensation for accidents and injuries, transparency in the operation and adequate remuneration (Figure 5). The Uber Eats Union holds regular meetings on the first Thursday of each month and is usually open for interviews, visits and participation.⁶² As of December 2021, regular meetings has been held online (zoom) due to COVID-19. In addition to its website, the union has a YouTube and Twitter account.⁶³ Especially, through Twitter, they share real-time information about food delivery drivers across the country, and actively retweets information about its competitors. Table 1 describes the concrete actions and outcomes of Uber Eats Union since their formation.

⁶¹ Wood et al., "Good Gig, Bad Gig: Autonomy and Algorithmic Control in the Global Gig Economy."

⁶² "UberEatsUnion," n.d., accessed February 16, 2022, <https://www.ubereatsunion.org/>.

⁶³ UberEatsUnion, "UberEatsUnion."

Figure 5: Three Pillars on Uber Eats Union

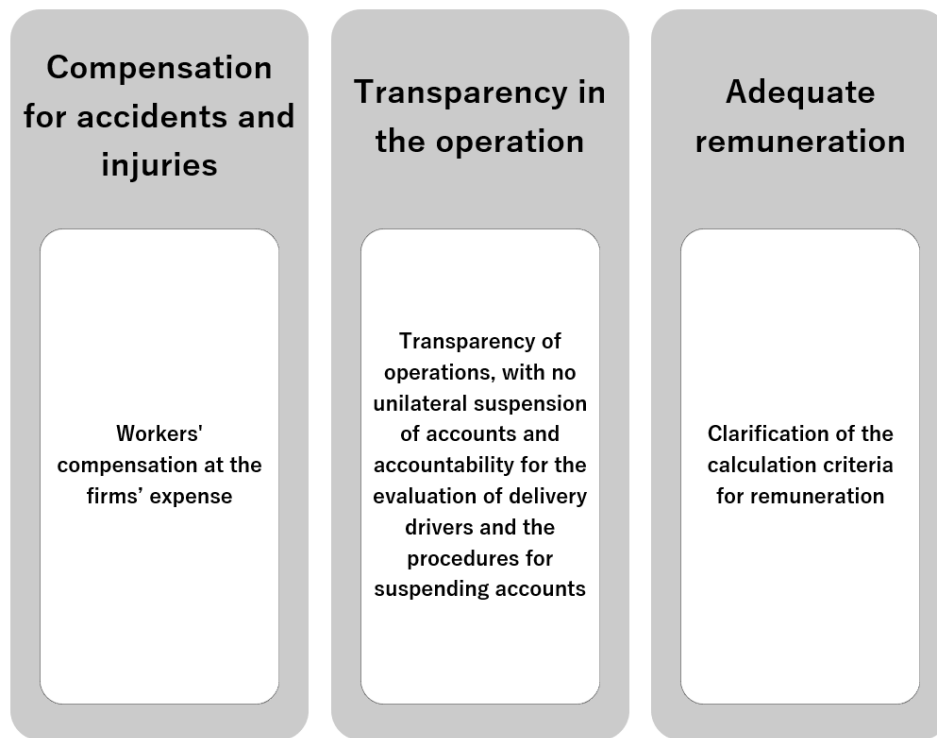


Table 1: Main Activities and Outcomes by Uber Eats Union

Year/Month	Action	Outcome	Source
2019/6	Preparatory meeting for the establishment of a trade union by delivery drivers on Uber Eats in Japan	Led to the formation of Uber Eats Union on 3rd Oct 2019, with 17 members	Nihon Keizai Shimbun (Nikkei)
2019/8	2nd Uber Eats Union Preparatory Meeting		UberEatsUnion
2019/9	3rd Uber Eats Union Preparatory Meeting		UberEatsUnion
2019/10	Uber Eats Union Inaugural Meeting		UberEatsUnion Kyodo
2019/10	Sending a demand for collective bargaining to Uber Japan	Uber rejected the request with this statement "delivery partners do not fall under the category of workers under the Japanese Labour Union Act"	Nikkei
2019/11	1st Uber Eats Union Regular Meeting		UberEatsUnion
2019/11	Sending a collective bargaining request to Uber Portier Japan	Uber Portier Japan notified the rejection of the collective bargaining agreement on 4	UberEatsUnion
2019/12	The basic remuneration for delivery staff in Tokyo has been reduced	December 2019, because under the Japanese Labour Union Act, delivery staff are not considered as	Asahi
2019/12	Statement of protest against the revision of delivery charges in the Tokyo area	"Employed Workers"	UberEatsUnion

2019/12	Statement of protest against the refusal of Uber Japan and Uber Portier Japan to bargain collectively	Uber responded by referring that incentives will be raised.	UberEatsUnion
2020/1	National investigation launched into accidents during Uber Eats operations		Asahi
2020/2	Statement calling for an end to dangerous driving for Uber Eats deliverers		UberEatsUnion
2020/3	Statement of protest against Uber Eats' unilateral changes to app specifications	No official response	UberEatsUnion
2020/3	Submission of the request to the Tokyo metropolitan government's Labour Relations Commission	In progress	Asahi Shimbun
2020/4	Proposals and demands to Uber Japan and Uber Portier Japan for the spread of the COVID-19	No official response	UberEatsUnion
2020/7	Accident investigation project report	Official press conference was held at the Health and Labour Press Club to announce the results	UberEatsUnion
2020/8	Uber Eats Union's request to the Ministry of Health, Labour and Welfare: consideration of expanding the scope of the special enrolment system for workers' compensation insurance		UberEatsUnion
2020/10	Participation in the global protest against the ubanisation of digital platforms		UberEatsUnion
2021/3	Urgent statement on the new charging system introduced in Fukuoka and Kyoto	No official response	UberEatsUnion
2021/3	Open Question to the Japan Food Delivery Service Association (JaFDA)	The JaFDA requests union to enquiry Uber individually. →No official response from Uber Japan	UberEatsUnion
2021/5	New fee structure (introduced nationwide on 10 May 2021)		UberEatsUnion
2021/7	Statement of protest and offer of collective bargaining against unilateral suspension of accounts for special permanent residents	No response	UberEatsUnion
2021/8	Open letter of enquiry to the JaFDA issue of unilateral account suspensions for foreign national deliverers)	No official response from the JaFDA	UberEatsUnion
2021/8	Response to Uber Japan and Uber Eats Japan's statement of protest against the unilateral suspension of accounts for special permanent residents	Uber Eats Japan formally rejected collective bargaining and demands.	UberEatsUnion

2021/10	Press conference: Statement of protest against the unilateral suspension of accounts for special permanent residents	Uber reiterated that any comments or concerns should be raised via support or the survey. Negotiations for collective bargaining is still in progress	UberEatsUnion
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PREPARATION AND FORMATION OF LABOUR UNION

On June 12, 2019, the first preparatory meeting was held for the formation of a trade union by approximately 20 delivery Uber Eats workers. At the preparatory meeting, the current situation and challenges of the job (e.g., contracting work as independent contractors, delivery methods, workers' compensation, payment of remuneration) were shared, as well as examples of the formation of trade unions of Uber drivers in the United States by lawyers and trade unions of independent contractors working on construction sites in Japan.⁶⁴ At the second preparatory meeting on 1 August 2019, the main discussion themes were the draft charter, collective bargaining, unfair labour practices, draft demands, draft constitution, draft activity policy and union fees. Three proposals were raised to address union fees: (1) 500 yen, (2) a percentage of sales, and (3) zero for the decision at the next preparatory meeting.⁶⁵ The third preparatory meeting on 5 September 2019 was conducted with 15 deliverers and discussed the collective bargaining process, demands, draft terms of reference, compensation for work-related accidents and the policy of action.⁶⁶ After the discussion, the notable demands were decided as follows: (1) Bias in the remuneration system (e.g., incentives) (2) Fairness of the evaluation system (3) Lack of procedural guarantees for disciplinary action (e.g., suspension of the application) (4) Problems with the delivery contract (e.g., the distance to the delivery address is not known at the time of receiving the pick-up from the restaurant). The aim was to share these demands with the firms in collective bargaining and to try to improve them. If the company does not improve, the labour union will use legal action and collective action to ask the firm to take action.⁶⁷

After three preparatory meetings, the Uber Eats Union was launched on 3 October 2019 with 17 members.⁶⁸ Ultimately, the Uber Eats Union's claims and demands are divided into three categories: "compensation for accidents and injuries", "transparency of operations", and "adequate compensation".

REQUESTS TO OTHER PARTIES

Uber Eats Union's request was made as of February 2022 to Uber Japan, Uber Portier Japan, the MHLW, and the Japan Food Delivery Service Association (JaFDA). Specific demands and progress are described in chronological order.

a) Compensation for Accidents and Injuries

With regard to compensation for accidents and injuries to delivery drivers, Uber Eats Union has provided detailed explanations to Uber Japan and Uber Portier Japan (a firm contracting with delivery

⁶⁴ Nihon Keizai Shimbun, "Uber Eats haitatsuin roukumi kessei ni muke jyunbikai wo kaisai [Uber Eats delivery workers hold preparatory meeting to form labour union]," June 12 2019a, <https://www.nikkei.com/article/DGXMZO46014660S9A610C1XQH000/>.

⁶⁵ "Dai nikai Uber Eats Union jyunbikai [Second Uber Eats Union Preparatory Meeting]," 2019a, accessed February 17, 2022 February 17, <https://www.ubereatsunion.org/blog/1/>.

⁶⁶ "Dai sankai Uber Eats Union jyunbikai [Third Uber Eats Union preparatory meeting]," 2019b, accessed February 17, 2022, <https://www.ubereatsunion.org/blog/14/>.

⁶⁷ UberEatsUnion, "Dai sankai Uber Eats Union jyunbikai [Third Uber Eats Union preparatory meeting]."

⁶⁸ KYODO NEWS, "Uber Eats delivery staff in Japan form labor union," October 3 2019, <https://english.kyodonews.net/news/2019/10/d2198529f08b-update1-uber-eats-delivery-staff-in-japan-form-labor-union.html?phrase=Uber%20Eats&words=Uber,Eats,eating>.

drivers since 1 December 2019) in its collective bargaining demands of 8 October and 25 November 2019.⁶⁹⁷⁰ However, the Uber side has rejected the request with the answer that delivery workers are not considered "employed workers" under the Labour Union Act.

From 7 January to 31 March 2020 (with some coverage from April onwards), the labour union conducted an online survey of traffic accidents and compensation for delivery workers in collaboration with the Tokyo Occupational Safety and Health Centre, a non-profit organisation that provides advice on industrial accidents.⁷¹ The aim of the survey was to improve their working environment and encourage the development of a workers' compensation system for gig workers by also interviewing them about their specific compensation.⁷² Respondents answered a questionnaire about Uber Eats' handling of the accident via a hearing sheet on the Uber Eats Union website.⁷³

On 21 July 2020, an official press conference was held at the Health and Labour Press Club to announce the results. The results highlighted a wide range of issues including: lack of advance information about accidents during delivery, lack of connection to the support centre in the event of an accident, deliverers having to deal with the accident behind the scenes, lack of clarity about the external point of contact for accidents caused by deliverers, suspension of deliverers' accounts and so on. Taking these responses into account, the Uber Eats union made specific recommendations to the Japanese government and Uber Japan. To the Japanese government, the union requested to amend the current Workers' Accident Compensation Insurance Law to expand the scope of coverage, and to establish a new article defining "workers" covered by the insurance, and to define "those who provide labour and receive compensation" and other terms to match the current labour situation of gig workers. On the other hand, they also requested to improve and expand the scope, content and procedures of the accident compensation system, to add a special clause for settlement negotiation and to add it to the bodily injury and property damage insurance, and to set up a contact point to respond to enquiries from the general public who have been involved in accidents with delivery personnel, instead of relying on the current delivery personnel, to Uber Japan.

On 13 August 2020, Uber Eats Union has submitted a request to the MHLW regarding the review of Workers' Accident Compensation Insurance for platform workers.⁷⁴ The reason is that the MHLW has been seeking public opinion on the expansion of the scope of the special enrolment system in the industrial accident compensation insurance system from 29 June to 14 August 2020 (Ministry of Health Labour and Welfare, 2020). According to the MHLW, the special enrolment system refers to the insurance benefit system for accidents caused by workers' work or commuting, but in consideration of the actual situation and the occurrence of accidents, non-workers are exceptionally allowed to join the system. The union has requested that firms with a business model such as Uber will expand their coverages, with employers paying the premiums.⁷⁵ In order to expand it, they also pointed out the need to amend the Workers' Accident Compensation Insurance Law to clarify the definition of freelance

⁶⁹"Youkyuusho no souhu [Send request form]," 2019c, accessed February 17, 2022, <https://www.ubereatsunion.org/blog/31/>.

⁷⁰"Youkyusho no saisaikouhu [Resend request form again]," 2019d, accessed February 17, 2022, <https://www.ubereatsunion.org/blog/63/>.

⁷¹Nihon Keizai Shimbun, "Uber Eats roukumi jiko hoshou no jittai wo chousa [Uber Eats union investigates accidents and compensation]," January 7 2020, <https://www.nikkei.com/article/DGXMZO54125440X00C20A1TJ2000/>.

⁷²Nihon Keizai Shimbun, "Uber Eats roukumi jiko hoshou no jittai wo chousa [Uber Eats union investigates accidents and compensation]."

⁷³"Youkyusho no saikouhu [Resend request form]," 2019e, accessed February 17, 2022, <https://www.ubereatsunion.org/blog/38/>.

⁷⁴"Uber Eats Union jiko chousa project houkousho no gaiyou [Uber Eats Union Accident Investigation Project Report Summary], 2020d, accessed February 19, 2022, https://www.ubereatsunion.org/pdf/jiko_20200722.pdf.

⁷⁵"Kouroushou he teishutsu shitekimashita [Submission to the Ministry of Health, Labour and Welfare]," 2020e, accessed February 19, 2022, <https://www.ubereatsunion.org/blog/194/>.

working conditions and to establish a new article defining the coverage of workers' accident insurance.⁷⁶

In parallel with the research project, a statement on combating dangerous driving was issued at a press conference following the incident of 23 January 2020, when a courier driver was assaulted by a bus driver. At the same time, a call was made in the statement for courier drivers to observe traffic etiquette.⁷⁷ As another activity, in response to the spread of COVID-19, the union issued a statement to Uber Japan and Uber Portier Japan to distribute infection prevention equipment such as masks and disinfectant to delivery staff at their regional partner centres, as well as a risk reward of 300 yen per delivery on 6 April 2020⁷⁸.

b) Transparency in the Operation

For Uber Eats Union, the opacity of the employer's operations is one of its greatest concerns. The outline of the collective bargaining statement issued on 8 October 2019 contained the most relevant issues.⁷⁹ Firstly, the unexplained criteria for unilateral account suspensions based on the evaluation system. Secondly, it is the lack of clarity in the structure of the application. For instance, the drivers cannot know the delivery address until they pick up the goods at the restaurant. Large orders are allocated to bicycle drivers instead of bike drivers. If two delivery orders are received from the same restaurant, the goods may be delivered first to a location far from the restaurant and then later to a location closer to the restaurant. As a result, the loss of delivery efficiency due to this inappropriate allocation of deliveries could easily lead to complaints from customers. Relatedly, there are also complaints due to inaccurate delivery times in the app. Thirdly, insufficient training of support centre operators can result in them being unable to respond to queries from deliverers. In response to these demands, Uber rejected the request with this statement "delivery partners do not fall under the category of workers under the Japanese Labour Union Act"⁸⁰.

Next, the union has issued a statement of protest against the unilateral specification change to Uber Japan on 21 March 2020.⁸¹ Uber Eats made a change to the specification of the display of the customer's delivery request in the courier app without prior explanation to the drivers on 20 March 2020. By displaying all orders' delivery requests as "leave at the front door", it caused confusion in the delivery cycle for them. Although Uber sent an email to the delivery drivers about the malfunction, the customer was not aware of the malfunction. This confusion in the delivery may have led to a bad rating from them. Furthermore, although the delivery staffs could choose whether or not to deliver to cash-paying customers, the malfunction forced all delivery staff to change their delivery settings to "cash payment". Therefore, the union protested against the advance notice of the major change in the application specification.

On 1 March 2021, Uber Japan and Uber Eats Japan introduced a new pricing structure in Fukuoka and Kyoto.⁸² The drastic reduction in remuneration has led to confusion and the withdrawal

⁷⁶ UberEatsUnion, "Kouroushou he teishutsu shitekimashita [Submission to the Ministry of Health, Labour and Welfare]."

⁷⁷ "Kiken unten ni kansuru kougi seimei [Statement of protest on dangerous driving]," 2020a, accessed February 18, 2022, <https://www.ubereatsunion.org/blog/148/>.

⁷⁸ "Shingata Korona Virus No Kansen Kakudai Ni Taisuru Teian To Youkyu [Proposals and demands for the spread of the COVID-19]," 2020c, accessed February 19, 2022, <https://www.ubereatsunion.org/blog/164/>.

⁷⁹ UberEatsUnion, "Youkyuusho no souhu [Send request form]."

⁸⁰ Nihon Keizai Shimbun, "Uber, nihon deno dantaikoushou oujizu [Uber did not accept collective bargaining request in Japan]," October 21 2019b, <https://www.nikkei.com/article/DGXMZO51225650R21C19A0HE6A00/>.

⁸¹ "Ippouteki shiyou henkou ni taisuru kougi seimei [Statement of protest against unilateral specification changes]," 2020b, accessed February 19, 2022, <https://www.ubereatsunion.org/blog/160/>.

⁸² "Fukuoka to Kyoto de dounyu saretu shinryokin ni kansuru kinkyu seimei [Urgent statement on the new charging system introduced in Fukuoka and Kyoto]," 2021a, accessed February 19, 2022, <https://www.ubereatsunion.org/blog/230/>.

of many deliverers. After that, the union had four specific demands in response to this situation.⁸³ The first is an official announcement to the delivery staff of the disruption caused by the introduction of the new tariffs in Fukuoka and Kyoto. Many deliverers contacted the support centre, but there was no unified answer, which led to a lot of confusion on Twitter. The second is that the base value and the formula used to calculate the new fee system were not properly received. There were some cases reported where the fee per delivery was in the 100 Japanese yen range and others where the fee was fixed at 300 yen regardless of the delivery fee. In the previous system of the application, it was possible to check the receiving, delivery and distance charges, but under the new fee structure, the deliverers could only check the base fee and the delivery adjustment amount in the app. In other words, the base that forms the new fee is a complete black box, and it is impossible to ascertain its suitability. The third is the compensation for the reduction in the new tariff. Taking into account the case of a flat rate of 300 yen irrespective of the distance of delivery, even if an order is received for two deliveries in an hour, the hourly rate would be 600 yen, which is below the minimum wage. The fourth is about the adoption of experimental initiatives that ignore the lives of the deliverers in the specific areas. After the application of the new rate regime, many drivers have stopped operating after confirming unfair delivery charges. The effect of this issue has been a major disruption to the supply and demand balance for matching, with significant damage to both restaurants and consumers. With regards to this matter, the union asked the JaFDA for their views on the new pricing structure in Kyoto and Fukuoka. However, they replied that since they respect the different business practices of their members, the union may contact the Uber side.⁸⁴

On 16 June 2021, Uber Japan and Uber Eats Japan unilaterally suspended the accounts of a labour union member who has a special permanent resident certificate without providing any reasonable explanation. After this, the member was prompted to go to the compliance centre based on the guidance from support centre enquiry. After repeated visits to the centre, the account was restored, but no explanation was given as to why the account was suspended and the criteria for restoration. Originally, special permanent residents do not have any restrictions when it comes to working in Japan. Since they can work just as much as Japanese nationals, they are not legally obliged to show or report their certificates when working. Thus, confirmation of the certificate by the employer may violate the Labour Standards Law in terms of violation of workers' privacy and discrimination with nationality and social status. Based on these circumstances, the union demanded the following points and proposed collective bargaining.⁸⁵

(1) Explanation for suspending the account despite the submission of a valid special permanent resident certificate and a notice of intended issuance of a special permanent resident certificate

- The firm should explain why it suspended the account despite the member's repeated submission to Uber of a valid special permanent resident certificate and a notice of intended issuance of a special permanent resident certificate, which are official documents issued by the local government.

(2) Compensation for the loss of work during the period of suspension of the account of the member concerned

⁸³ UberEatsUnion, "Fukuoka to Kyoto de dounyu sareta shinryokin ni kansuru kinkyu seimei [Urgent statement on the new charging system introduced in Fukuoka and Kyoto]."

⁸⁴ "Nihon food delivery service kyokai eno koukai shitsumonjyou (Gaikokuseki haitatsuin ni taisuru ippouteki na account teishi mondai [Open letter of enquiry to the Japan Food Delivery Service Association (issue of unilateral account suspensions for foreign national delivery staff)]," 2021b, accessed February 20, 2022, <https://www.ubereatsunion.org/blog/269/>.

⁸⁵ "Tokubetsu eijyusha ni taisuru akaunto no ippouteki teishi ni taisuru kougi seimei [Statement of protest against the unilateral suspension of accounts for special permanent residents]," 2021c, accessed February 20, 2022, <https://www.ubereatsunion.org/blog/261/>.

- Since the unilateral suspension of the account without reasonable cause forced the union member to take 11 days off work, the Uber side should conduct financial compensation for the member's absence.

(3) Clarification of the department and person in charge

- Although the union members have repeatedly asked support for a response from the department in charge or the responsible person, they have never responded directly. As deliverers are the backbone of the Uber Eats business model, it should be clear who is responsible and who is in charge and they should respond appropriately.

(4) Revision of the act of requiring the presentation of a special permanent resident certificate

- Legally, special permanent residents are not restricted from working and can work as much as Japanese nationals. In addition, a special permanent resident certificate is not a condition of employment. Therefore, the practice of changing the treatment of special permanent residents due to their foreign nationality should be stopped. This issue could lead to discrimination and human rights violations at worst.

In relation to this issue, the union sent a letter of enquiry to the JaFDA asking for their opinion on the issue of unilateral account suspensions for foreign national deliverers, which happen throughout the food delivery industry on 5 August 2021. However, no official response has been received from the association.⁸⁶

Uber Japan and Uber Eats Japan responded to the issue on 18 August 2021 and formally rejected collective bargaining and demands. They mentioned as in previous replies deliverers do not constitute "employed workers" under the Labour Union Act. Despite a statement of protest about the suspension of the foreign union member's account with no explanation from support, Uber reiterated that any comments or concerns should be raised via support or the survey.⁸⁷

After the rejection from the Uber side, they one-sidedly suspended the account of another special permanent resident on 1 September. The support centre only told the courier to go to a distant compliance centre to check the original residence card and passport. In response, Uber Eats Union has requested proper explanation and collective bargaining to them but negotiations are still in progress.⁸⁸

c) Adequate Remuneration

Whilst adequate remuneration is central to the livelihood of gig workers such as delivery workers, their safety net is very weak. On 8 October 2019, a statement of collective bargaining demands to Uber Japan pointed out various problems with the remuneration system.⁸⁹ With regards to basic remuneration, the statement emphasised three points: the unfairness of the flat rate of 300 yen for product pick-up remuneration; an explanation of the criteria for reward payments; and the establishment of a remuneration system based on the weight and quantity of orders. As for the payment of reduced compensation due to distance calculation errors, the union demanded a full refund and a

⁸⁶ UberEatsUnion, "Nihon food delivery service kyoukai eno koukai shitsumonjyou (Gaikokuseki haitatsuin ni taisuru ippouteki na account teishi mondai [Open letter of enquiry to the Japan Food Delivery Service Association (issue of unilateral account suspensions for foreign national delivery staff)]."

⁸⁷ UberEatsUnion, "Tokubetsu eijyusha ni taisuru akaunto no ippouteki teishi ni taisuru kougi seimei [Statement of protest against the unilateral suspension of accounts for special permanent residents]."

⁸⁸ "Ku gatsu tsuitachi no tokubetsu eijyusha ni taisuru account no ippouteki teishi ni taisuru kougi seimei [Statement of protest against the unilateral suspension of accounts for Special Permanent Residents on 1 September]," 2021d, accessed February 20, 2022, <https://www.ubereatsunion.org/blog/284/>.

⁸⁹ UberEatsUnion, "Youkyuusho no souhu [Send request form]."

specific method of calculating the amount of the refund. In addition to this, the union also referred to the fact that deliverers have not been paid the referral fee for the new partner referral system.

In a statement on 25 November 2019, the Uber Eats Union demanded an explanation for the unilateral reduction in basic remuneration in the Tokyo area from 29 November 2019 and an assurance that the average income before the revision would be maintained and that the revision would not affect average income.⁹⁰ According to their statement, the basic remuneration per kilometre has fallen from 150 yen to 60 yen (-60 percent) and the delivery fee has fallen from 170 yen to 125 yen (-27 percent), with the Uber side claiming that the basic fee would remain the same since it would be reduced but the incentive would be increased.⁹¹ The union side referred there would be no compensation for the level of remuneration, as Uber has the all right to decide on the incentives. Moreover, their analysis revealed a 16-20% drop in earnings after the revision.⁹² However, Uber Portier Japan notified the rejection of the collective bargaining agreement on 4 December 2019, because under the Japanese Labour Union Act, delivery staff are not considered "employed workers".

d) Request relief to Tokyo metropolitan government's Labour Relations Commission

Uber Eats Union has requested relief from the Tokyo Metropolitan Government Labour Relations Commission on 16 March 2020 for the refusal to bargain collectively on the above unfair labour practices.⁹³ The main focus of the commission's review will be whether Uber Eats delivery workers, who are independent contractors, are entitled to "worker status" or not. A lawyer supporting the union said Uber is unilaterally determining the working conditions of its deliverers.⁹⁴

DISCUSSION

As a result, the demands of the Uber Eats Union have not yet been accepted in totality. Specifically, the negotiation process showed the weak collective bargaining power of the Uber Eats trade union, which is consisted of a small number of gig workers.⁹⁵ Table 2 illustrates resolved and unresolved issues in the Uber Eats Union. In relation to repeated refusals to collective bargaining, Uber did not respond to four statements issued by the Uber Eats Union.

Table 2: Resolved and Unresolved Issues in the Uber Eats Union

Resolved Issues	Unresolved issues
Demands for collective bargaining to Uber Japan and Portier Japan – formally rejected	Unilateral changes to Uber Eats app specifications
	Support for the spread of COVID-19 to Uber Japan and Uber Portier Japan
	Unilateral suspension of special permanent resident gig workers is still under negotiation
	New fee structure for Fukuoka and Kyoto

⁹⁰ UberEatsUnion, "Youkyusho no saisaikouhu [Resend request form again]."

⁹¹ "Tokyo chiki no haisouryou kaitei kougi seimei [Statement of protest against the revision of delivery charges in the Tokyo area]," 2019g, accessed February 18, 2022, <https://www.ubereatsunion.org/blog/70/>.

⁹² UberEatsUnion, "Tokyo chiki no haisouryou kaitei kougi seimei [Statement of protest against the revision of delivery charges in the Tokyo area]."

⁹³ The Asahi Shimbun, "Uber Eats union asks labor body to back collective bargaining push," March 17 2020, <https://www.asahi.com/ajw/articles/13222011>.

⁹⁴ The Tokyo Shimbun, "Uber roukumi, kysai moushitate torou ni "dankoukyohi wa hutou" [Uber Eats Union lodged redress complaint with Tokyo Metropolitan Labour Relations Commission "Refusal of collective bargaining is unfair"]," March 17 2020, <https://www.tokyo-np.co.jp/article/1436>.

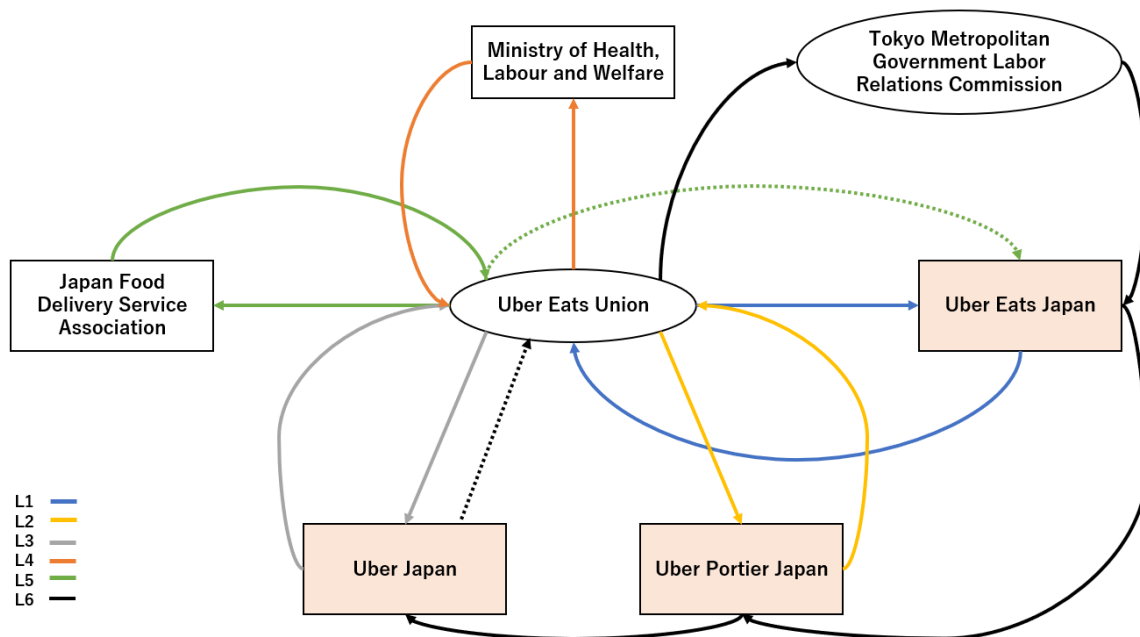
⁹⁵ Umer, "Illusory freedom of physical platform workers: Insights from Uber Eats in Japan."

As a potential breakthrough, the Uber Eats Union requested relief from Uber Eats' refusal to bargain collectively from the Tokyo Labour Commission on 16 March 2020 and is still under review. If the "worker status" of Uber Eats delivery workers is officially recognised, the Uber Eats union will be able to conduct collective bargaining and proceed with concrete discussions to improve industrial relations. Furthermore, the result may have an impact on workers in other OFD firms and could have a ripple effect towards improving industrial relations through further unionisation and collective action.

This case study also found that the union's claims and demands to other parties such as Uber Japan, Uber Portier Japan, the MHLW and the JaFDA can be depicted by a dynamic loop that shares a similar fashion with causal loop diagrams.⁹⁶ Figure 6 shows a causal loop relationship in the labour union behaviour of Uber Eats Union.

Based on the analysis, the union's actions have mainly two potential challenges: employee recognition under labour union act and support from other parties. However, in view of the current situation, the priority is to clarify the legal position of the deliverers through an approach to the legal authorities, rather than relying on other relevant bodies. Although the MHLW received the request from the Uber Eats Union, they did not really consider the on-demand gig workers including OFD workers in the "Guidelines for the development of a safe environment for freelance work" in 2020 (L4). The JaFDA has also been reluctant to support the union, since they prior to the decision of the platform firms (L5).

Figure 6: A causal loop relationship in the labour union behaviour of Uber Eats Union



⁹⁶ Jinhyo Joseph Yun et al., "Business Model, Open Innovation, and Sustainability in Car Sharing Industry—Comparing Three Economies," *Sustainability* 12, no. 5 (2020), <https://doi.org/10.3390/su12051883>, <https://dx.doi.org/10.3390/su12051883>.

EMPLOYEE RECOGNITION UNDER THE LABOUR UNION ACT

As shown in L1, L2, L3 of Figure 6 and the previous discussions, all collective bargaining demands from the Uber Eats Union to the Uber side have been rejected under the same response.⁹⁷ The reason was that deliverers do not constitute "employed workers" under the Labour Union Act.

The issue is whether the deliverers are "employed workers" under the law. Uber Eats Unions requested the collective bargaining by presenting the nature of the worker using three articles: Article 28 of the Constitution of Japan, Article 1 (1) and Article 3 of the Labour Union Act. Article 28 of the Japanese Constitution guarantees the right of workers to bargain collectively. Article 28 of the Constitution is embodied in the Labour Union Act, which aims to determine equal working conditions through collective bargaining (Article 1). They further argued that Article 3 of the Labour Union Act does not refer to "employed workers".

a) *The Constitution of Japan*⁹⁸

Article 28: The right of workers to organize and to bargain and act collectively is guaranteed

b) *Labour Union Act*⁹⁹

Article 1 (1): The purpose of this Act is to elevate the status of workers by promoting their being on equal standing with their employer in their negotiations with the employer; to defend the exercise by workers of voluntary organization and association in labour unions so that they may carry out collective action, including the designation of representatives of their own choosing to negotiate working conditions; and to promote the practice of collective bargaining, and procedures therefore, for the purpose of concluding collective agreements regulating relations between employers and workers

Article 3: The term "workers" as used in this Act means those persons who live on their wages, salaries, or other equivalent income, regardless of the kind of occupation

Following repeated refusals to bargain collectively, the union applied for redress to the Tokyo Metropolitan Government Labour Relations Commission on 16 March 2020 (L6). The main discussion is whether Uber Eats workers are workers as defined in Article 3 of the Labour Union Act. The specific criteria for determining this are the four criteria set out in the Central Labour Relations Commission's order of 7 July 2010: (1) they are integrated into the firm organisation; (2) their contracts are fixed; (3) their remuneration is remunerative; and (4) they are less entrepreneurial. In the past, the Supreme Court has ruled in cases where collective bargaining was permitted on the basis that the workers met these criteria (e.g., the New National Theatre Foundation case and the INAX Maintenance case). If the

⁹⁷ "Dankoukyohi ni taisuru kougiseimei [Statement of protest against refusal of collective bargaining]," 2019f, accessed February 18, 2022, <https://www.ubereatsunion.org/blog/110/>.

⁹⁸ Japanese Law Translation, "The Constitution of Japan," (April 1, 2009). <http://www.japaneselawtranslation.go.jp/law/detail/?id=174>.

⁹⁹ Japanese Law Translation, "Labor Union Act," (2021, June 30, 2022, February 18 2021). <http://www.japaneselawtranslation.go.jp/law/detail/?ft=1&re=01&dn=1&x=0&y=0&co=01&ia=03&ja=04&ky=%E5%8A%B4%E5%83%8D%E7%B5%84%E5%90%88%E6%B3%95&page=7>.

unions win, it could have a significant impact on the OFD platform in Japan.¹⁰⁰¹⁰¹ Although the Uber Eats Union does not have enough members to trigger a major collective bargaining agreement, its Twitter account has about 5,700 followers as of February 2022. Furthermore, the account provides a place to exchange and share opinions not only with Uber Eats drivers but also with people working on other OFD platforms. This means that delivery workers at competitors have also been carefully watching the union's progress. Therefore, the union's positive actions may not only empower delivery workers with social media, but may also trigger further new labour union formation to pursue comfortable working conditions.

LESSONS FOR GIG ECONOMY IN MALAYSIA

Based on Japan's experience with the gig economy, this section uses some basic job-matching theory to draw some lessons for Malaysia. Gig workers in both Japan and Malaysia have faced similar problems, such as low remuneration and poor social protection. However, there is a noticeable difference in the practices of industrial relations in both countries. In the case of Japan, as this paper argued, constitution and labour laws clearly stipulated collective bargaining as an unalienable part of workers' rights. Under this legal framework, Uber Eats Union Japan effectively conducted collective bargaining with the employer. Despite its initial failures, Uber Eats Union are able to identify major labour issues on gig workers and to negotiate effectively with the employer to improve their payment and working conditions in Japan. Furthermore, Uber East Union tried to strength its bargaining power by forming a wider and stronger union named "freelance union, Japan".¹⁰² In the case of Malaysia, there is no strong trade union for gig workers, except an association called "Malaysia e-Hailing Drivers Association" which is a social media-based organization for networking among the e-hailing workers. More critically, Malaysian gig workers have seriously suffered from the lack of appropriate social protection. Majority of gig workers have no unemployment insurance and no retirement saving.¹⁰³ Despite their dismal working conditions, gig workers in Malaysia are unable to conduct a meaningful collective bargaining with the employers without their trade unions. In comparison with Japan, lack of effective collective bargaining is a unique feature of labour relations for gig workers in Malaysia.

The basic job-matching model¹⁰⁴ could be used to give some insights on gig workers in Malaysia. According to this model, workers and firms would jointly create values in the production. However, distribution of created value between workers and firms would be determined by the worker's bargaining power (β). The distributed value for worker or the wage (w) could be expressed as Pissarides¹⁰⁵:

$$w = \operatorname{argmax}(J^E - J^U)^\beta (J^F - J^V)^{1-\beta} \quad (1)$$

In other words, the optimal level of wage would be determined by maximising a weighted product of the worker's net return ($J^E - J^U$) and the worker's net return ($J^F - J^V$). In a wider sense,

¹⁰⁰ "Uber haitatsuin "osoraku shindemo mushi sareru" roudou kumiai ga uttaeru yottu no mondaiten [Uber delivery workers "will probably die and be ignored" Four issues raised by labour unions]," Business Insider, 2021, accessed February 22, 2022, <https://www.businessinsider.jp/post-248662>.

¹⁰¹ The Tokyo Shimbun, "Uber haitatsuin "roudousha no kenri" hunsou ga oozume shushoku hyougakisedai ga dantaikoushou wo motome huntou [Uber delivery workers "workers' rights" dispute comes to a head Ice Age generation struggles for collective bargaining]," February 15 2022, <https://www.tokyo-np.co.jp/article/160212>.

¹⁰² S. Ikeo, "Freelance Union hossoku e [Formation of Freelance Union]," *The Tokyo Shimbun*, March 4 2022, <https://www.tokyo-np.co.jp/article/163712>.

¹⁰³ "Ensuring Social Protection Coverage for Malaysia's Gig Workers," 2020, accessed March 17, 2022, <https://www.centre.my/post/voluntary-versus-automatic-figuring-out-the-right-approach-on-social-protection-for-informal-workers>.

¹⁰⁴ Christopher A Pissarides, *Equilibrium unemployment theory* (MIT press, 2000).

¹⁰⁵ Pissarides, *Equilibrium unemployment theory*.

wage rate could be equal to an overall welfare level of gig workers which include working conditions or social protection. This equation could be reformulated as Pissarides:

$$(J^E - J^U) = (1 - \beta)((J^E - J^U) + (J^F - J^V)) \quad (2)$$

This equation clearly indicated that the worker's net return ($J^E - J^U$) would be determined by a product of firm's bargaining power ($1 - \beta$) and total amount of value creation ($(J^E - J^U) + (J^F - J^V)$). Incorporating interest rate (r) and workers' productivity (p), the equation could further modify as Pissarides:

$$w = \beta p + (1 - \beta)rJ^U \quad (3)$$

This equation captures some important aspect of value distribution. The distributed value for worker (w) would be determined by the sum of worker's bargaining power-weighted productivity (βp) and firm's bargaining power-weighted value of unemployed worker ($(1 - \beta)rJ^U$). On the other hand, net value of unemployed worker (rJ^U) could be expressed as Pissarides

$$rJ^U = z + \frac{\beta}{1-\beta} \theta \gamma \quad (4)$$

where z is value created by unemployed worker in home production, $\beta/1 - \beta$ is relative strength of worker's bargaining power, θ is a tightness of labour market and γ is firm's search cost. This equation shows that the net value of unemployment worker is determined by home value creation, relative bargaining power, labour market condition as well as the cost to find a suitable worker. It also means that $\theta\gamma$ would measure a difficultness to find a worker. Finally, combining Equation (3) and Equation (4), the wage equation could be expressed as Pissarides:

$$w = \beta(p + \theta\gamma) + (1 - \beta)z \quad (5)$$

This equation indicated that wage would be the sum of worker's bargaining power-weighted value of worker's productivity (p) plus labour market condition ($\theta\gamma$) and firm's bargaining power-weighted value of unemployed worker's home production (z). This equation clearly highlights three possible scenarios for Malaysian gig workers to secure higher remuneration, namely productivity, labour market condition and bargaining power.

Firstly, gig worker may increase their remuneration by strengthening their productivity. However, gig worker's productivity may not depend fully on academic or theoretical knowledge which are obtained from books or online materials. Their productivity may depend more on skills and practical knowledge which were acquired through their experience to work as gig workers. In other words, it could be difficult for gig workers to enhance their productivities in the short-run. On other hand, on-job vocational training or workshops may contribute to improve their productivities in the long-run.

Secondly, a labour market condition is given to gig workers. It is almost impossible for a gig worker to change the labour market condition. If the firms may face some difficulties to find a gig worker, their remuneration may increase. However, gig workers are unable to manipulate the labour market condition to obtain better remuneration.

Thirdly, the most feasible channel to increase the gig workers' remuneration is to enhance their bargaining power. As Japan's experience highlighted, collective bargaining could directly or indirectly improve remuneration and working condition for gig workers in the country. A gig worker union may play an important role to increase awareness of their problem and issues among a wider stakeholder in society.

In short, the job-matching model predicts three alternative channel to improve the remuneration of gig workers, namely gig workers' productivity, tightness of labour market and gig workers' bargaining power against the employer. Among these three, the third option is the most feasible channel to improve the welfare of gig workers. Influential collective bargaining with platforms in the gig economy still cannot be seen in Malaysia.

Trade unions in Malaysia have traditionally been very weak and have historically been regulated from three directions: legislative, judicial and executive.¹⁰⁶¹⁰⁷ On the other hand, collective bargaining conventions have been ratified by the government¹⁰⁸ and some success stories also have been seen. For example, collective bargaining has helped rubber millers adapt their overall income to the rising cost of living since 1959¹⁰⁹; members of the affiliated National Union of Hotel, Bar and Restaurant Workers Peninsular Malaysia (NUHBRW) regained collective bargaining rights in 2017¹¹⁰; and the Electronic Industry Employees Union Western Region of Malaysia (EIEUWR) gained the collective agreements in 2021¹¹¹.

In terms of the government's attitude to the gig economy and adaptation of legislation, gig workers in Malaysia are not covered by the Employment Act 1955 (Act 265), the Labour Ordinance (Chapter 67, Sabah) and the Labour Ordinance (Chapter 76, Sarawak)¹¹². Meanwhile, with the rapid growth of e-hailing and OFD workers, the Malaysian Government has emphasised the importance of the gig economy's contribution under the Malaysia Digital Economy Blueprint as the national policy on the digital economy in 2020¹¹³. As a short-term goal within the Blueprint, the Government is considering introducing long-term social protection for all gig workers by 2025. Specifically, the government aims to extend the scope of the current social protection for gig workers, which is provided to gig workers under the "Penjana Gig" policy, to full-time gig workers and gig platform workers who work more than a certain number of hours¹¹⁴. In terms of social security, the Self-Employed Social Security Scheme (SESSS) under the Social Security Organisation (SOCSO) is mandatory for a wide range of gig workers, including e-hailing and OFD delivery workers, under the Self-Employed Social Security Act 2017¹¹⁵. The scheme is designed to protect insured persons who pay premiums against work-related occupational accidents. As a short-term complement to the SESSS, the Malaysian Government introduced a policy of full government coverage of social security for delivery staffs under the SPS Lindung Scheme¹¹⁶. However, this is shown that the gig economy platform relies on the

¹⁰⁶ P. Todd and J. K. Sundaram, "THE TRADE UNION MOVEMENT IN PENINSULAR MALAYSIA, 1957-1969," *Journal of Asian and African Studies* 23, no. 1-2 (Jan-Apr 1988), <https://doi.org/10.1177/002190968802300107>, <Go to ISI>://WOS:A1988M479000007.

¹⁰⁷ Rabiun Sani Shatsari and Kamal Halili Hassan, "The right to collective bargaining in Malaysia in the context of ILO standards," *Asian journal of comparative law* 1 (2006).

¹⁰⁸ Shatsari and Hassan, "The right to collective bargaining in Malaysia in the context of ILO standards."

¹⁰⁹ Parthiban S. Gopal and Suresh Narayanan, "Collective Agreements and the Wages of Rubber Tappers in Malaysia, 1954-2003: A Revisit of 'Bad Bargains'," *Malaysian Journal of Economic Studies* 54, no. 1 (2017), <https://doi.org/10.22452/mjes.vol54no1.7>, <https://dx.doi.org/10.22452/mjes.vol54no1.7>.

¹¹⁰ "Malaysia: Shangri-La workers win 13-year fight to restore collective bargaining rights," 2017, accessed March 21, 2022, <https://www.iuf.org/news/malaysia-shangri-la-workers-win-13-year-fight-to-restore-collective-bargaining-rights/>.

¹¹¹ "Malaysian union wins collective agreement after nine years," 2021, accessed March 21, 2022, <https://www.industriall-union.org/malaysian-union-wins-collective-agreement-after-nine-years>.

¹¹² Malay Mail, "Gig economy workers not included under definition of workers, says deputy minister," *malay mail*, November 8 2021, <https://www.malaymail.com/news/malaysia/2021/11/08/gig-economy-workers-not-included-under-definition-of-workers-says-deputy-mi/2019292>.

¹¹³ Prime Minister's department Economic Planning Unit, Malaysia Digital Economy Blueprint, (n.d.).

¹¹⁴ Economic Planning Unit, Short Malaysia Digital Economy Blueprint.

¹¹⁵ REFSA, Digital Labour Markets in the Platform Economy: Mapping the Political Challenges of Crowd Work and Gig Work, June 2020.

¹¹⁶ Sadho Ram, "Grab And Foodpanda Riders Are Now Covered By SOCSO," *SAYS*, July 18 2021, <https://says.com/my/news/grab-and-foodpanda-riders-are-now-covered-by-socso>.

government to pay social security to gig workers, thereby making the firm profitable¹¹⁷. This also exposes the industry's tendency for platform firms to avoid paying social protection by viewing gig work as informal employment. However, a passive view of government policy makes it difficult for suitable employment for gig workers to be achieved. Therefore, even if it takes time, the formation of a collective bargaining union, such as the Uber Eats Union in Japan, and persistent collective bargaining practices will work best as an active strategy.

CONCLUSION

In Japan, with the rise of the gig economy, various institutional facilities led by the Japanese government are being developed for workers, but the benefits are being enjoyed by freelance crowd workers and individual business owners. On the other hand, the protections for app-based on-demand gig workers are still ambiguous, as well as workers are forced to work in inverse proportion to the growth of the industry.

This paper focused on the activities of the Uber Eats Union, one of the labour unions of the online food delivery platform and examined the current situation and prospects of their bargaining process with employers and relevant institutions. The union has taken various actions to resolve three main regulatory issues faced by OFD workers, such as compensation for accidents and injuries, transparency in the operation and adequate remuneration. Firstly, the union continuously requested collective bargaining to employers. However, the Uber side continued to refuse on the grounds that delivery workers are not equivalent to "employed workers" under the Labour Union Act. Secondly, the union also approached institutions such as the MHLW and the JaFDA, but neither they have come up with concrete solutions. The current promising option was a request for redress with the Tokyo Metropolitan Government Labour Relations Commission. The issue is whether Uber Eats workers qualify as "workers" under Article 3 of the Labour Union Act. The formation and actions of the Uber Eats Union have become a benchmark not only for other online food deliverers, but also for whole platform workers. The outcome will be a major turning point in the treatment of them in the future. Their actions have the large potential to have a major spill over effect on the future of labour relations in "gig work" using platform applications.

In the context of the Japanese gig economy, this paper has focused only on the online food delivery industry, especially Uber Eats Union, but the Japanese food delivery industry is very large and the actual labour relations are much more complex than those of the app-based workers, and there are several layers of exploitation structures, ranging from large corporate contractors to subcontracted independent workers (delivery workers). Therefore, future research needs to broaden the scope of the study to include more macro industrial relations and solutions in the food delivery industry. At the same time, further consideration of industrial relations in the context of Japanese gig workers and academic tracking of collective bargaining could be adapted to Malaysia and other countries where on-demand gig workers such as online food deliverers are part of the domestic economy.

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¹¹⁷ Syed Jaymal Zahiid, "Critics again call out gig work's exploitative model after Socso announces subsidy for Grab, Foodpanda riders," *malay mail*, July 23 2021, <https://www.malaymail.com/news/malaysia/2021/07/23/critics-again-call-out-gig-works-exploitative-model-after-socso-announces-s/1991905>.

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