

# Dispute Resolution Systems in the Workplace: A Study Relating to Their Establishment and Support

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## I. Introduction

In recent years there has been a marked increase in the number of labor disputes, particularly disputes involving individual cases, an increase reflected in a corresponding increase both in the numbers having resort to the One-stop Worker Consultation Corners in Prefectural Labor Bureaus and also in cases brought before the civil courts. A variety of factors are responsible: the lengthening and the deepening of the recession following the bursting of the asset bubble; increasing labor market competition, both at home and from abroad; the increasing diversity of forms of employment and the changes in the traditional Japanese employment system characterized by long-term employment and *nenko* (seniority-constrained) pay and promotion systems. But one aspect is certainly that the functioning of in-house grievance processing systems has declined and more complaints are being brought out into the open.

This situation prompted The Japan Institute for Labour Policy and Training (JILPT) to mount its project for “Research into the institutionalization of, and support for, workplace dispute resolution systems,” spread over two years, 2006 and 2007. The project has conducted interviews and questionnaire research with both labor and employer representatives in Japan, undertaken field work overseas (in US, Britain, France and Germany) including interviewing experts in the identification of and training in dispute-resolution skills. It has also sought to define the systems of dispute resolution that employers and labor should seek to establish and the policies by which such systems can be promoted and diffused. This paper provides a summary of the project’s conclusions.<sup>1, 2</sup>

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<sup>1</sup> The project is responsible for the following publications in Japanese: An interim report in 2007, No. 86 in the series *Rodo seisaku kenkyu hokokusho (Reports of research on labor policy)*, and the final report of 2008 in the same series, No. 98, both bearing the title *Kigyonai rodo funso shori shisutemu no seibishien ni kansuru chosa kenkyu (Research and study on the establishment of, and support for workplace dispute resolution systems)*. The authors of these reports were, Ryuichi Yamakawa (Professor, Law School, Keio University), Yoko Hashimoto (Professor, Faculty of

The paper, following the structure of the final report, begins with an overview of the prevailing systems of dispute resolution in Japan, including public systems, and uses the results of interviews and questionnaires to show the present state of dispute resolution within enterprises. (Sections II-IV)

Given the importance both of efficiently functioning dispute resolution systems and of the quality of the people who actual engage in resolution activity, the next sections deal with the mechanisms whereby disputes arise and are resolved, the skills necessary for their resolution, and the content and the methods of training for such skills. (Sections V-VI)

Finally, we consider dispute resolution systems in the essential context of human resource management practices and end with recommendations arising from this research concerning how to design dispute resolution systems and what public support might be given. (Sections VII-VIII).

## **II. Overview of Dispute Resolution in Japan**

There has recently been a very rapid increase in the number of labor disputes reaching the civil courts, the majority brought by, or on behalf of, individual workers. The increase roughly tracks the lengthening and deepening of the recession following the bursting of the bubble economy, and is presumably a consequence of the labor force reductions, changes in work conditions and personnel policies and organizational changes which the recession prompted. There is a possibility that the recovery will see a relaxation of these trends, but it seems clear that, with the increase in market competition both at home and abroad, and the changes in corporate governance towards an emphasis on shareholders' profit, corporations are continuing to make changes in work

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Law, Gakushuin University), Hideaki Irie (Guest researcher at the Waseda University, Center for Negotiation and Dispute Resolution Research), Masayuki Kitaura (Deputy Secretary General, Japan Productivity Centre for Socio-Economic Development), Kaoko Okuda (Associate Professor, Faculty of Public Policy, Kyoto Prefectural University), Tetsushi Okumura (Professor, Graduate School of Economics, Nagoya City University), Mitsuo Omoteda (Associate Professor, Faculty of Law, Kyoto Gakuen University), Kazuo Taguchi (Associate Professor, Faculty of Management, Takachio University), Naoki Tsuchiya (Associate Professor, Faculty of Economics, Musashi University), and from JILPT, Masato Gunji, Hirokuni Ikezoe, Akio Kihara, Shino Naito, Kasumi Nomura, Makoto Suzuki, and Ken Yamazaki.

<sup>2</sup> "Dispute" for the purposes of this study, meaning individual rather than collective grievances.

conditions and organization and to cut back their work force, leading to a continued expectation that conflicts of interest with their workers will continue to arise.

At the same time, on the supply side of the labor market, there is an increasing diversity of worker profiles—more women, older workers, foreign workers—and an increase in non-conventional types of employment contract. As compared with earlier times when the labor market was dominated by full-time, male, regular workers, workers' personal concerns are more diversified, personnel managers can no longer make do with standard one-size-fits-all policies, and the possibility of conflicts of interest increases.

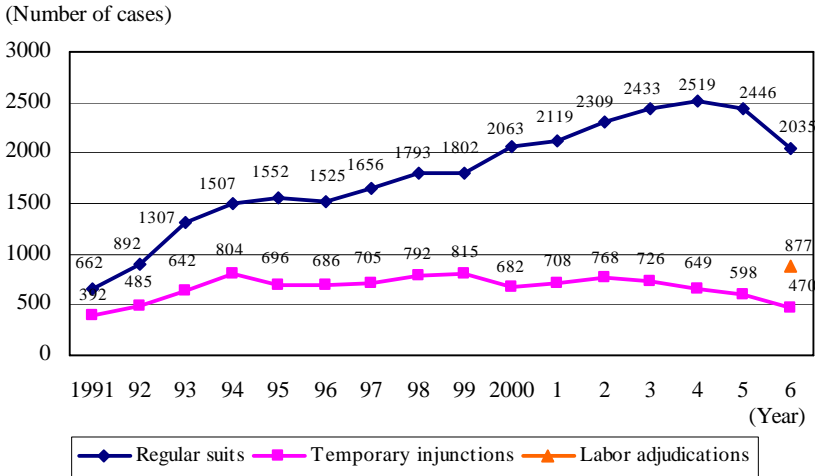
Such factors may promote conflicts of interest and cause worker discontent, but whether or not such conflicts and the resultant discontent express themselves in complaints and disputes is a different matter. It may be that workers will simply put up with their situation and not outwardly reveal their grudges, or it may be that preventive measures resolve the conflict of interest before it gets to the complaint and dispute stage.

In Japan until recently, the first option, “putting up with things,” maybe seen as a rational choice. The so-called Japanese employment system with its long tenures and seniority-constrained pay and promotion system acted to prevent, or reduce the likelihood of, disputes. Workers who lodge a complaint against their employer are generally likely to feel uncomfortable at work and are inclined to look for another job, but in the Japanese system it might well seem a realistically sensible choice to put up with things rather than sacrifice the advantages of security of tenure and prospects of advancement.

As that system changes, so those rewards for “putting up with things” are reduced. As workers' feelings about changing their job begin to alter and the likelihood that discontent will manifest itself in overt disputes is increased. Also, whereas traditionally, the person a worker would complain to would be his immediate superior, with the increasing use of performance pay, that superior is likely, as primary evaluator, to be directly responsible for the decision causing the dispute, or he or she may have been given a greater work load—been made a “playing manager” in the Japanese term—and simply have less time to spare to talk to his subordinates.

Such were the factors that led to increasing arguments in favor of creating a new dispute resolution system, resulting, in 2001, in the Act on Promoting the Resolution of Individual Labor-related Disputes which came into effect in

**Figure 1. Number of newly accepted civil disputes concerning labor matters brought to district courts**



Source: General Administration Bureau, Supreme Court, *Rodo Kankei Minji Gyosei Jiken no Gaiyo* [Outline of labor-related civil and administrative suits], *Hoso Jiho* [Lawyers Association Journal].

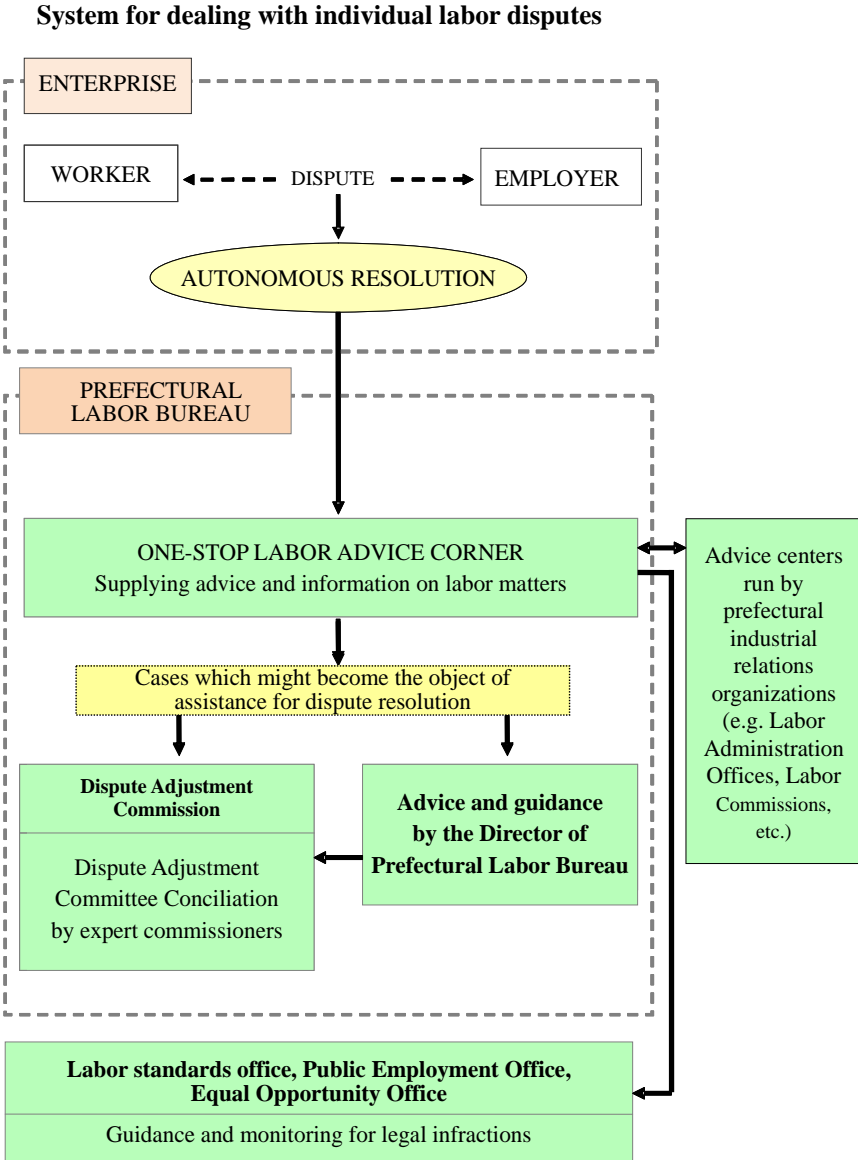
Note: Labor adjudications for 2006 are for April to December. The number in the year April 2006 to March 2007 was 1,163.

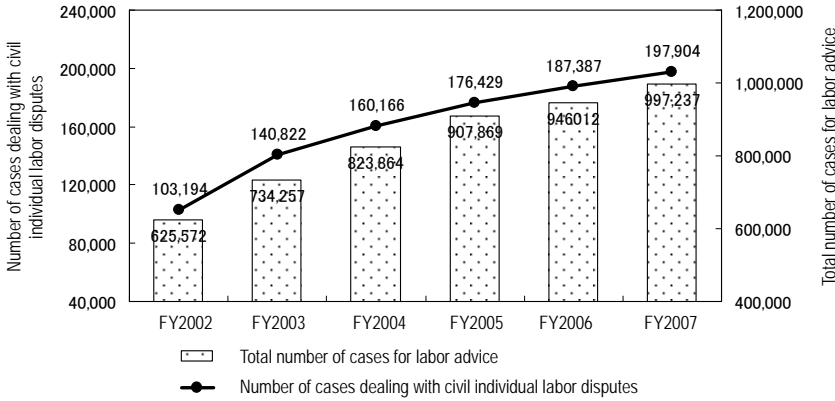
October of that year. It had three elements: a general labor consultation service in the Prefectural Labor Bureau, advice and guidance by the Director of that Bureau, and conciliation by a newly created Dispute Adjustment Committee.

Subsequently, within the legal system proper, a law of 2004 established a system of Labor Tribunals to deal with disputes involving individuals. The tribunals (which began operating in April 2006) consist of a labor-specialist judge and experts from both sides of industry, and are intended to speed up the processing of labor disputes and offer both arbitration and flexible conciliation (See Figure 1, 2 and 3). Further, an amendment of the Labor Union Law, passed in 2004 and effective from January 2005, dealt with disputes involving not individuals but worker organizations. It aimed at speeding up and improving the examination of unfair labor practice complaints made to the Labor Relations Commissions.

These responses of both the judicial and the administrative systems to the increasing number of disputes, together with a revision of the Labor Union

**Figure 2. An outline of the system for dealing with individual labor disputes and number of cases dealt with by the Advisory Service**





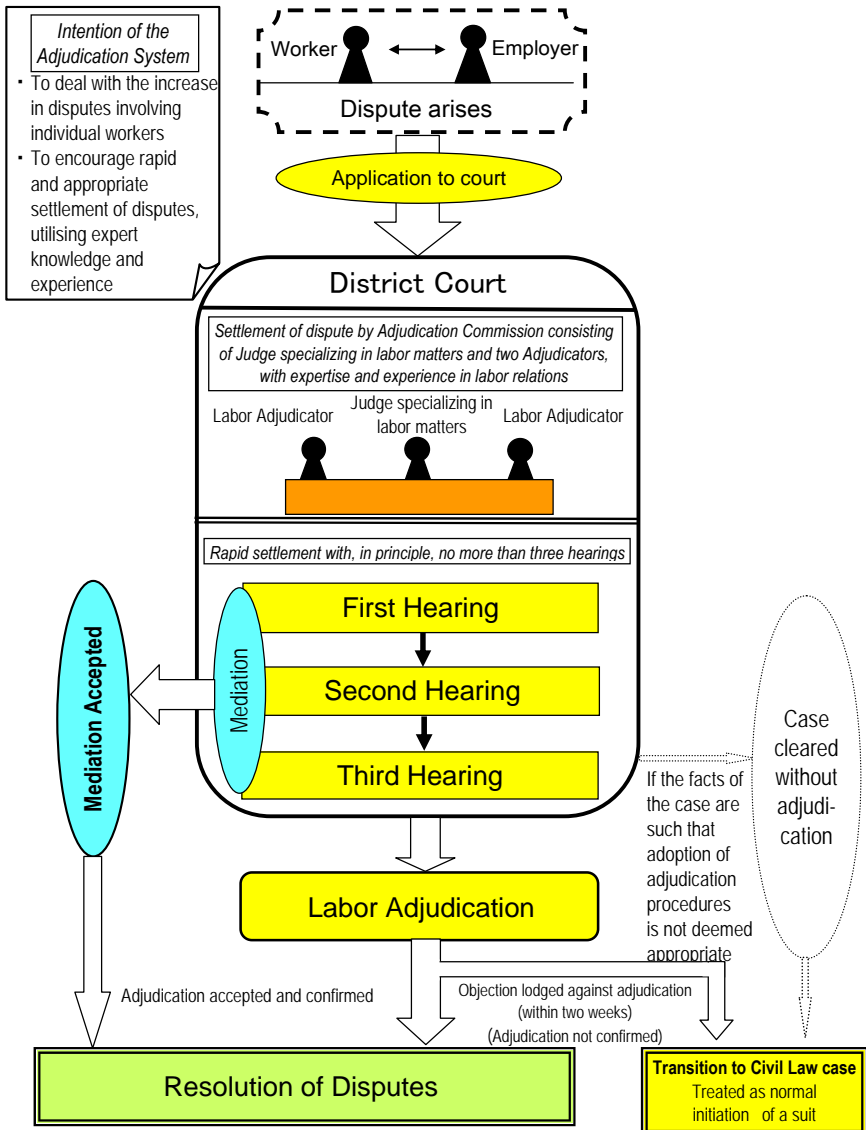
Law’s procedures for dealing with unfair labor practices, brought considerable improvements to the systems for resolving both individual and collective disputes. But they left one area unresolved, namely systems for resolving within-enterprise or private disputes.

There is a general consensus that the resolution of labor disputes at the workplace is best left to employers and employee organizations themselves, but in practice it appears that the grievance committees and the grievance procedures which are formally set up to deal with disputes in firms which have labor unions, are hardly ever used. At the same time, whereas Japanese employers have traditionally put more emphasis on consultation with unions—as a means of preventing disputes before they happen rather than resolving them once they have happened—these dispute-prevention mechanisms seem to have weakened as the evidence cited earlier indicates. These circumstances mean that, even if external, public dispute resolution mechanisms are provided, given their cost and the problem of adapting to the particular circumstances of particular firms, the role of in-firm dispute resolution systems remains of great importance.

But in spite of their importance, there have been insufficient attempts to examine and improve them. There have been studies of worker dissatisfactions and grievances, but even these have rarely been focussed on the systems for resolving disputes.

Such is the background to our study which seeks first to establish by means of earlier studies and our own investigations what actually is the state of dispute resolution in Japanese workplaces today, secondly to consider the systems used

**Figure 3. Outline of the labor adjudication system**



Source: [http://www.kantei.go.jp/jp/singi/sihou/hourei/roudousinpan\\_s-1.pdf](http://www.kantei.go.jp/jp/singi/sihou/hourei/roudousinpan_s-1.pdf)

abroad and how they function, and thirdly, having got some idea of the best sort of system for dealing with disputes in a manner best suited to the circumstances of particular workplaces, to consider what forms of assistance could help such systems to function efficiently.

### **III. The Current State of Workplace Dispute Resolution in Japan: Survey Results<sup>3</sup>**

With the increasing diversity, both of worker preferences and of patterns of employment, and with the trend towards individualized, as opposed to collective rule-making personnel management, it becomes of first-rate importance, both for enterprise managers and for unions, to maintain good communications, create a congenial work environment and make sure that worker discontent is either prevented, or if it occurs, swiftly dealt with. Hence one of the first objects of our enquiry was the state of employer-worker communications, how worker complaints were ascertained, and how they went about resolving them. We sent questionnaires to employers, employees and unions.<sup>4</sup> Below are the main findings yielded by these questionnaires concerning the present state of dispute resolution within workplaces.

Seventy percent of employees said that they were unhappy about something in their workplace: the way work was handled, interpersonal relations, their evaluation rating or work conditions such as wages and hours (Figure 4). There is a wide variety of both formal institutions and informal procedures for ascertaining and dealing with such discontents. Of these, firms tend to put most emphasis on “consulting with managers” and employees on “consulting with

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<sup>3</sup> This section describes the questionnaire survey of 2007. The interim report (sections 1 and 2 of chapter 1) examines the existing literature on the nature of complaints and grievances, how they are dealt with, and what seem to be the problems to be resolved.

<sup>4</sup> Response rates for the three questionnaires are as follows. The questionnaires themselves and the initial tabulations are printed as an appendix to the final report.

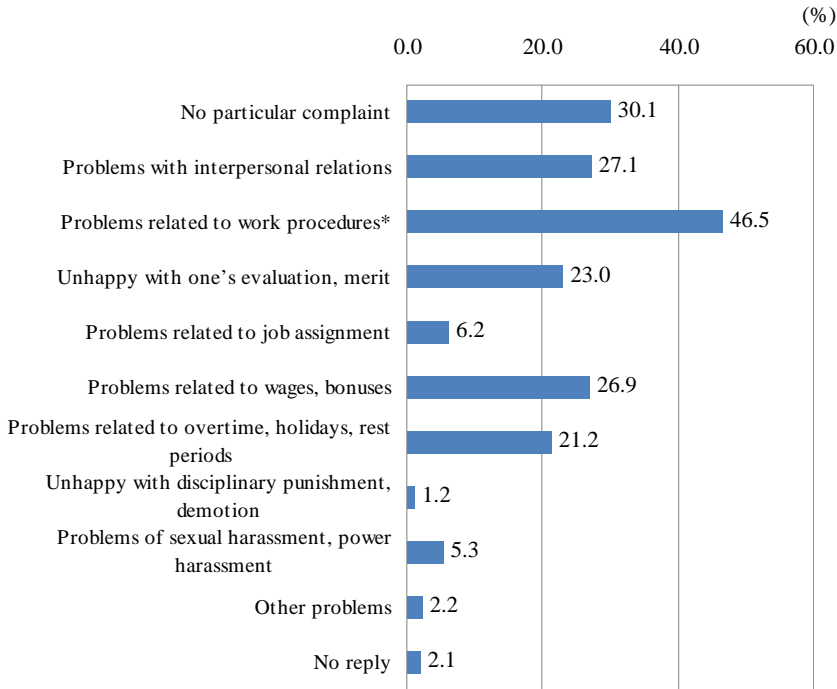
Employers questionnaire: Sent to 10,000 private sector companies (excluding agriculture and fisheries). 1,792 returned: effective response rate 17.9%.

Employees: Sent to 100,000 including part-time, daily hired and contract workers. 10 sent to each company with the request that they be passed on to 3 managers and 7 ordinary employees. 10,851 returned: effective response rate 10.9%.

Unions: Sent to 10,000 unions in workplaces with 100 or more employees (both stand-alone unions and units of federations). 2,349 returned: effective response rate 23.5%.



**Figure 4. Nature of current complaints  
(Employee questionnaire, N=10851, Multiple replies)**

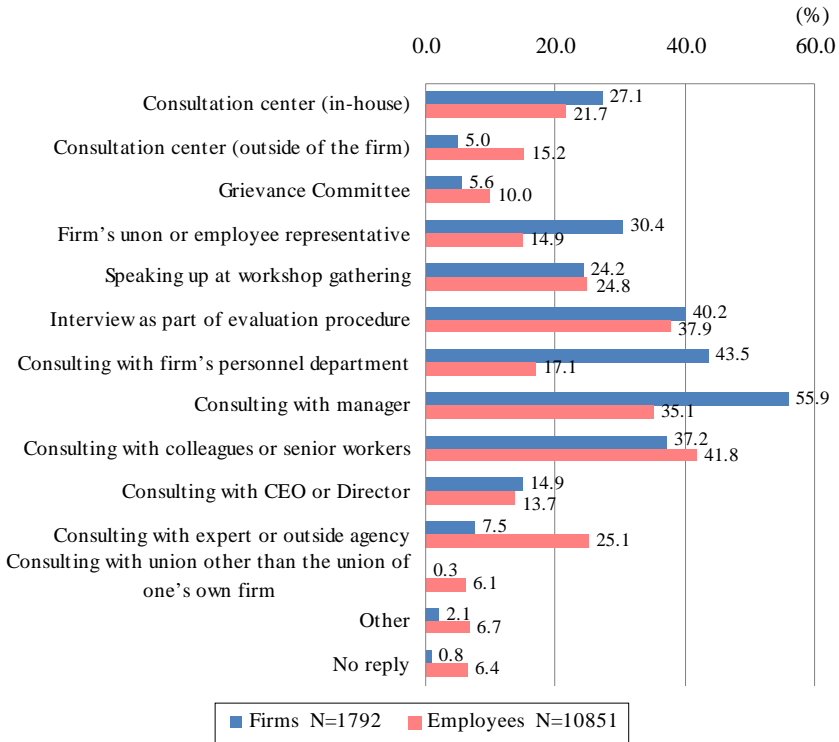


\* The alternatives offered on the questionnaire were: “problems concerning work, such as work methods, work assignments or the content of work.”

colleagues or senior workers” (Figure 5). Unions tend to put most emphasis on day-by-day union activity (Figure 6). Special “consultation centers” and “grievance committees” are more likely to be found, the bigger firms (Figure 7), and although such formal systems are deemed important in those big firms, in smaller firms more informal means of communication are favored.

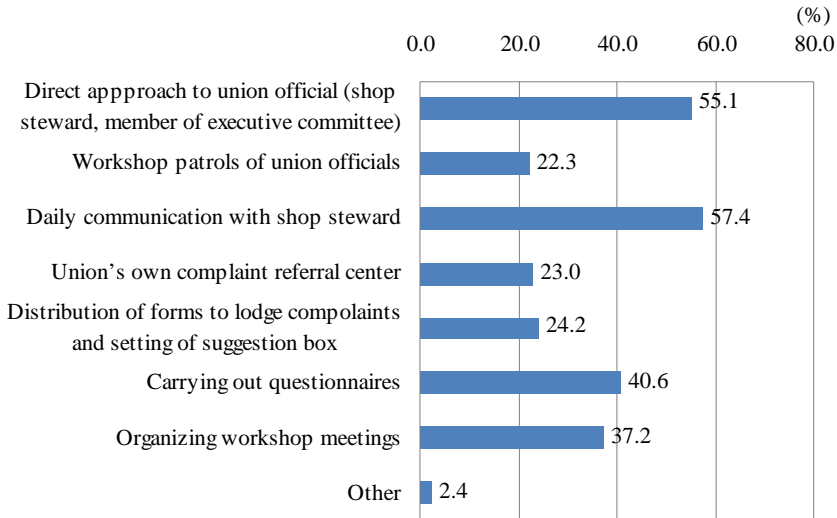
Even where there are special consultation centers and grievance committees, their use does not seem to be growing; for example 80% of the consultation centers had nine or fewer cases a year (Figure 8). As for the reasons why employees do not much use such facilities, the most commonly offered, apart from not fully understanding procedures, was concern about the fairness of the procedures or about the possibility that using them would work to their disadvantage (Figure 9).

**Figure 5. Most important methods or referral points for ascertaining and dealing with complaints (Firm questionnaire) and most appropriate methods or referral points to resort to when you have complaints (Employee questionnaire) (Each allowed up to three choices)**

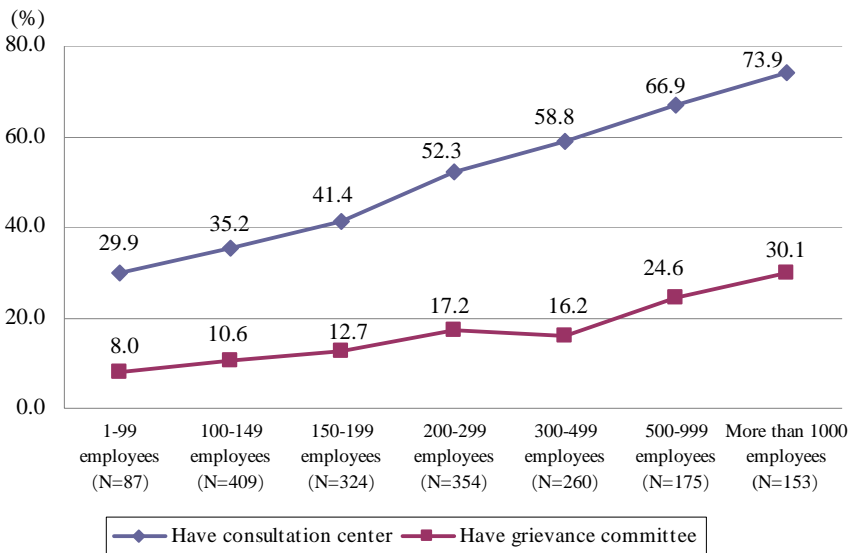


As many as 58.2% of employees said that they had taken some complaint to a superior, a good deal more than the number (respectively 11.5% and 7.2%) who had gone to a consultation center or grievance committee. The most common complaints concerned matters to do with work or interpersonal relations (Figure 10), and while 60% of those who had made complaints said that they had had them largely resolved, the other 40% said that they resigned themselves to nothing being done for them (Figure 11) which is twice the proportion if consultation centers are used (Figure 12).

**Figure 6. Methods for ascertaining dissatisfactions and complaints thought most effective (Union questionnaire, N=2277, Up to three choices)**

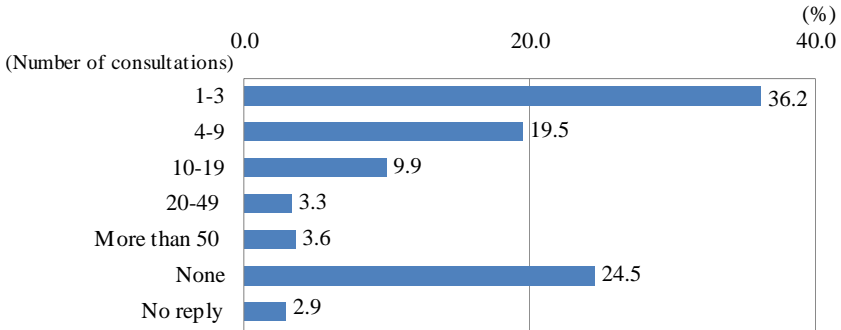


**Figure 7. Presence or absence of consultation centers and grievance committees by firm size (Firm questionnaire)**

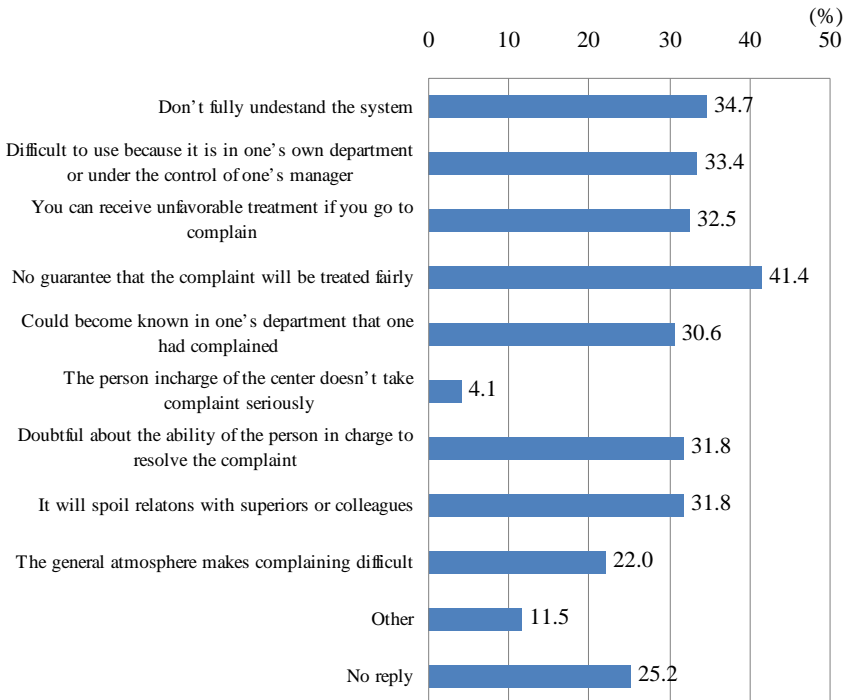


Note: The figures for all firms of all size classes are 49.4% for consultation centers and 16.0% for grievance committees.

**Figure 8. Frequency of resort to consultation center in those firms that have one per year (Firm questionnaire: N=886)**

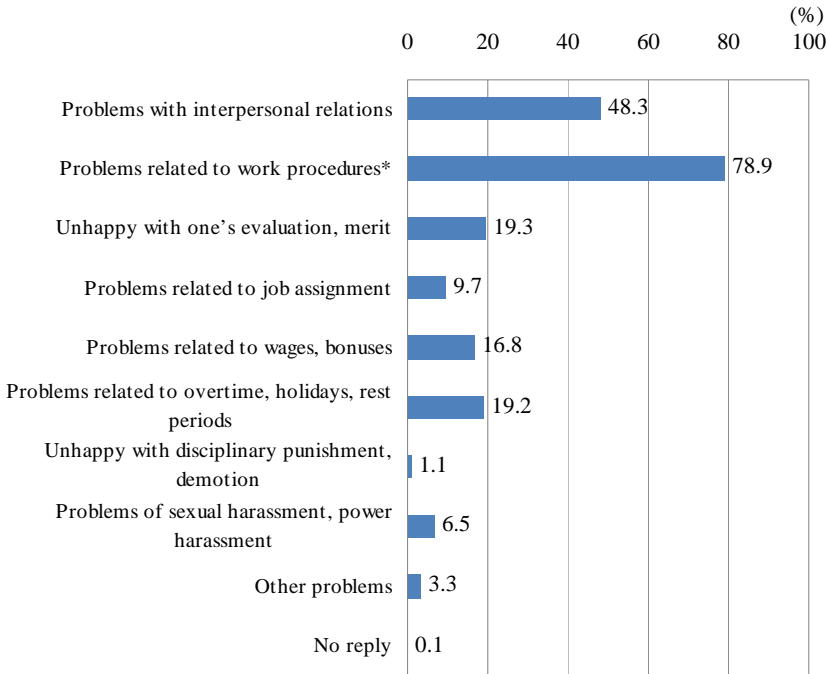


**Figure 9. Reasons for never having used grievance procedures (Employee questionnaire, N=862, Multiple replies)**



*Note:* The question asked for the reasons why the employee had not used either a consultation center or a grievance committee in firms that had either or both facilities. The tabulation excluded the 63.6% who said that they had never had anything worth complaining about.

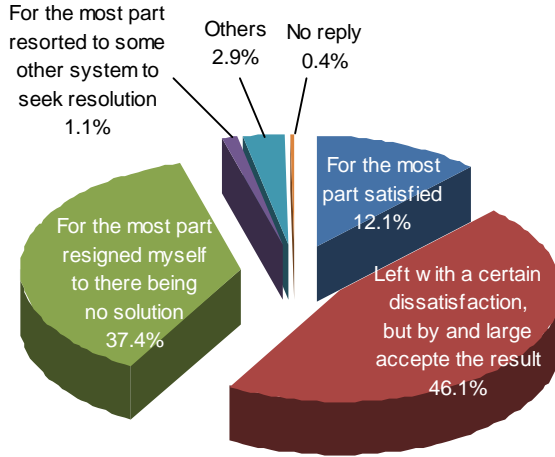
**Figure 10. Nature of complaints actually made to immediate superior  
(Employee questionnaire, N=6317, multiple replies)**



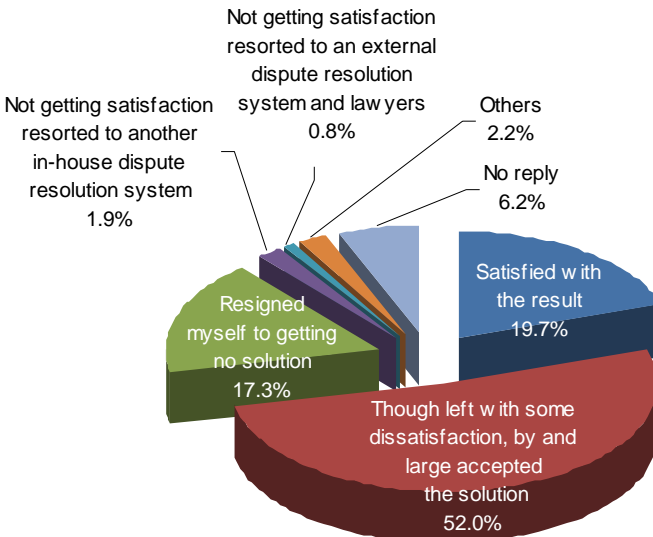
\* The alternatives offered on the questionnaire were: “problems concerning work, such as work methods, work assignments or the content of work.”

As for “consulting with managers,” which firms place so much emphasis on, 66.0% of firms include dealing with subordinates’ complaints among managers’ duties, and 23.3% use it as a factor in manager evaluation. In this way managers are involved in the system for dealing with disputes, but nevertheless a half of the managers at Section Chief level and above felt uncertain whether they could handle disputes in their own right (Figure 13) and many thought there was a need for clarifying what was to happen when they could not resolve a dispute, and a need for better training courses (Figure 14). Among unions, too, 65.1% thought that the role of managers in ascertaining and dealing with complaints was important, but 63.2% of those who did so think felt that they were not up to doing that job, giving as their reasons that, apart from not being particularly concerned about dealing with complaints, also, for instance, they did not have enough time (Figure 15).

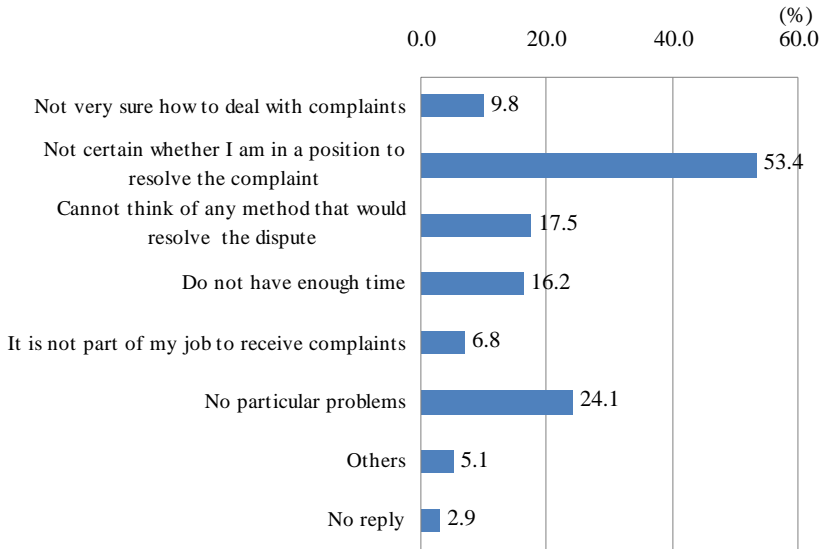
**Figure 11. Result of taking complaint to immediate superior (Employees who had done so, only) (Employee questionnaire, N= 6317)**



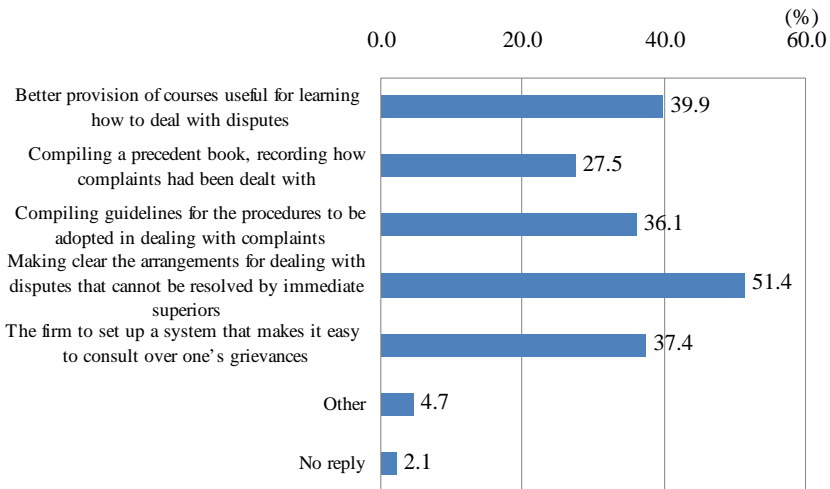
**Figure 12. Result of using the consultation center (Employees who had so used) (Employee questionnaire, N=371)**



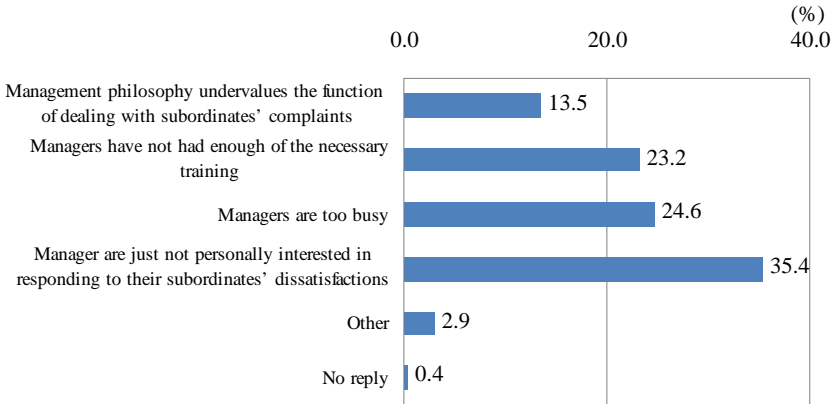
**Figure 13. Problems in dealing with complaints (Section Chiefs and above)  
(Employee questionnaire, N=2309, Multiple replies)**



**Figure 14. What is necessary to make it easier for managers to respond appropriately when they are consulted over grievances (Section Chiefs and above) (Employee questionnaire, N=2309, Multiple replies)**

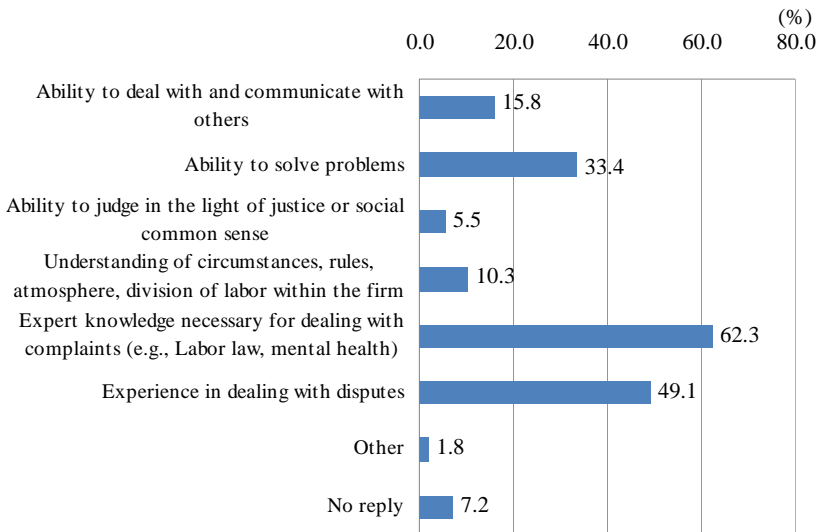


**Figure 15. Why managers are not properly performing their role  
(Union questionnaire, N=1357)**



Note: Answers from those unions which recognize the role of superiors in dealing with complaints, but do not perform well (or not very well) in that role.

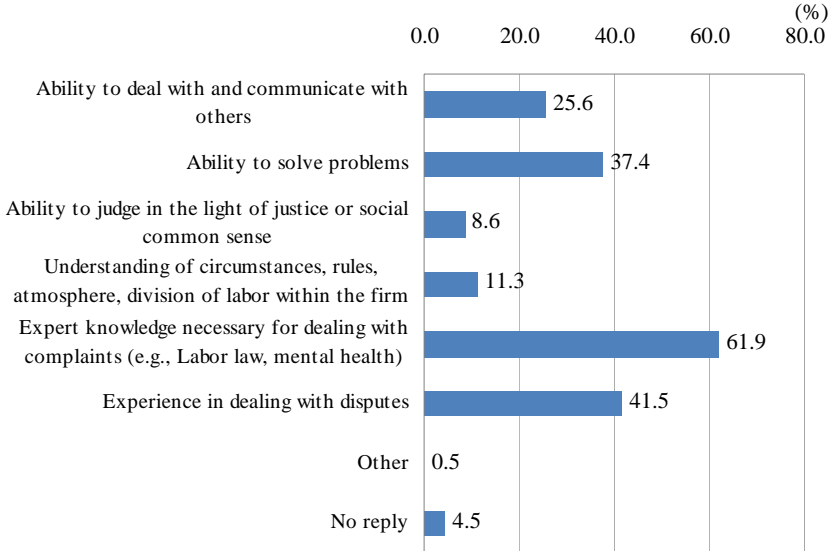
**Figure 16. Abilities and qualities required in consultation center staff and currently not adequately available (Firm questionnaire, N=886, Two choices)**



Note: Question asked of those firms which said they had a consultation center. As for the abilities and qualities deemed most important in themselves, they were “Ability to deal with and communicate with others” (77.4%) and “Ability to solve problems” (52.1%).

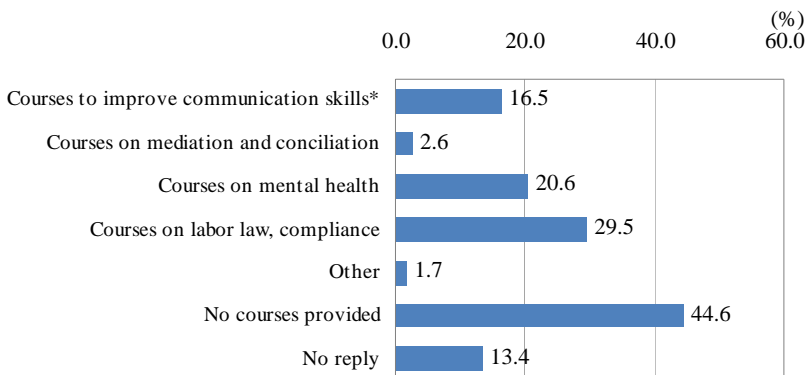


**Figure 17. Abilities and Qualities required in managers for ascertaining and dealing with complaints, in which they are at present deficient (Firm questionnaire, N=1792, Two choices)**



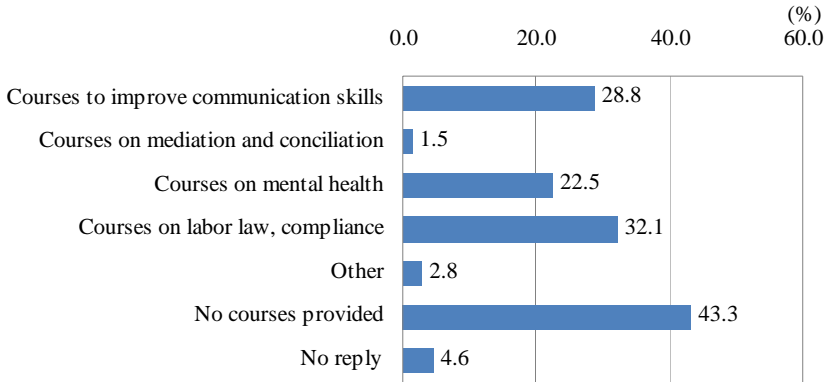
Note: The two qualities deemed of greatest importance were: “Ability to deal with and communicate with people” (82.2%) and “Ability to solve problems” (60.1%).

**Figure 18. Courses provided for those in charge of dealing with complaints (Firm questionnaire, N=1792, Multiple replies)**



\* The wording of the questionnaire was “Courses to improve communication skills (Coaching, counselling, facilitation courses).” Also for Figure 19.

**Figure 19. Course provided for managers to help them ascertain and deal with complaints (Firm questionnaire, N= 1792, Multiple choices)**



When we asked about the abilities and qualities necessary for the staff of consultation centres and for managers, and what might currently be lacking in that regard, large numbers of firms pointed to the lack, apart from experience in dealing with complaints, of expert knowledge (of labor law, mental health issues) and problem-solving ability (Figures 16 and 17). Forty percent of firms said that they provided no courses for consultation centre staff or managers (Figures 18 and 19).

#### **IV. The Current State of Workplace Dispute Resolution in Japan: Information from Site Visits**

In all we visited 11 firms in the course of 2 years to hear what managers and unions had to say about communications in the workplace and in particular the way complaints are recognized and dealt with. The chart below summarizes the main measures reportedly taken, as abstracted from the full case studies in the final report.<sup>5</sup>

In every one of the cases, where there was a labor union, as spelt out in the above table, there were some mechanisms for identifying and resolving complaints, and also for preventing dissatisfactions from arising. Some were put in place by the management unilaterally (various consultation centers, questionnaires),

<sup>5</sup> See Chapter 3 of the final report for details about each case.

Dispute Resolution Systems in the Workplace:  
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| Industry and Number of employees  | Measures adopted by management  | Management-union measures   | Measures adopted by unions  |
|---|---|---|---|
| Company A<br>Maker of transfer equipment<br><br>Over 34,000 employees         | Suggestion box<br><ul style="list-style-type: none"> <li>• A few suggestions per month</li> <li>• Chief subjects: harassment and evaluations</li> </ul> Questionnaire survey  | Workplace meetings for the exchange of ideas<br><ul style="list-style-type: none"> <li>• Once every two months</li> </ul> Grievance committee<br><ul style="list-style-type: none"> <li>• No activity</li> </ul>  | Consulting on an individual basis<br><ul style="list-style-type: none"> <li>• Responding to phone calls or office visits</li> <li>• Content: individual work conditions</li> </ul>  |
| Company B<br>Transport<br><br>Over 12,000 employees                           | Helpline<br><ul style="list-style-type: none"> <li>• A few score times a year</li> <li>• Chief subjects: harassment and work in general</li> </ul> Direct talks between employees and top management  | Union-management consultations at various levels and specialist committees<br>Grievance committee<br><ul style="list-style-type: none"> <li>• No activity</li> </ul>  | Union version of helpline<br><ul style="list-style-type: none"> <li>• About 20 cases a year</li> </ul> Union meeting<br>Individual conversations  |
| Company C<br>Electrical appliances<br><br>6,000 and several hundred employees | Management hotline (related to evaluation system)<br>Consultation center for sexual harassment<br>Helpline for company ethics   | Personnel management committee (related to evaluation system)<br><ul style="list-style-type: none"> <li>• Twice a year</li> </ul> Grievance committee<br><ul style="list-style-type: none"> <li>• No activity</li> </ul>  | Dealing with complaints as part of general survey of actual conditions<br><ul style="list-style-type: none"> <li>• All union members, three times a year</li> <li>• Subject: chiefly evaluations</li> <li>• Get a response from the company for transmission to employee</li> </ul> Questionnaire on the working of the evaluation system |
| Company D<br>IT-related devices<br><br>Approx. 18,000 employees               | Speak-up! Program (Illegalities, inappropriate business behavior, complaints and dissatisfactions. Name given on reporting, but subsequent treatment anonymous [unless permission to do otherwise is personally given])<br>Open Door Policy<br>Consultation center for sexual harassment<br>Survey of employee satisfaction   |   |   |
| Company E<br>Wholesaler of electrical appliances<br><br>Approx. 600 employees | Handling of complaints via an Ethics Line (signaling or consulting about infractions of the law or ethical principles. Complaints addressed to the American parent company E. Anonymity allowed.)<br>Dealing with complaints on the intranet<br>Employee Assistance Program (EAP) (Chiefly for mental health problems with a qualified clinical psychologist dealing with problems of harassment etc.)<br>Attitude questionnaire surveys of employees |   |   |
| Company F<br>Chemical products<br><br>More than 10,000 employees              | Employment Opportunity Promotion Center (for sexual harassment and work/life compatibility)<br>Compliance Hotline<br>Training of personnel staff, (using past instances of trouble as case studies)   | Union management meetings<br><ul style="list-style-type: none"> <li>• Twice-yearly</li> </ul> Grievance procedures specified in the Management-Union Basic Contract<br><ul style="list-style-type: none"> <li>• Never utilized</li> </ul> Union-management council on human resources (deals with personnel problems) | Emphasis on identifying and dealing with complaints through everyday workplace activity<br>Branch chiefs talking with individuals<br>Consultation via e-mails   |
| Company G<br>Machine Tool-maker<br><br>More than 10,000 employees             | Various types of Help Desks<br><ul style="list-style-type: none"> <li>• Several tens of consultations per annum</li> <li>• Contents: Chiefly personnel system, sexual harassment</li> </ul> Training of personnel staff (Using case studies of particularly difficult cases)<br>Career counseling center<br>Attitude questionnaire surveys of employees   | Various union-management consultation organs<br>Grievance committee<br><ul style="list-style-type: none"> <li>• No activity</li> </ul>  | Private consultation center (Union officials responding to approaches as part of daily activities.)<br>Reinforcement of every-day activity<br>Individual discussions with those concerned<br>Questionnaires, suggestion box   |
| Company H<br>Heavy Machinery<br><br>Over 6,800                                | Compliance hotline<br><ul style="list-style-type: none"> <li>• Several tens of consultations per annum</li> <li>• Content: Overtime,</li> </ul>   | Various Union-management consultation organs<br>Grievance committee<br><ul style="list-style-type: none"> <li>• One case every 2-3</li> </ul>   | Consultation in the workplace with someone designated as preferred consultee by the union branch  |

|  |  |   |   |
|--|--|---|---|
| employees  | personal evaluations<br>Sexual harassment consultation centre<br>Questionnaire survey  | years<br>Union-management committee for the management of discretionary work-time contracts                                     | Union general meetings and committees<br>Questionnaire surveys of union members   |
| Company I<br>Medical Appliances<br><br>Approx. 3,200 employees     | Account Managers (Deal with complaints concerning evaluations and interpersonal relations)<br>Harassment consultation center<br>Whistle-blower reception center<br>Letters to the company president, etc.  | Workplace discussion meetings<br>Grievance committee<br>• Hardly every used<br>Joint committee to examine the evaluation system | Union's own grievance committee<br>Preparatory coordination of opinion before the discussion meetings mentioned in adjacent column<br>Action by executive member for the union branch<br>Questionnaire on evaluation issues |
| Company J<br>Software<br><br>Approx. 700 employees                 | Initiation of complaint<br>• Several tens of consultations per annum<br>• Content: Evaluations, etc.<br>Grievance committee (Mediation between employee and his superior by head office)<br>Suggestion box<br>Questionnaire surveys  | Contact maintained chiefly through monthly union-management consultation committee  | Responding to individual consultations<br>• content: Evaluations etc.<br>Questionnaires on evaluation procedures, etc.  |
| Company K<br>Supplemental Education<br><br>Approx. 3,000 employees | Survey of the organizational atmosphere<br>Helpline<br>• Use: several tens of consultations per year<br>• Content: very varied such as sexual harassment<br>Union's efforts to gather and articulate opinions supplemented by the Personnel Department:<br>Meetings to explain and gather comments on changes in the personnel system. |   |   |

- Notes: 1. Companies A to E were surveyed in 2006, Companies F to K in 2007. D, E and K did not have unions which enrolled more than half the employees, and at J, union members numbered around 130.
2. Included are mechanisms which, although not specifically for dealing with complaints can function as such.
3. "No activity" for grievance committees includes, also, "No activity lately."
4. This list is not exhaustive of all the mechanisms mentioned, and in every company importance was placed on resolution of individual complaints through discussion with immediate superior.

others by the union (for example identifying problems through everyday activities and shop-floor investigation) and yet others, jointly (various forms of regular consultation committees). Also in companies without unions, there were mechanisms which may be thought of as substitutes for the union's function of gathering and channeling complaints.

One senses from these visits to companies and unions, that there is a general awareness of the importance of swift identification and resolution of complaints, leading to the creation of various hotlines and consultation centers. These do seem to be performing a certain function, but it is generally thought to be a problem to get these mechanisms trusted and utilized.

Likewise, everyone stresses the importance of the immediate work superior in dealing with complaints, but both managers and unions recognize that many managers are too busy to fulfill that role properly, and this is one reason for re-examining the role of consultation centers and procedures.

Union-management consultation and face-to-face meetings to improve acceptance of personnel evaluation decisions are important for reducing the origination of complaints, and in this an important role can be played by the union itself and also in conjunction with the company.

## **V. Mechanisms of Dispute Origination and Resolution**

### **1. Dispute Origination and Resolution**

Disputes arise when a worker's request or claim is rejected (not accepted by the other party); one part wants something, the other recognizes no obligation to grant it. The key to resolving disputes is recognition of the interests which lie behind the position of the two parties overtly in dispute. Ury, Brett and Goldberg in their study of disputes in the American coal-mining industry, speak of three approaches to dispute resolution: the underlying interests approach, the rights approach, relying on established rules and procedures, and the power approach which allows the more powerful to overbear the other party. They also suggest that as elements in the evaluation of a resolution outcome, the four criteria should be: transaction costs, the degree of satisfaction with the outcome, the subsequent effect on the relationship, and the likelihood of recurrence of disputes.

In the design of dispute resolution systems, functionality and the trust/confidence factor are all-important. In particular, the assurance of neutrality and respect for the privacy of confidences are one crucial element in setting up consultation centers by the firm itself: otherwise these mechanisms will remain unused. The authors just quoted enunciate six principles for the design of such mechanisms from the list of which, they suggest, individual firms can choose the principles which suit their own particular characteristics. The six principles include (i) a focus on interests, (ii) building in loop-backs to negotiation and (iii) provide low-cost back-up systems for the rights and the power approaches.<sup>6</sup>

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<sup>6</sup> For detail, see William L. Ury, Jeanne M. Brett, and Stephen B. Goldberg, *Getting Dispute Resolved: Designing Systems to Cut the Costs of Conflict* (San Francisco: Jossey-Bass, 1988).

## **2. Dispute Resolution Skills**

High-quality dispute resolution involves four elements: resolution should be at minimal cost in terms of time, cash and psychological stress; it should not simply compromise on a middle position, but make sure that, in the various interests at stake in a dispute, priority is given to the most important; it should leave the complainant feeling that he or she has been fairly treated, and, finally, there should be a learning process, furthering understanding of the fundamental origin and development of disputes. And to achieve all of these, what is required is a “listening” attitude, and skill in “asking” the right questions.

- (i) personal proximity, making eye contact,
- (ii) paying attention to the other person’s feelings,
- (iii) nodding and making understanding noises,
- (iv) being silent when the other person lapses into silence,
- (v) repeating what the other person has said as a means of confirmation, and
- (vi) rephrasing what the other person has said in your own words.

These may seem like basic and obvious practices hardly to be identified as a skill technique, but it does underline the importance of avoiding various forms of defensiveness—feelings, conscious or unconscious, of the need to defend one’s own position, inability to see or hear things which are incompatible with, inconvenient for, or alien to one’s own preconceptions—all of which prevent one listening to what the other person has to say

As for “asking” skills, one can, both through open-ended questions and closed-end (yes-no answer) questions, encourage the other person to articulate and to make judgments which can be effective in inducing in him or her a useful self-awareness which will increase the chances that the complainant will understand the interests which are the background to the dispute, become himself or herself aware of the possible ways of reconciling those interests, and accept such a possible resolution.

A study of mediation veterans, all of whom had dealt with over a hundred cases, also pointed up the importance of building rapport with the parties to the dispute, and the ability to think of novel and creative solutions to problems.

## **VI. Training for Dispute Resolution**

In the United States what is beginning to become widespread is the notion that dispute resolution is a matter of helping the parties to a dispute to reach

their own decisions and the practical means of doing so. Mediation training is seen as an essential means of making it possible for mediators who are assumed to be a wide variety of people, to achieve resolutions of high quality.

In Japan, too, such training in American methods has been given in universities, and by non-profit organizations. Such training should, it is thought, be designed in an open sort of way in order to encourage the self-development of the participants, with a problem-solving orientation and an emphasis on two-way communication, role-playing and group discussion.

Broadly, there are three elements in mediation training listed below, though other elements are also necessary, such as the ability to deal with dilemmas that arise in the mediation process itself (as when one of the parties starts to say he or she has to leave early), knowledge of the law and how to convey it to the parties, liaison with lawyers, etc.

(i) Dividing the mediation process into strategically planned sequential stages

Control over the discussion process is seen as a service which the mediator renders to the disputing parties. (a) Start, (b) Beginning a conversation, (c) Discussion (seeking the basic interests, the nub, of the dispute), (d) Establishing the problem and the clash of interests in which it resides. Throughout this first half, the mediator is not trying to find the final solution and lead the parties to it. But then, (e) brain-storming to find a solution, and helping the parties to produce and select a plan for resolution, (f) Agreement on the resolution, (g) Conclusion.

(ii) A framework for the analysis of the dispute based on concepts of interest

The procedure is based on the assumption that lying behind the demands of the parties there are interests, and real intentions, which are different from the positions they have taken up, and that bringing out that difference will help to establish the real issues to be resolved.

(iii) Communication skills, listening skills

The central techniques—open-ended questions, paraphrasing etc.—are those listed above, but the essential thing is for mediators to listen with an open mind, in full awareness that only the parties to the dispute have the right answer. They should try to cultivate not so much the ability to perceive accurately the feelings of the disputants when they talk, but to get positively involved with them.

Training sessions should be for 20 to 30 people, using a lot of small-group work in twos and threes and conducted in as conversational a manner as possible

so as to provide participant feedback and also practice of communication skills. In role-playing exercises, the mediator should not be party to secrets about the disputants, so that, even if agreement is not reached, they can critically discuss the whole process of the mediation afterwards.

Training requires trainers and training materials. Trainers are in short supply, and if only for that reason the provision of materials that can be used for training labor dispute mediators is important. (There is already a good range of easily used material in the field of dispute resolution between trading partner companies.)

## **VII. Workplace Dispute Resolution, Personnel Management and Industrial Relations**

Dissatisfactions arising from everyday work activity are most effectively settled between the individual and his or her superior. That is what is expected, and only matters which the superior cannot resolve, or which it is inappropriate for him or her to resolve, become “complaints.” Those that get to be dealt with in the external dispute resolution system are those which, perhaps because conflict within the organization has become too overt, are difficult to resolve internally.

In Japan, too, settlement by immediate superiors is the norm, but it is necessary for the personnel department to make sure that the mechanisms that are provided for registering dissatisfactions and complaints are easy to use—by making sure that use of such mechanisms has no effect on one’s evaluation, for instance. It is also important for unions to identify and deal with complaints as part of their normal everyday activity (including using management-consultation meetings to make sure that solutions reached in individual cases are applied to all union members). They also need to monitor the dispute resolution mechanisms established by the company.

Other important things are: preventing disputes from arising in the first place, speedy measures to deal with them when dissatisfactions reach the complaint stage, and the willingness to recognize that when a dispute arises it may present an organizational problem which requires an organizational reform.

Problems which arise over the work process can be divided into those that derive from the nature of the work task and those that derive from the instructions of superiors regarding the manner of working. The former are most likely to be



problems of total work load, and the basically important thing is to reduce excessively heavy assignments. Among the latter are problems of the ambiguity or vagueness of instructions, sexual harassment, and so on, which require for their cure, better training of superiors in how to give guidance to subordinates and how to organize work. When problems arise over personnel evaluation, or treatment based on evaluations, getting workers to accept evaluations requires, apart from making sure that evaluations themselves are fair, checking how far consultation interviews are functioning effectively. In harassment cases, there is an increase in the number being dealt with outside the firm as labor disputes, and a need to consider the risk of the firm being sued when dealing with them.

Various methods for resolving disputes within the workplace are mutually complementary. Hence a need to plan their coordination in such a way as to maximize the useful characteristics of each. And this requires comprehensive overall discussion and planning. With that needs to go efforts to prevent disputes arising, such as making personnel systems clear and transparent and appropriate policies as to what those systems should be. That said, one can list the challenges:

- Strengthening the function of workplace supervisors as people their subordinates can consult
- Coordinating as a “system” the prevention and the resolution of dissatisfactions and complaints
- Reconsidering the positioning of labor unions (monitoring of the company’s mechanisms, their role in preventing disputes from arising)
- Devising methods of genuinely activating the grievance committees jointly run by management and unions.

## **VIII. Designing Appropriate Workplace Dispute Resolution Systems in Japan and Appropriate Forms of Public Support**

### **1. Japan’s Problems and Suggestions from Abroad**

The existing literature and our own research show that firms have a strong desire to settle complaints within the enterprise, and for workers, too, taking complaints outside the firm is uncommon. For both management and union the emphasis is placed on internal resolution. But the systems for doing so are not well developed and a large number of firms and unions recognize the need to revamp and improve them. How to do so is the important question, as is the question of the skills required for successfully operating such systems and the

training to provide those skills. There is also a need for reflection on the general question of how those concerned in both management and union should deal in general with conflict in the workplace, including how to prevent disputes occurring.

One approach to these questions is to look at the situation in other countries with well-developed systems. For the purposes of this study we made field research trips to the US, UK, Germany and France.<sup>7</sup>

Generally speaking, in Europe, particularly in continental France and Germany, public dispute resolution systems are well developed. In Germany the central institution is the “Arbeitsgericht” in which a professional judge and management and union assessors render swift and simple judgments. A vast number of disputes are dealt with every year. In France, although the number of cases does not reach German proportions, there is the “Conseil de Prud’hommes” which also has assessors appointed by management and the unions and deals with a considerable number of disputes annually. In both countries great emphasis is placed on public systems for dealing with disputes and the very notion of “workplace dispute resolution” seems not to be widely diffused, but if one interprets dispute resolution more widely to include the prevention of disputes, the workplace representative/shop steward system can be said to play a big role.

In the United States, by contrast, the judicial system has no special organs for dealing with labor disputes, and, apart from unfair dismissal cases which are dealt with by the National Labor Relations Board, labor disputes are dealt with in the ordinary courts. The American judicial system has very strong elements, such as the jury system and the possibility of awarding punitive damages, but for that very reason is a high-cost, high-risk system. This is why alternative dispute resolution systems have developed outside the purview of the courts. Traditionally, grievance committees and mediation procedures have been specified in union contracts, but lately, even where there is no negotiating union, various procedures for dealing with disputes have become common—appointing external experts to mediate or arbitrate, or appointing an ombudsperson. Thus the development of internal resolution systems is the characteristic feature of the American scene.

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<sup>7</sup> Detailed reports of findings in each country are to be found in Chapter 2 of the interim report.

Britain has its Employment Tribunals on which, as in Germany, professional judges sit along with representatives of management and labor, but a feature of its public system is the fact that mediation by its Advisory, Conciliation and Arbitration Service (ACAS), an administrative body, also plays an important role. In addition, whereas, true to the British tradition of voluntarism, workplace dispute resolution had hitherto been left to the private arrangements of individual managements and unions, the provision of workplace dispute resolution procedures has become legally required, and appeal to Employment Tribunals has to come via such a route. (However, it seems that the government is reconsidering this in the light of criticism that the legal requirement leads to ritual concern for form rather than substance.)

To summarize, although Britain has a well-developed public system of dispute resolution, compared with Germany and France internal workplace systems play a big role. Despite several institutional differences, Britain and the United States have that in common. One can draw the following suggestions for the establishment of appropriate systems in Japan from an analytical comparison between Britain and the US where workplace systems play an important role and France and Germany where public systems are more important.

- In the case of workplace systems of dealing with disputes, it is useful to think more broadly about “dealing with disputes,” including the prevention of disputes from arising, as well as resolving them when they have already arisen.
- In establishing systems of dispute resolution within the workplace, important factors are the perception of needs and incentives (for example the benefits the company derives from resolving disputes.)

## **2. Appropriate Systems for Workplace Dispute Resolution**

It is desirable that workplace systems have the following characteristics:

- (i) That they should be easy to use and work swiftly.
- (ii) In addition to using informal procedures—encouraging the parties to arrive autonomously at agreements—the procedures should be flexible and capable of reaching satisfactory outcomes with as small a staff as possible being involved. (Though formal track alternatives are also desirable.)
- (iii) Important factors necessary to ensure that employees should actually use such systems are, their transparency (employees need to be told clearly

the outline even of informal systems and how to use them, and the knowledge needs to be widely diffused), and the degree of trust employees have in them (no fear of subsequent ill-treatment, keeping secrets, fair procedures and judgments).

Given the importance of workplace disputes reaching a resolution informally and taking into account the reality of the situation in the particular firm, it is necessary for those involved to have the mediator skills and to be capable of delivering solutions that are adapted to the special characteristics of labor conflict. In concrete terms this means not only the general skills necessary for dispute resolution, such as communication skills like the art of active listening, the ability to discern the underlying interests involved in the dispute, and the ability to devise appropriate solutions, but also specific knowledge and understanding of the nature of labor disputes (their diversity, the continuing relations between disputing parties, the relation the dispute has to the institutions and procedures of the firm), together with the ability to apply such knowledge in the settlement of disputes, an understanding of the particular circumstances and procedures of individual firms and a basic knowledge of labor law. Off-the-job training can have played an important role in building up such skills.

Even in the daily performance of work duties, supervisors' treatment of the dissatisfaction of their subordinates can to a certain extent be improved by their possessions of such dispute resolution skills, and it is useful for members of the personnel department to have them and to provide training courses for managers to learn to deploy such skills. It also helps to have the business of dealing with and preventing disputes written clearly into managers' job descriptions. In Japan the unions also play an important role, with workplace representative and branch executives in the course of their daily routines identifying complaints and trying to resolve them at workplace level, and when they involve rules and procedures which require amendment putting them on the agenda for Union-Management Consultation Meetings. All this is part of "dealing with conflict" at the broadest level.

### **3. Appropriate Forms of Public Assistance for Workplace Dispute Resolution**

Basically it is up to individual firms and unions to provide dispute resolution systems suited to their own needs. Nevertheless, in recent Japan, with continuous growth in the number of disputes involving individuals reaching the courts, the institutionalization of workplace systems seems not to be progressing satisfactorily

in spite of a widespread awareness of the need on the part of firms, employees and unions. Given that there is a social value in resolving and preventing labor conflict, it is not unreasonable to consider some form of public support for the installation of such systems and for the training of the personnel who will operate them.

Support can best be given not in the form of imposing standard systems—that is to be avoided—but by providing the information that people need if they are to make an independent choice of the sort of system that would suit their own circumstances—in the form of guidebooks and seminars, giving examples of such systems, points to be wary of when planning and implementing such systems, criteria for settling disputes, and the form such judgments might take, or taking the form of sessions to get them to appreciate the skills necessary for resolving or preventing disputes. It is also worth considering the idea of developing and diffusing a model training program for such skills when they have been fully elaborated in concrete terms.

## **IX. In Conclusion**

This study was carried out at the request of the Secretariat of the Central Labour Relations Commission, an external bureau of the Ministry of Health, Labour and Welfare but interest in the issue is much wider. The Japan Business Federation (Nippon Keidanren) issued a report in May 2006 entitled “Towards the building of intra-enterprise communication systems appropriate to a new age” and noted in it the need to give priority to the ability of firms to deal with disputes in the light of the steady growth in disputes involving individuals, insisting that good communications within the firm was a precondition for competitive success. This is one indication of a general concern on the part of both managers and unions in workplace communications and what is intimately related to it, namely the prevention and resolution of conflict, which suggests that our study is one which addresses a matter of a high level of social concern. We have also been able by our questionnaire and field studies to provide some new information on the actual present state of dispute resolution in Japanese workplaces.

We hope that it will not only provide useful suggestions for the formation of policy, but also provide material for discussion by managers and union officials and others within enterprises who are concerned with the resolution of conflict.

