

Significance and Tasks involved in Establishment of a Labor Tribunal System

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1. Introduction

A Labor Tribunal Law was enacted on May 12, 2004, as a move towards the establishment of a new system of resolution of individual labor disputes by what are known as labor tribunals (scheduled for April 2006). Following the establishment of an administrative-led alternative dispute resolution (ADR) system, the reform of the judicial system in the form of adoption of labor tribunals, has brought to a prima-facie conclusion the series of discussions concerning the establishment of a system of individual labor dispute settlement, which started in the 1990s. This article will outline the purposes and special features of this labor tribunal system, and seek to shed light on tasks that may have to be tackled in the future in order to achieve the purposes set at the initial stage.

2. Background to Establishment of a Labor Tribunal System

This section will give a brief account of the background to establishment of the labor tribunal system. It was in the late 1980s that discussions concerning establishment of a system of settling individual labor disputes first drew attention in Japan. The initial interest in the issue arose from a theoretical point of view¹, doubts being cast on the effectiveness of labor laws in Japan where there were an extremely small number of legal disputes compared to European countries², and the need to form a basis for the principle of amendment of labor contracts. However, changes in the employment situation and labor-management relations following the collapse of the bubble boom, along with

¹ Research Report “Kobetsu Rodo Funso Shori System no Genjo to Kadai (The Present State of and Tasks for the Individual Labor Dispute Settlement System),” Japan Labor Institute, 1995.

² Formerly in Japan, there were no tribunals specializing in labor cases, which were handled by ordinary courts. In 1991, the number of new cases accepted by district courts as ordinary lawsuits totaled a mere 669. The figure was extremely small compared to countries in Europe or the U.S.A., but has been increasing ever since; it nearly doubled—1,307 cases—in 1993 and rose to 2,092 in 2000. In fiscal 2004, the number of ordinary lawsuits cases newly accepted by district courts was 2,519. See page 123 ff of the Lawyers Association Journal Vol. 57, No. 8 (2005).

the rapid globalization of market economies, lead to an increasing number of labor disputes over dismissals and deterioration of working conditions occurring in Japan in the 1990s. In view of this situation, the establishment of a system of resolving labor disputes easily and swiftly had become a fairly practical issue, leading, in the latter half of the 1990s, to active discussion among labor-related, business and governmental circles³.

The discussions at that time tended towards an improvement of the administrative-led dispute settlement system. One achievement was that a Law on Promoting the Resolution of Individual Labour Disputes was formulated in July 2001, and that general labor counseling centers and Commissions for Adjustment of Disputes were set up within prefectural Labour Bureaus, which are national organizations. At the same time, many local labor relations commissions, whose original tasks were to deal with collective disputes through examinations of unfair labor practices and adjustment of labor disputes, began tackling mediation in individual labor disputes.

The formation of a labor tribunal system is not simply a result of discussions seeking establishment of a system of settling such individual labor disputes. The discussions began as a call for formulation of a system of dispute settlements which would be more feasible than, and an alternative to, the existing system on the tacit premise that Japan's judicial system would not change so drastically. The premise, however, had crumbled. With the globalization of the market economy, businesses related to the handling of disputes were themselves exposed to market competition, and so the move towards the nurturing of globally-conscious legal professions and swift judicial proceedings gathered momentum: In July 1999, the government set up a Judicial Reform Council (headed by Koji Sato), initiating discussion concerning legal reform. Reforms of the justice system had been considered to take place only once in a hundred years and involved fundamental reforms of the system.

³ JTUC-Rengo (the Japan Trade Union Confederation), "Research on a New Labor-Management Dispute Settlement System (interim report)," 1995; "Research on a New Labor-Management Dispute Settlement System (final report)," 1998; Nippon Keidanren (the Japan Business Foundation) "On the Future Form of the Labor Relations Commission System," 1998; and "Opinions concerning the Judicial System (final report)," 2000. For discussions in the field of labor law studies, see page 160 ff of Shigeya Nakajima, "Determination and Amendment of Working Conditions, and Dispute Settlement Systems" and other papers in 'Lectures on Labor Laws in the 21st Century, Vol. 3 (2000)'.

In view of this, emphasis of the reforms had been placed on the training of the legal professions, improvement and speeding up of handling of civil cases, and realization of citizen participation in the legal procedures of criminal cases; less attention was paid to labor cases. However, partly thanks to efforts of Zensen Domei chairman Takagi (now chairman of Rengo), who had joined the above-mentioned council as a workers' representative, labor cases related to intellectual property and errors in medical practices were incorporated in cases requiring professional knowledge. In June 2001, the council drew up the final version of its opinion report, calling for "considerations" of "adoption of a mediation system for labor disputes" and "the rights and wrongs of adopting a judicial system to which persons with professional knowledge of employment, and labor-management relations commit themselves."⁴

In February 2002, in response to the opinion report, a study group for labor issues was formed within the Bureau for Promotion of Judicial System Reform in order to discuss specific directions of the reform. The study group, headed by Kazuo Sugeno, was comprised of academics, representatives of labor and management, and actual legal professionals (representatives of the Labor Lawyers Association and the Management Lawyers Council). There had been vigorous debate; agreement was rarely reached between labor-management members and practical lawyers concerning the citizen-participation system, and the group almost failed to draw up a unanimous proposal. Nevertheless, on the one hand there was a presentation by three academic members of a proposal concerning the "direction of an interim system"⁵, and on the other, there was a hearing of career judges invited by the Japan Law Foundation (from employment tribunals in England and labor courts in Germany).

⁴ Reforms of labor cases discussed and reform realized by the Judicial Reform Council were greatly attributable to the efforts of Tsuyoshi Takagi, a council member from labor circles. For his activities in the Judicial Reform Council and the study group for labor issues, see Tsuyoshi Takagi, "Judicial System Reform and Labor," *Journal of the Japan Labor Law Association*, Vol. 3 (2003), p. 3 ff.

⁵ Where the formation of a collegial body comprising a judge and labor and management representatives is concerned, four patterns were proposed in accordance with whether the body should be authorized, not just to be committed to mediation, but to make certain judgments. If so, which function—mediation or judgments—to emphasize and how to connect such functions with the lawsuit procedures: (i) the type where either mediation or arbitration is chosen; (ii) the type where mediation and arbitration are combined; (iii) the type where mediation and arbitration are blended; and (iv) the type where arbitration only is sought. Type (iii) is the closest to the proposal that was agreed upon.

Members of the management circles and of labor lawyers reached an agreement in July 2003, and in December of the same year the study group compiled a “summary of the labor tribunal system”, which was to lead to the latest legislation⁶.

3. Outline and Main Features of the Labor Tribunal System

(1) Outline and Main Features

(a) Labor-Management Arbiters

The first feature of the new labor tribunal system⁷ to be adopted is that a panel of labor arbiters will comprise a labor examiner who is a career judge and labor arbiters from both labor and management sides. Moreover, there are several noteworthy features. The first is that, unlike councilors in domestic determination cases who simply witness or hear opinions (Article 3 of the Domestic Determination Law), or labor and employer members of labor relations commissions—who only participate in hearings to be held prior to judgments over unfair labor practices which are made exclusively by public members (Article 24, paragraph 1 of the Trade Union Law)—arbiters have identical right of verdicts with judges. This is as stated in Article 12, paragraph 1 of the Labor Tribunal Law (hereinafter referred to as the “Law”), which says, “resolutions of labor-management arbiter members shall be determined by a majority.” In other words, this takes the form of the participation of arbiters in judgments⁸ where they deal with them in the same position as examiners, and thus can be seen as achieving the participation of citizens in civil cases just as in the case of citizen judges of criminal cases.

(b) Determinative function

The second feature is that the labor tribunals will possess not only an

⁶ For the process of discussion in the study group for labor issues, see Kazuo Sugeno, “Judicial System Reform and the Study Group for Labor Issues,” *Jiyu to Seigi*, June 2004, page 14 ff.

⁷ For description of the labor tribunal system, see Takashi Muranaka, “Outline and Significance of the Labor Tribunal System” *Kikan Rodo Ho (Labor Law Quarterly)*, Vol. 205, (2004), page 25 ff; and Makoto Johzuka, “On the Current State of Labor Cases and the Newly Established ‘Labor Tribunal System,’” *Hanrei Times (Judicial Precedent Times)*, No. 1147, (2004), page 4 ff.

⁸ For the significance of “labor-management participation,” see Kazuo Sugeno, “Judicial System Reform and Labor Tribunal,” *Journal of the Japan Labor Law Association*, Vol. 93 (2001), p. 387; and Katsutoshi Mori (ed.), “International Comparison of Individual Labor Dispute Settlement Systems,” *the Japan Institute of Labor* (2002), p. 325.

adjustment function (mediation), but also a determinative function (judgment). This is quite different from the way in which the function of the ADR system for individual labor disputes has so far been confined to an extremely mild adjustment function calling for conciliation. Since it is crucial for such systems to be equipped with a determinative function able to effect coordinated settlements, the new system is quite advantageous in terms of acceptability.

(c) Non-contentious procedure

The third feature is that court procedures will be aimed at non-contentious procedures, outside any legal proceedings. This was a desperate solution devised in order to achieve two goals: the establishment of a mediation system for labor disputes, and adoption of the citizen-participation system as referred to in the final opinion report of the study group for judicial system reform. The labor side called for adoption of a system allowing both labor and management to participate in judgments, whereas the management side strongly opposed this. The fact that labor judgments will be made via a non-contentious procedure shows two things: On the one hand, that the judgments will be kept from the public (Article 16, paragraph 1 of the Law), and, on the other, that the emphasis on official authority (Article 17 of the Law—which labor court systems in Europe have adopted on the grounds of the asymmetry of the parties involved in disputes on labor cases—has been unexpectedly realized⁹. However, it does not take the form of a prior examination, but is designed to provide an alternative to the traditional legal proceeding; whether or not this procedure is made use of will depend on its being seen as easy to use.

⁹ The theoretical distinction between contentious and non-contentious cases is somewhat controversial (see page 19 ff of Koji Shindo, “the Civil Procedure Code, 2nd printing, revised edition”). However, judging from judicial precedents, it seems to be understood that, while the former signifies disputes over the presence or otherwise of rights and obligations, the latter signifies disputes over the specific nature of rights and obligations—thus, in cases where judicial courts exercise their discretionary powers to meet a certain purpose from the position of guardian to define that specific nature. Therefore, the procedures of non-contentious cases are not necessarily open to the public and do not involve cross-examinations, but rely on detections, if necessary, by the courts themselves, carried out *ex officio*, rather than relying on arguments in accordance with documents and evidence presented by the parties concerned. In such procedures, moreover, judicial courts have a fairly large discretion. See page 19 ff of Koji Shindo, “the Civil Procedure Code, 2nd printing, revised edition”; Noboru Koyama “Contentious and Non-Contentious Cases,” *Jurist No. 500* (1972), page 310 ff; Masahiro Suzuki, “Contentious and Non-Contentious Cases,” in *Minsoho Hanrei Hyaku-sen* (100 Selected Precedents Related to Civil Procedure Code, 2nd edition,) (1982), page 12 ff.

(d) Handling within Three Sessions

Fourth, the system is designed so that the procedure will terminate within three sessions (Article 15, paragraph 2 of the Law). A labor tribunal will “terminate” the court procedures if it determines that the “nature of the case” is “inappropriate for swift, adequate solution of the dispute” (Article 24, paragraph 1 of the Law). Although swiftness is the most important element for a dispute settlement system, the maximum limit of three sessions has undeniably produced a restraint on the use of court procedures. This limit of the number of sessions is the most conspicuous feature of the new system, along with the participation of labor-management representatives, and will affect the practical performance of the system.

(e) Effects of Judgment

Fifth, judgments have the same effect as judicial amicable settlements (Article 21, paragraph 4 of the Law). Thus, unlike the administrative-led ADR system, the same enforcement power as definitive judgments by the court will be attached to decisions by dispute handling organizations, which benefits parties involved in disputes in terms of acceptability. However, the judgment will be nullified if one of the parties concerned makes a formal objection within two weeks (Article 21, paragraphs 1 and 3 of the Law). This provision was the most controversial issue at the final phase of the discussions by the labor study group, in that if a judgment becomes invalid simply by a motion of objection, the labor tribunal system itself could become quite useless. In the end, the discussions decided that, with a motion of objection, “it shall be deemed that an appeal has been made against the appeal for judgment (Article 22). In other words, the parties concerned are not required to appeal again (because the written application for appeal is considered to be a written complaint. Article 32 of the regulations), and the documents and materials obtained during the course of the court procedure can be used as such for the procedure for a judicial action. (However, it is necessary for the party concerned to “request the issuance of duplicate copies of records, etc. because those documents are not automatically passed on to the subsequent procedure.) All the party has to do is to pay the difference between the costs of the court procedure and those of the judicial action.

(f) Establishment of Labor Tribunals at the District Court Level

Sixth, labor tribunals will be established in 50 district courts across the country. If the adjustment function (mediation) had been emphasized, the

tribunals might have been set up in summary courts, but because it was decided that the determinative function was the more important, they were established in district courts throughout the country. In this sense, the tribunals seem to have been given a crucial role as the main part of the system of dealing with individual labor disputes.

(2) Position of Tribunals from the Viewpoint of Comparative Law

In the features described above, the labor tribunals share the following common aspects¹⁰ with the standard labor court system often seen in European countries: i) Representatives of labor and management form part of a single organ for dispute settlements. ii) Adjustment and determinative procedures are well coordinated. (iii) Settlement of disputes is sought for by simple procedures, but are quite different from the latter in these respects: (a) that the jurisdiction of the tribunals in this new system is confined to civil disputes related to individual industrial relations; (b) that cases are handled in the procedure as non-contentious, unlike judicial procedures traditional in courts, and disclosure to the public is not guaranteed; (c) that there is a limit on the number of sessions; and (d) that, although an enforcement power identical to that attached to judicial amicable settlements is given to judgments under the new system, it is not of the kind that may lead to an appeal to a higher court, but becomes invalid simply through a motion of objection. In terms of the number of the labor tribunals to be set up, the new system is larger than the employment court system in the U.K.; it is closer in nature to the counterparts in Germany or France, which incorporate the mechanism of the mediation procedures. At the same time, it also resembles the U.K. system in that an order of execution must be obtained from district courts in order to have the judgment endorsed with power of execution. Either way, the labor tribunals will be quite unique, bearing little resemblance to organizations dealing with labor disputes in any other countries.

¹⁰ See the Research Report cited above, and page 305 ff of the "International Comparison" cited above.

4. Tasks for the Labor Tribunal System

(1) Prerequisite Tasks for the System

(a) Securing of Arbiters

For a successful labor tribunal system, it is crucial, above all, to secure reliable arbiters. Since a panel of arbiters will be set up for each individual case in individual district courts, quite a considerable number of arbiters have to be secured. For this, the significance of citizen-participation lies in its reflection of the feelings of workers themselves in the application of related laws, and the actual application of the laws to enterprises and workplaces. To this end, basically, it is necessary to designate as arbiters those who are responsible for employment, and for labor and management relations, such as persons from workers' and employers' associations, and businesspeople. It seems unnecessary to deliberately choose those with a good knowledge of labor-related laws – this issue has been intensively discussed in the study group. It is persons who, as those involved in labor-management relations, have a sound judgment of labor issues, and who are eager to play an active role in forging fair employment practices through the labor tribunal system that should be chosen as arbiters¹¹. In the cases of adjustment committees for individual disputes, it seems that public consultants on social and labor insurance or former civil servants engaged in labor issues have been designated as committee members. However, such persons should not be appointed as arbiters under the new system just because they are familiar with labor laws, although a person of a labor or management organization engaged in, for example, counseling services and having a certificate as the public consultant could well be designated as an arbiter. Currently, an industrial relations association is undertaking a project entrusted by the Ministry of Health, Labour and Welfare, providing candidates for labor arbiters with training programs.

(b) Securing of a Cooperative Structure between Career Judges and Arbiters

In the meantime, judges to serve as labor examiners will be required to enhance their specialized knowledge in labor laws, as well as to change their

¹¹ For specialized features of labor cases, see Kazuo Sugeno "Labor-Management Disputes and Role of Judicial Courts," *Hoso Shiho (Judicial Times)* Vol. 52, No. 7, p 1 (p. 23) ff.

mindsets when experiencing “citizen-participation” in civil cases for the first time. This is so they will be able to take an appropriate initiative in sorting out of the focal points of disputes and in the procedures related to evidence, and to guarantee free discussion with arbiters in the collegial body. Since the time is limited, request forms and other necessary documents should be mailed out prior to the sessions; brief accounts should be given, ahead of the first session, concerning the case itself and focal points; and, as practice in the employment courts in the U.K., examinations should be made intensive, with sufficient time devoted to them during the sessions.

In future, it could be possible to appoint part-time judges as labor examiners, as in the U.K., but until the labor tribunal system has settled down, it is desirable to have incumbent judges in district courts serve as examiners.

(c) Assistance to Workers in Using Examinations

Examinations begin with a request made to a court either by workers or by an employer “in written form stating the purpose and any reasons” (Article 5). However, since labor examinations attach emphasis to swift processing—intended for “typical disputes” which are relatively easy to handle—it is vital to make it easy for ordinary workers to take advantage of examination procedures. It is therefore desirable to make request forms available at the counter of courts, as well as to give advice concerning preparation of documents and certificates required for examinations, and allocate legal service officers who give advice on calculation methods of average wages and extra wages if requests concern the examination of wages. Since there are only three sessions, labor administration should help the courts, if those cannot afford to carry out their preparation by themselves.

Many labor courts and labor tribunals in Europe are operated by labor administration or in collaboration with judicial and labor administrative authorities, since they are wary of any unbalance of power among the parties involved in disputes of labor cases. Hence, labor administration will be required, from the “viewpoint of the legal protection of workers,” to formulate a labor contract law, and build an appropriate cooperative relationship with the judicial administration in assisting dispute settlements.

(d) Establishment of Substantive Laws

In order for disputes to be settled within three sessions, the formulation of a labor contract law is essential—apart from simplification and classification of examination procedures—in that certain criteria for a settlement must be

clearly presented in examinations¹². The currently most common matters in individual labor disputes concern dismissals and deterioration of working conditions, and should be handled in an appropriate manner. Where dismissals are concerned, aid should be provided to workers in pursuing their desired ways of settlement, and it is also important to confirm the principle of reinstatement of the workers concerned and call for certain rules concerning monetary payment for dissolution, for the sake of greater advantage in accessibility. It will not necessary to establish a rule whereby employers can one-sidedly resort to the monetary settlement, because such a rule would have an impact on the employment system in Japan. However, at the same time, it is unnecessary to reject the formulation of a rule calling for monetary settlement, which can be given as a choice to workers. As for cases concerning deterioration of working conditions, it is not required to create a method of calling for ex-post relief following the changes made to working conditions, but rather to create a legal device, which allows formulation of new contracts after a labor tribunal procedure has seen a judgment¹³.

¹² Since the principle related to the abuse of dismissal power was put on the books in 2003 (Article 18-2 of the Labour Standards Law), debate over the establishment of a labor contract law has been heating up. In October 2005, a study group for ideal labor contract legislation, established within the Ministry of Health, Labour and Welfare, compiled a report presenting the legal grounds of case laws concerning monetary settlement of dismissals and disadvantageous alteration of working conditions; a scheme for amendments of labor contracts for continued employment; and generalization of the labor-management commission system. These issues are currently under discussion at the Labor Policy Council. It is not yet certain whether the debate will result in the enactment of a law, but the tasks involved in establishment of a labor contract law are the issues affecting the most desirable forms of labor-related laws in future. Thus, the debate should not be concluded simply by the formation of criteria for swift proceedings in the labor tribunal system.

¹³ In dealing with amendments of contracts as a consequence of reasoned decisions by the judicial courts, from the lawmaking standpoint it is desirable to make such amendments based on the right to seek amendment of contracts which permits the parties to the contract right to adjust its contents, rather than based on a notice of amendment or cancellation of the contract. This is because a notice of amendment or cancellation leads in practice to forcible execution by pressing workers to accept dismissals, and the workers are obliged, if only temporarily, to accept the new conditions, although they are entitled to reserve their acceptance of the dismissal. Among proposals for the law on the basis of the right to claim amendment of the contents of contracts, Rengo-RIALS (Research Institute for Advancement of Living Standards) published a "Draft Proposal for a Labor Contract Law" in 2005.

(2) Tasks related to System Operation

(a) Scope of Individual Labor Disputes subject to Examinations

A problematic feature of the labor tribunal system in operation is that the coverage of the system is limited to “civil disputes arising between individual workers and business proprietors concerning the presence or otherwise of labor contracts and other matters related to labor relations (civil disputes related to individual labor relations)” (Article 1). Since disputes to be covered concern “individual labor relations”, cases of unfair labor practice—collective labor disputes under the Trade Union Law—are not, in general, subject to the tribunal system. Even so, an act of claim against unfair labor practices by a worker will not be rejected during the course of examination of a dismissal case¹⁴. On the other hand, it is not difficult to see that disputes affecting so-called contract workers who are in work under a contract, outsourcing agreements, etc. should be covered by the tribunal system, since disputes involving such workers arise between individuals and—not employers—but “business proprietors.” The problem is disputes arising between workers concerning sexual harassment, bullying, and similar workplace issues and disputes directed to superiors or colleagues, together with (or without) the company. Such cases are not, if the letter of the law is complied with, subject to the examination procedures. If the current Law cannot be interpreted flexibly to admit such cases, it should be modified, in that there is no good reason to reject them¹⁵.

Where labor relations affecting public servants are concerned, court precedents suggest that their appointment is considered to be administrative action. As such, they are associated with the public statutes, so that from the perspective of “civil disputes” matters involving public servants would seem to be outside the scope of the application of the system. However, even in the labor relations affecting public servants, cases involving claims for compensation against sexual harassment, etc. are classifiable as civil disputes, so that not all cases affecting public servants are outside the jurisdiction of the industrial tribunal system¹⁶. At the same time, disputes over dismissals or termination of continuing employment contracts of temporary staff members, etc. should not

¹⁴ See page 27 of Muranaka (2004) cited above.

¹⁵ Article 2, paragraph 1, item 9 of the Labour Court Law in Germany states that “civil disputes among workers arising from illegal acts in relation to the maintenance of the order in collaborative work or labor relations” shall be also under jurisdiction of the labor courts.

¹⁶ See page 27 of Muranaka (2004) cited above.

necessarily be seen outside beyond the jurisdiction of the system. This is because labor relations affecting such workers can be considered to be relations under labor contracts, whereas it is undeniable that “civil disputes” could arise in relations affecting dispatched workers.

(b) Possibility of Practical Restrictions on the Subject of Disputes due to the Limited Sessions

Civil disputes concerning individual workers, which seem unlikely to be processed within three sessions, are deemed as “inappropriate for the labor tribunal procedures to seek a swift, adequate settlement of the dispute” (Article 24 of the Law), and processed as “termination.” Cases which are most likely to be rejected from among the requests for swift handling are cases related to disadvantageous changes in labor conditions and cases related to discrimination in employment. Matters concerning unfavorable changes in employment regulations, etc. are to be “judged after comprehensive consideration of the following: the degree of disadvantages to be suffered by the workers concerned due to changes in employment regulations; the nature and degree of necessity for the changes from the viewpoint of the employer; suitability of the nature of the amended employment regulations; measures for compensation or amelioration of other related labor conditions; the background to negotiations with the trade union, etc.; response of other trade unions or other employees; the general state of affairs in the society of Japan concerning similar matters; and so on” (the Daishi Bank Case, February 28, 1997, Supreme Court). Thus it is extremely difficult to process such cases within three sessions. At the same time, it is also highly likely that discriminatory cases in employment such as discrimination against thought and creed, gender discrimination, etc. will be rejected on the grounds that these cases do not fit into the coordinated settlement and normally require a large amount of time for verification of evidence.

Nevertheless, since workers’ action for disputes (settlements aimed at) are varied, it seems that workers should not give up on the procedure from the start just because the cases they are involved in do not concern disadvantageous changes in employment conditions or discrimination in employment. If there is any possibility that cases can be settled coordinately, or if cases are simple enough, they should be processed in the examination procedure. In sum, what is important is a flexible judgment.

(c) Prompt Procedure

Expeditious proceedings are the other distinguishing feature of the labor tribunal system, apart from the introduction of labor-management arbiters. “Panels of arbiters must promptly hold hearings of the parties concerned and organize the focal points and evidence of disputes” (Article 15 of the Law), but, at the same time, “the panels may verify the facts *ex officio*, and, upon request or *ex officio*, investigate such evidence as is deemed necessary” (Article 17 of the Law). Thus, the panels will be required not only to take the initiative during the sessions but also to make preparations, such as calling on the parties concerned to submit necessary documents, by the time the first session begins.

(d) Procedures by Proxy

For the examination procedures, there is a clause concerning lawyers by proxy. Courts, “when they determine that it is necessary and reasonable in order to protect the right and interest of the parties concerned, and to advance the labor tribunal procedures smoothly, may admit persons who are not lawyers (Article 4 of the Law). On this point, it is likely that a lawyer will be called on to act as a proxy for the party concerned in order to realize efficient examinations within the proscribed three sessions¹⁷. However, considering the realities of the examinations, the tribunal system should be made flexible enough to allow labor counselors of labor unions and others to act as proxies once the examination procedure in question has got on the right track. This is only natural, in that the handling of individual disputes consists of major tasks for which unions are normally responsible¹⁸. On the other hand, if lawyers are required to act as proxies, it will be essential to set up some kind of legal aid system

¹⁷ Sugeno states on page 22 of the paper cited above that “it is desirable for specialist lawyers to be involved in order to handle cases effectively within three sessions at a maximum,” which seems to aim at the launching and firm establishment of a labor tribunal system. For the system to work as such, it should be established to work properly even without lawyers.

¹⁸ In the case of the labor court system in Germany, only lawyers only are allowed to act as proxies in the second or subsequent trials. However, in the first trial, the proportions of cases where lawyers act as proxies, those where secretaries of trade unions act as proxies, and those where the parties concerned act themselves, have so far been more or less the same. In recent years, however, the proportion of cases where lawyers act as proxies has been increasing due to more easily readily insurance against court actions.

(e) Openness

Labor tribunals handle cases, in principle, behind closed doors, and the labor tribunal may allow “persons who it determines to be reasonable” to observe proceedings for arbitration (Article 16). This is the same provision as laid down in domestic determination cases. The proceedings are not open to the general public, for the sake of protecting the privacy of the parties concerned and the pursuit of coordinated settlements. However, the proceedings are disputes for which the focus has been placed on “settlement taking into account the actual circumstances in cases affecting the interests of the parties concerned” (Article 1), so that it seems that the tribunal system should be utilized flexibly enough to permit observation if workers so wish¹⁹.

(e) Formation of Legislation through the Arbitration Proceedings

The positive significance of the labor tribunal system is that tribunals examine cases and make decisions, rather than simply play a mediatory role. They are required to draw up a decision stating the principal judgment and outlining the reasons (Article 20, paragraph 3 of the Law). Since the precedents created by the tribunals will serve, like court precedents, to form criteria for settlements of future individual labor disputes²⁰, tribunals are required to make clear decisions concerning the presence or otherwise of rights and obligations.

Here, emphasis can be given to the fact that the labor tribunal system has been launched to deal with disputes as non-contentious cases. The decision to regard disputes as non-contentious is a kind of political compromise where citizen-participation in the lawsuit procedures is hardly acceptable, making it possible for tribunals, as well as citizen-participation, to undertake procedures involving decision-making, and not just coordinated judgments. At the same time, however, it is not wrong to say that the parties committed to the formation of the system shared an implicit recognition of the nature of labor cases—that is, as qualifying for treatment as non-contentious cases. In short, workers in many cases request for adjustment of the interests of the parties concerned and consideration of various other circumstances, since their rights and authorities obviously pertain to dismissals, job rotation, transfer, and assessment. Clearly,

¹⁹ Muranaka (2004) states on page 31 that union executives in the case of dismissal of union members, and employees who have been treated in the same way as those suffering from disadvantageous alterations of working rules should be allowed to observe the examinations.

²⁰ See Kunio Miyazato “the Reality of Labor Cases and the Dispute Settlement System,” p. 45, *Kikan Rodo Ho* (Quarterly Labor Law), 2004.

as seen above, it is also necessary to upgrade substantive laws and clarify the legal requirements for such rights and authorities to be exercised as much as possible, but it will still be necessary sometimes to dismiss judgments on the basis of rationality and other factors. One conclusion, if the nature of labor cases conforming to the non-contentious category is taken into account, is that labor tribunals need not hesitate²¹ during the proceedings to make decisions that may lead to the formation of certain legislation. In fact, tribunals should take the initiative in the birth of new legislation rather than waiting for existing laws to be amended, thereby making themselves more flexible in the resolution at hand and effective in legal disputes occurring in future.

5. Significance in the Labor Dispute Settlement System, and Future Tasks

(1) Significance in the Labor Dispute Settlement System

In the first half of the 1990s, the following five features of the labor dispute settlement system were highlighted from the viewpoint of comparative law: (i) Its heavy reliance on public systems in an immature setting apart from the legal system; (ii) lack of participation, if the public system is looked at as an organization, of representatives of labor and management associations; (iii) its lack of coordinated settlement procedures preceding any procedures seeking definite judgments; (iv) its failure to achieve social familiarity, though the system was developed to function as an autonomous system within the framework of a private system; (v) its failure to build up a new system corresponding to changes in labor-management relations.

Moreover, no administrative-led dispute settlement system which could realize flexible settlement proceedings and methods was invented; instead, there was simple reliance on a system based on continental law. Nor were organizations or proceedings especially designed for individual labor disputes created. Because of this, the labor dispute settlement system failed to change to make it more easily accessible for workers, and thus gave rise to the remark

²¹ For example, there has been criticism of the verdict in the Maruko Alarm Case (Nagano District Court, Ueda Branch, March 13, 1996, Rokeisoku No. 1590-3. The verdict ruled that it abused discretionary power and was illegal if the wages of part-time workers were “80 percent or less than the wages of female regular employees who had worked for the company for the same number of years as the part-time workers.” A formative verdict of this kind should not be denied, taking into account that labor cases bear the nature of non-contentious cases.

that “the current public dispute settlement system in Japan was a system only for acts of dispute which took no account at all of time and cost, that is, a system for disputes pertaining to personal qualities and value judgment²².” However, over the past decade, as far as the public element is concerned, the system has been subject to fundamental improvement. In particular, the establishment of a labor tribunal system is epoch-making in the history of labor dispute settlement systems.

Nevertheless, it is essential to clearly recognize problems even in such an epoch-making system. A requirement to dispose of cases within three sessions betrays an intention to emphasize nothing but expeditious proceedings. This design suggests that the new system will contribute to the settlement of cases of individual labor disputes where, in the traditional setting, workers have been obliged to give up appeals to the courts and which have been resolved by withdrawing from the dispute settlement system. It will also pay more attention to coordinated settlement methods seeking amicable settlement (mediation) of “typical disputes”, e.g., economic disputes seeking a monetary settlement if the case pertains to dismissals²³.

On the other hand, it is true that one of the main features of the labor tribunal system is undoubtedly the introduction of labor and management arbiters. However, such “citizen-participation” is most advantageous in more complicated cases²⁴, especially in dismissals due to corporate restructuring, changes in labor conditions (disputes over rights), and employment discrimination (disputes concerning the public order and morals). Put differently, types of dispute cases which the labor tribunal system intends to exclude from its coverage in the interest of swift handling are those cases requiring the most

²² See Kezuka “Rodo Funso Shori Ho (Labor Disputes Settlement Law),” Jurist No. 1066, 1995, p. 210 ff (p. 213).

²³ For disputes, classification of acts of disputes, and classification of dispute settlements, see Kezuka (1995) cited in the preceding note.

²⁴ In Germany, evaluation on labor-management participation is higher in higher trials than in lower trials. Career judges appreciate the participation of labor-management arbiters when they deal with somewhat difficult disputes. In the meantime, when Aust-Dodenhoff, Director of the labor tribunal in the state of Berlin, was invited to Japan by the Japan Federation Bar Associations in July, 2003, and asked about the role of honorary judges, he made the following comment: “Their familiarity with practical affairs of the labor process and the situation of each vocational type” was helpful for career judges, and also “useful for identification of the problems of each case, evaluation of the facts, and assessment of the reliability of witnesses and the credibility of their statements”.

participation of labor-management arbiters in their settlement procedures. Under a spell of the principle of three sessions, if the labor tribunals were specialized in the handling of typical disputes or monetary resolutions, arbiters would be treated by the judges as the icing on the cake. In this light, in order to take full advantage of the arbiters, the tribunals should be actively prepared to deal with somewhat difficult disputes. In this case, however, unless panels of arbiters take the initiative in clarifying the issues (e.g., by calling for submission of necessary evidence), the uneven distribution of evidence in labor cases may end up by making workers avoid labor tribunal proceedings, out of fear of hastily-made within three sessions. If such cases are considered possible, it may be better to say that only cases with clear points of dispute and solid evidence should be eligible for the labor tribunal system. Either way, it will not be an easy task to firmly establish the system with its two outstanding features—expeditious processing and labor-management participation—in full use. Revisions of the system should be made without hesitation if the necessity arises after it is in operation.

(2) Reorganization of Other Labor Dispute Settlement Systems

Now that the labor tribunal system is about to be launched, the existing administrative-led ADR system must be reorganized. Labor administration offices in local governments and the prefectural labor bureaus of the government will continue providing one-stop counseling services as before. In addition, if workers cannot receive sufficient support from courts, or expect a lawyer to file the case by proxy, then the workers might be able to make use of an alternate method of gathering the documents and evidence necessary for arbitration proceedings. Since the number of sessions of tribunals is limited to three, they could achieve this with the help of the labor administration office of the local government, the dispute adjustment committee, or whatever means before making an appeal to the tribunal. However, the basic stance that the government's labor administration should take towards general labor civil cases is to supply direct assistance for tribunals, in order that workers can have easy access to the procedures, rather than creation of an alternative method. Therefore, the dispute adjustment committee, as one of the administration dispute settlement systems, should be committed to the future enhancement of its original scope of duties—i.e., the handling of disputes over the public order

and morals²⁵. Meanwhile, it might be effective for the labor relations committees to firm up their legal standing as organizations for settling collective disputes involving employment regulations, taking into account the fact that it remains uncertain whether the newly established tribunal system is capable of handling issues involving changes in collective labor conditions, such as alterations to working rules.

The private dispute settlement system should also be redesigned, in the light of the establishment of the labor tribunal system. Taking into account the diversification of employment patterns, an open, autonomous settlement system should be developed, both in order to allow various kinds of workers comfortable about access, and to link the system to the labor tribunal system. This would be beneficial both for labor and for management²⁶.

6. Conclusions

Every year, labor bureaus alone hear more than 800,000 labor grievances and more than 160,000 individual workers' complaints related to civil cases. In view of such high demand for settlements²⁷, the labor tribunal system is expected to deal with an increasing number of labor lawsuits, say 5,000 to 10,000 cases, while district courts currently handle 2,500 or so labor lawsuits. For this to be possible, labor and employers associations, the courts, the legal profession, labor administrative agencies and others concerned, not to mention official publicity, should cooperate in firmly establishing the system and improving it in the future.

Discussions from the time of the formation of the Judicial Reform Council up to the introduction of the labor tribunal system have not only brought new expansion of the bodies handling disputes, but are also changing the legal

²⁵ That is, to assist with examinations or lawsuits filed by workers when necessary, such as is done by the employment equality committees in the U.K. and the U.S.A.

²⁶ For methods of development of intra-corporate dispute settlement systems, see Kezuka, "Atarashii Kobetsu Roshi Funso Shori System no Kochiku (Construction of New Individual Labor-Management Dispute Settlement Systems)," *Kikan Rodo Ho (Labor Law Quarterly)*, No. 184 (1997), p. 10 (p. 19) ff.

²⁷ In fiscal 2004, general labor grievances brought to the Labor Bureaus numbered 820,000, individual workers' grievances 160,000, and accepted applications for conciliation 6,014 (according to the Ministry of Health, Labor and Welfare). Apart from these, Tokyo Metropolitan Labour Counseling and Information Centers (former labor administration offices) accepted about 44,000 grievances and dealt with 969 cases for conciliation in the same fiscal year (according to the Tokyo Metropolitan Industrial Labor Bureau).

culture associated with labor laws. Steady progress is observable in various areas including: dialogues between lawyers representing labor and management within the Japan Federation of Bar Associations; a Labor Case Council held by lawyers, representing labor and management²⁸, and judges of the Tokyo District Court; and provision of training materials for judges based on a “note on examinations of labor cases²⁹” written by judges in charge of labor cases. In future, if labor examiners are allocated to district courts across the country and start collaborative work with labor arbiters, the situation affecting labor laws and labor dispute proceedings will be improved even more substantially.

²⁸ The achievements of the discussions concerning measures for improvement and facilitating smooth proceedings in the examination of labor lawsuits are presented in Hanrei Times (Judicial Precedent Times), No. 1143, (2004), page 4 ff.

²⁹ Hanrei Times (Judicial Precedent Times), No. 1144, (2004), page 9 ff.