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The System of Labour Relations Commissions in Japan: Retrospects and Prospects

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NEXT ISSUE (Winter 2016)
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Introduction

The System of Labour Relations Commissions in Japan: Retrospects and Prospects

Japan's Labour Relations Commissions (LRCs) were established in March 1946. As such, 2016 will mark their 70th anniversary. LRCs, instituted by the Labor Union Act of 1945 and reinforced by the amendment of 1949, have made a great contribution to the formation and dissemination of cooperative and stable industrial relations in Japan. Moreover, in the face of structural changes such as the stabilization of labor-management relations and the rise of individual employment disputes from the 1990s, the 2001 Act empowered LRCs to provide counseling and conciliation services for individual employment disputes. With this, they started to launch into the new field of labor disputes. We analyze the 70-year history and actual situations of LRCs in Japan, and examine the relationship between the roles of LRCs and characteristics of Japan's labor-management relations.

The Significance of Labour Relations Commissions in Japan's Labor Dispute Resolution System by Kazuo Sugeno examines the roles and significance of Japan's LRCs from a historical viewpoint. To clarify the transitional roles of LRCs in their 70-year history, the author first portrays a profile of LRCs, then illustrates their achievements as institutions for resolving collective labor disputes in the upheavals of postwar industrial relations, and finally describes the challenges they face amid structural changes in labor disputes. By means of this historical approach, he clarifies the significance of LRCs in the overall system of labor dispute resolution in Japan.

Yasuo Suwa's *The Present Situation and Issues of the Labour Relations Commission System* clarifies the structure and roles of Japan's LRCs. The LRC system has made a huge contribution to the formation of industrial relations and labor practices in Japan since World War II. Today, however, both the industrial structure and the labor market have changed, the organization rate of labor unions is in gradual decline, and collective industrial disputes have also decreased in number. In view of this, continuous efforts are being made to improve the LRC system and review its deployment, in order to identify how the system should be maintained and developed in future.

Labour Relations Commissions and Industrial Relations: The Era of Great Conciliators by Michio Nitta describes the involvement of the Central Labour Relations Commission (CLRC) in adjusting major nationwide disputes over a period of about 15 years from its creation in 1946 until 1960. Following the course of four important disputes adjusted under the guidance of the CLRC's 2nd Chairman Izutaro Suehiro and the 3rd Chairman Ichiro Nakayama—specifically, the 1946 Densan dispute, the 1946–47 wage dispute by public sector employees, the 1952 Tanro-Densan dispute, and the 1959–1960 Miike Mine dispute—the author clarifies the historical role played by LRCs in Japan's industrial relations.

Ryuichi Yamakawa's *The Law of the Labour Relations Commission: Some Aspects of*

Japan's Unfair Labor Practice Law examines the distinctive features of the LRC system in Japan. Modeled on the National Labor Relations Act in the United States, the Labor Union Act of Japan provides for a system of prohibiting and redressing unfair labor practices. Also, like the National Labor Relations Board in the United States, the Labor Union Act established a system of LRCs as independent administrative agencies in charge of unfair labor practice procedures. The features of LRCs, such as their nature as administrative agencies and their tripartite composition—differing from the rules of private law under the Civil Code—appear to have influenced Japan's unfair labor practice law.

Unfair Labor Practice Cases Handled by the Tokyo Metropolitan Government Labor Relations Commission by Takashi Araki clarifies the characteristics of cases in the Tokyo Metropolitan Government Labor Relations Commission. As characteristics of the cases handled, the author reveals that even when unfair labor practices are committed outside Tokyo, cases against those practices are often filed with the Tokyo LRC because the union's head branch or the company's head office is located in Tokyo, and that many cases are filed by community unions because many of these unions exist in Tokyo. Meanwhile, he clarifies that cases often take a considerably long time to process because settlement is often preferred and cases are often complex, and the need to expedite processing of cases is therefore a constant challenge.

These papers, written by important figures who have assisted and themselves developed LRCs in Japan over many years, could contribute to an understanding of the historical roles and changing models of Japan's LRCs, and provide some lessons for comparative studies on labor law and industrial relations.

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The Significance of Labour Relations Commissions in Japan's Labor Dispute Resolution System

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The Japanese labor law system established after World War II attached the highest importance to collective bargaining disputes, the rights for which were established by the postwar Constitution and the Labor Union Act. Labour Relations Commissions (LRCs) were created to undertake the task of nurturing industrial relations along with the new labor law and resolving collective labor disputes arising therefrom. Until the beginning of the 21st century, LRCs had been the single statutory institution specializing in labor disputes. As a matter of fact, until the 1980's, LRCs had in many ways played important roles in dispute-prone industrial relations. One can conclude, therefore, that in the first four decades of their 70-year history, LRCs played a dominant role in Japan's labor dispute resolution system.

Yet, as the number of collective labor disputes handled by LRCs declined in the late 1980s and the new field of individual labor disputes has been expanding since the 1990s, Japan has transformed its labor dispute resolution system by placing the latter disputes in the center of the labor dispute resolution system. Nationwide administrative services of counseling and conciliation were established by the 2001 Act to offer informal, comprehensive and expeditious services, undertaken mainly by the national labor administration. LRCs were also empowered by the Law to offer counseling and conciliation services, but have not yet fully developed their services to an extent comparable to those of the national administration.

Then, the 2003 Act established a new judicial system specializing in individual labor disputes, which rapidly became a popular and efficient system. The success of this labor tribunal system could be said to have further blurred the significance of LRCs in the entire labor dispute resolution system in Japan. While maintaining and utilizing their accumulated expertise in collective labor relations, LRCs have to form and promote strategies to expand their activities for resolving individual labor disputes, which will surely continue to be the centerpiece of labor disputes in the coming decades.

I. Introduction

Labour Relations Commissions (LRCs) in Japan were established in March 1946 during the post-World War II reforms designed to democratize Japan. The Labor Union Act was enacted in December 1945 to guarantee trade union rights, but another of its aims was to institute the LRCs with the mission of examining the eligibility of labor unions and adjusting collective labor disputes arising from union-management relations. The LRCs were then endowed, under the 1949 amendment to the Law, with the additional authority to issue remedial orders against unfair labor practices by management. LRCs continued to exist and

function with their original mission until the beginning of the 2000s. In actual practice, they had been the most significant dispute resolution institution until the 1980s. They had made a great contribution to the formation and dissemination of cooperative and stable industrial relations that became well known throughout the world.

Yet, as a consequence of the stabilization and individualization of industrial relations, the number of collective labor disputes decreased in the late 1980s; instead, the number of individual labor disputes entered a trend of steady increase from the 1990s. In the face of such structural changes in labor disputes, Japan established a new system of individual labor dispute resolution under the 2001 and 2003 Acts. In this process, the 2001 Act empowered LRCs to provide counseling and conciliation services for such disputes, whereupon they started to launch into the new field of labor disputes.

As their 70th anniversary approaches, this paper analyzes the significance of LRCs in the overall system of labor dispute resolution in Japan. Considering the transitional roles of LRCs in their 70-year history, this paper will first portray a profile of LRCs, then illustrate their achievements as an institution for resolving collective labor disputes in the upheavals of postwar industrial relations. Finally, the challenges they face in the structural changes of labor disputes mentioned above will be described.

II. The Profile of LRCs as an Institution for Collective Labor Disputes

1. Structural Profile of LRCs

(1) Central and Prefectural LRC

Japan's LRCs consist of a Central LRC, affiliated with the Ministry of Health, Labour and Welfare, and 47 Prefectural LRCs established in each prefectural government. The LRCs are independent administrative commissions that discharge their responsibilities without supervision by the Minister of Health, Labour and Welfare or prefectural governors.

(2) Tripartite Composition

The LRCs are tripartite in their composition; namely, they comprise equal numbers of members representing public interests, labor and management. The Central LRC is composed of 45 members, with 15 members representing each of the three sides. The number of members in Prefectural LRCs ranges from 15 (5×3) to 39 (13×3). As discussed later, this tripartite composition is the major organizational characteristic of LRCs, and this is reflected in the manner of their performance.[1]

[1] In the author's view, the tripartite composition originates from the Labor Dispute Mediation Act of 1926, which intended to resolve union-management disputes by organizing an ad-hoc mediation committee composed of three neutral members and six members representing the parties (i.e. three representatives of each party to the dispute, respectively). These party representatives were expected to act as intermediaries between the committee and the parties. They thereby facilitated the resolution of bitter labor disputes involving militant leftist unions and oppressive management that occurred

Because of this tripartite composition, LRC members are mostly appointed on a part-time basis.[2] The vast majority of public interest members are chosen from among practicing lawyers and law professors. The labor members are usually officials of industrial labor organizations, while management members come from varied backgrounds (primarily officials of employers' organizations and executives of larger or middle-sized firms). The Chairman is appointed by the General Assembly of the members from among the public interest members.

Each LRC has an executive office with a director and other full-time staff members to assist the Commission members.

(3) Powers of LRCs

The two major powers of LRCs are (a) to adjudicate union complaints of employers' unfair labor practices, such as discriminating against union membership, refusing to bargain in good faith, and interfering with and dominating union management,[3] and (b) to conciliate, mediate and arbitrate collective labor disputes (mainly disputes over interests).

Additionally, LRCs verify the eligibility of unions under Labor Union Act when using LRC remedial procedures or acquiring a legal entity. In so doing, LRCs mainly examine companies' personnel structures and the constitutions of unions in regard to their compliance with organizational requirements set forth by the Law (i.e. exclusion of managers and supervisors, and establishment of democratic by-laws, etc.).

(4) The Relationship between Central and Local LRCs

Prefectural LRCs have jurisdiction over labor disputes and alleged unfair labor practices that take place within their respective local territories. The Central LRC, on the other hand, has jurisdiction over labor disputes extending across two or more prefectures, as well as disputes the Central LRC regards as raising questions of national importance. The Central LRC also has the authority to review the decisions of Prefectural LRCs on union complaints of unfair labor practices, with the full power to sustain, revoke or rewrite the decisions contested by the aggrieved party. Furthermore, the Central LRC has the power to promulgate regulations on matters necessary for implementation of LRC powers.

The Central LRC and individual Prefectural LRCs are separate administrative agencies, the former being an agency of the national government and the latter being those of

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during the early days of industrial relations.

[2] As an exception, the Central LRC has two full-time members, one being an ex-judge and one being an academic, who usually chairs the Commission.

[3] The major unfair labor practices prescribed by the Labor Union Act are:

a. discharging or otherwise discriminating against workers because of their union membership, or for engaging in proper union activities;
b. refusing to bargain with a labor union that represents workers employed by the employer without an appropriate reason; and
c. controlling or interfering with the formation or management of a labor union.

respective prefectural (local) governments. Yet, in reality, they form a conglomerate of LRCs under the leadership of the Central LRC. They communicate and coordinate with each other by holding various national and regional meetings. Their structure may be compared to that of the National Labor Relations Board (NLRB) in the USA, which is composed of Headquarters and Regional Offices, although the structure of Japan's LRCs is more decentralized.[4]

2. Procedural Profile of Unfair Labor Practice Adjudication

(1) Stages in the Procedure

Adjudication of unfair labor practices is commenced on receiving a complaint from a union and/or its members alleging that the employer has resorted to such practices against them. A panel, usually consisting of three LRC members representing public interests, labor and management is set up for each case.

The panel first carries out an "investigation" in which it interviews the parties (i.e., the plaintiff union and/or members and the defendant employer) individually or jointly for the purpose of clarifying the points to be examined, receiving briefs and evidence, and identifying witnesses to be heard. The panel then holds "hearings" to conduct cross examination of witnesses. After accomplishing these processes, the panel closes the hearings and asks the parties to submit briefs summarizing their arguments.

The Chairman of the LRC then summons a meeting of the public interest members, at which the labor and management members of the panel first state their opinions on the merit of the complaint. The public interest members of the LRC then discuss the case on the basis of the draft opinion prepared by the presiding public interest member of the panel with the assistance of administrative staff. If the public interest members conclude that the employer has committed an unfair labor practice, they then determine remedial measures to be required of the employer; typically, a cease and desist order and/or a back-pay order. If they conclude that there was no unfair labor practice, they decide to dismiss the complaint.

[4] The system of correcting unfair labor practices through a quasi-judicial procedure administered by an independent administrative commission is modeled after the 1935 Wagner Act in the United States. Accordingly, Japan's LRC system is often understood as an offspring of the NLRB, which administers the unfair labor practice system in the United States. Certainly, Japan's unfair labor practice system administered by LRCs has significant resemblance with the American counterpart system. One should, however, emphasize the following major differences between the systems of the two nations.

First, Japan's LRCs have the authority not only to adjudicate on unfair labor practices but also to mediate in labor-management disputes. Secondly, Japan's LRCs are tripartite in their composition. Although judgments on unfair labor practices are entrusted solely to neutral public interest members, labor and management members are expected to play important roles in soliciting agreements between the disputing parties when adjusting collective labor disputes or settling unfair labor practice complaints. Thirdly, the procedure for deciding on the merits of union complaints of unfair labor practices is modeled on civil procedures in Japan. The union making the complaint acts as a plaintiff and the employer subject to the complaint acts as a respondent. There is no public prosecutor like the General Counsel in the NLRB, who carries out procedures on behalf of the accusing party.

The decision is set in writing and delivered to the parties, after which the aggrieved party can seek a review by the Central LRC or appeal to the competent District Court for judicial review.

The number of unfair labor practice complaints filed annually to Prefectural LRCs has been somewhere between 350–400 in recent years.[5]

(2) Importance of Voluntary Settlement

In practice, the most important function carried out by LRCs in unfair labor practice proceeding is its efforts to attain voluntary settlement of disputes involving alleged unfair labor practices. The plaintiff party ordinarily seeks assistance in settling the dispute in its favor, since such a settlement represents a more practical and effective remedy than the time-consuming decision subject to appeal. The defendant employer is also inclined to accept the panel's assistance panel for a voluntary settlement, because it will put an end to severe confrontation in daily labor relations. Furthermore, members of the panel share the view that a voluntary settlement attained with the mutual commitment of the parties will contribute much more than a compulsory order to both remedying unfair labor practices and correcting aggravated labor relations.

Accordingly, in the large majority of cases, the panel makes efforts to attain a voluntary settlement, and LRCs tend to issue a formal decision only when such efforts of the panel are unsuccessful. When the panel perceives the willingness of either or both parties to discuss a settlement, it suspends the proceedings, irrespective of what stage they are in, and holds intensive "meetings aimed at settlement." There, the panel interviews each of the parties alternately to receive their points of view regarding settlement, while the labor and management members contact their respective sides informally to ascertain their real desires. When the views of the parties become sufficiently clear and the chance of agreement greater, the panel draws up a settlement proposal and seeks to persuade the parties through the efforts of the labor and management members.

3. Procedural Profile of Collective Labor Dispute Adjustment

(1) Conciliation

Adjustment of collective labor disputes by LRCs is governed by the Labor Dispute Adjustment Act of 1946. The first form of such procedures set forth by the Act is conciliation, in which conciliators seek to act as intermediaries between the parties, to ascertain their respective points of view, and to assist in arriving at a settlement. The Chairman of the LRC appoints conciliators from among the names on a list previously prepared by the LRC, when one or both parties to the dispute have asked the LRC to commence conciliation or when the Chairman of the LRC has decided to do so. Typically, three persons, one from each of the public interest, labor and management members of the LRC, are designated as

[5] 376 in 2011, 354 in 2012 and 364 in 2013, according to the Annual Report of the LRC.

tripartite conciliators. Conciliators hear the facts and claims presented by the parties, and strive to conciliate the dispute. In the process, they sometimes present specific settlement proposals, which the parties are free to accept or reject.

(2) Mediation

The second adjustment procedure under the Act is mediation, in which a mediation committee established by the LRC drafts a settlement proposal and advises the parties to accept it, after soliciting the views of the parties. Being a more formal intervention for resolving labor disputes, mediation cannot be initiated, in principle, at the request of only one party, as in the case of conciliation. The LRC organizes a mediation committee with tripartite members representing labor, management and public interests; these are usually taken from among the corresponding groups in the LRC.

(3) Arbitration

The third procedure is arbitration, in which an arbitration committee renders an award binding on both parties. LRCs carry out arbitration when requested by both parties, or by either or both of the parties in accordance with provisions in a collective agreement. An arbitration committee is composed of three neutrals designated by the Chairman of the LRC with the agreement of the parties.

(4) Predominance of Conciliation

In practice, conciliation has been playing a leading role in LRCs' adjustment procedures, accounting for the vast majority (98%) of dispute adjustment cases and attaining a success rate of 55–70%. The predominance of conciliation is attributable to the simplicity and malleability of the procedure. It can easily be initiated by an LRC Chairman upon application by a single party. It can be used not only to facilitate or conciliate deadlocked negotiations as its original function, but also to present concrete proposals for settling contested issues. Mediation, on the other hand, represents only 1–2% of dispute adjustment cases handled by LRCs, due to its more formal and rigid nature. It has almost been replaced by conciliation, which can also function as mediation. Arbitration is rarely used because of its narrow, rigid and binding nature.

The annual number of collective labor disputes brought to LRCs for their conciliation services has been 450–550 in recent years.[6]

[6] 563 in 2010, 543 in 2011, 463 in 2012 and 441 in 2013, according to the Annual Report of the LRC.

III. Achievements of LRCs toward the Stabilization of Japanese Industrial Relations

1. Moderating Industrial Confrontation after the Postwar Economic Desolation

Labor relations in the first decade after the end of World War II (August 1945) were characterized by militant labor movements imbued with leftist class struggle ideology. Encouraged by the democratization and liberalization policies of the Occupation Authority, unions rapidly spread in enterprises across the private and public sectors. They engaged in aggressive drives against management and the government, to defend workers' minimum standards of living under hyperinflation. Then, in order to reconstruct the economic system out of such confusion, in 1949–50 the Occupation Authority executed a drastic deflation policy in both public and private sectors with radical rationalization measures. As a consequence, a large-scale downsizing was mercilessly carried out, with massive dismissals to get rid of the resulting redundancy. Unions resisted fiercely with radical and prolonged industrial action.

It is noteworthy that, in almost all of these vicious labor disputes, LRCs were asked by the parties to intervene in deadlocked negotiations. They were successful in putting an end to such disputes through their vigorous mediation efforts.[7] Thus, LRCs made a great contribution to subduing bitter industrial confrontation during the postwar confusion.

The suppression of postwar hyperinflation enabled Japanese industries to launch into international competition under the newly established currency exchange rate. At the same time, the Korean War in 1950–1953 created opportunities for industries to take off. The restoration of independence by the 1952 San Francisco Treaty also laid the foundations for

[7] Examples of major disputes resolved by LRCs were as follows:

1946: The second Yomiuri Newspaper Company dispute (by the Tokyo Metropolitan Government Labor Relations Commission [hereinafter "Tokyo LRC"]), the Toshiba Corporation dispute (by the Central LRC), the Electricity Industry Union dispute (by the Central LRC), the All Governmental Union year-end payment dispute (by the Central LRC), and the Toyo Tokei Company Kamio Factory dispute (by the Tokyo LRC).

1947: The attempted February 1st General Strike by the All Governmental Union (by the Central LRC), the Besshi Mining site dispute (by the Ehime Prefectural LRC and the Central LRC), strikes by national railways workers and postal service workers for a lump sum paid to offset a squeeze on living costs due to rampant inflation (by Prefectural LRCs across the country and the Central LRC).

1948: Strikes by the Private Railway Workers Union (many Prefectural LRCs and the Central LRC), the All Governmental Union June Offensive (by the Central LRC), the Electricity Industry Union dispute (by the Central LRC), the Toho Movie Production dispute (by the Tokyo LRC), and the Nippon Cement Company restructuring dispute (by the Central LRC).

1949: The Electricity Industrial Union wage dispute (by the Central LRC), the Coal Miners Union wage dispute (by the Central LRC), and the National Railways wage-scale revision dispute (continued till 1950, by the Public Enterprise LRC).

1950: The All Textile Workers Union wage hike dispute (by the Central LRC), the Electricity Industry Union economic dismissals dispute (by the Central LRC), and the Electricity Industry Union year-end bonus dispute (by the Central LRC).

economic recovery. In 1955, the Japanese economy experienced the biggest boom since the war, marking the start of economic growth.

Despite this economic upsurge, however, confrontational industrial relations still continued, this time led by the new leftist national labor organization Sohyo (the General Council of Trade Unions). Unions affiliated with Sohyo resisted hard against downsizing and rationalization measures executed in the process of economic reconstruction in the 1950s, with bitter and prolonged strikes. These disputes were also resolved by LRCs' mediation efforts.[8]

The climax of their defiance was the Mitsui Miike Coal Mine Dispute of 1960, involving economic dismissals of 1,300 workers to downsize a major coal mine. The coal miners' militant industrial union launched a large-scale strike of indefinite duration. Sohyo mobilized tens of thousands of workers to support massive and fierce picket lines. Management was also determined to re-establish production, with full support from the employers' association as well as financial institutions. The dispute lasted for a full year, generating violent clashes and public disorder. But just as the police assembled to break down the picket lines, the Labour Minister hurriedly requested the intervention of the Central LRC, which brought an end to the dispute through its strenuous mediation efforts. The result was a defeat for the union, but both labor and management realized the high price of fierce labor-management confrontation. Japan has experienced very few large-scale labor disputes in the private sector since then.

In summary, one can say that LRCs made a great contribution to moderating bitter industrial confrontation during the economic desolation and recovery after World War II.

2. Playing a Significant Role in the *Shunto* System

In 1955, Sohyo started the annual *shunto*, or "spring wage offensive," by combining wage negotiations in major industries in the spring of every year. This was a device for overcoming the weak bargaining power of "enterprise unions," which had become the predominant structure of union organizations in Japan. Wage hike negotiations were concentrated and coordinated during March and April at national and industrial level, across and within industries in accordance with goals and schedules set forth by industrial federations and national organizations.

Usually, a boom industry of the time would take the lead, followed by key exporting industries such as iron and steel, automobile, and electricity appliances. These would establish the pattern of wage hikes, to be reinforced by other major domestic industries such as

[8] For example, the Mitsukoshi Department Store Company economic dismissals dispute (by the Tokyo LRC) in 1951, the Ube Kosan economic dismissal dispute (by the Yamaguchi Prefectural LRC) in 1952, the Amagasaki Steel Company Kure Factory rationalization dispute (by the Hiroshima Prefectural LRC) in 1954, the Nippon Steel Muroran Factory economic dismissals dispute (by the Hokkaido LRC and the Central LRC) in 1954, and the Amagasaki Steel Company rationalization dispute (by the Hyogo Prefectural LRC) in 1959.

public utilities. Then negotiations in public services such as national and private railways, telephone and telecommunication, and postal services were carried out. The number of unions participating in this annual joint action grew year by year, as its effectiveness in this expanding economy was proven by the achievement of high rates of wage increase.

In 1960, the government started the economic policy of doubling gross national product in ten years, which goal was attained much earlier than planned. The annual average real growth rate recorded rises of more than 10% between 1958 and 1973. Against this favorable economic situation, the spring wage offensive of this period attained large wage increases. The spring wage offensive came to comprise more than 80% of organized workers in Japan, as the unions belonging to Domei (the Japan Confederation of Labour), a more moderate national organization, also came to participate in the offensive from 1967.

One should emphasize that LRCs played a key role in the mechanism of the *shunto* until the middle of 1970s.

Wage hike negotiations in the *shunto* were accompanied by strikes, thereby increasing their propensity, but such strikes were of limited duration and on a smaller scale carefully scheduled in accordance with the *shunto* strategies. There was, however, a major action called the "general transportation strike," in which the unions of national railways, subways and buses struck jointly for one or a few days, as a climax of their *shunto* efforts, to paralyze the public transportation of the entire country.

In this whole process of *shunto* negotiations and strikes, the unions asked LRCs to intervene in wage disputes with mediation efforts. This was not, however, a case of seeking third party assistance to overcome bitter union-management confrontation, as used to be the case in the 1940s and 1960s. The purpose now was to obtain higher levels of wage hikes by relying on the skills and authority of the LRCs. Particularly important was the Central LRC's conciliation settlement of private railway wage hike disputes and the Public Enterprise LRC's mediation-arbitration settlement of public enterprise wage hike disputes.[9] The "general transportation strike" itself was a strategy designed to create a quasi-emergency situation, thereby making the intervention of LRCs inevitable. With the support of LRCs, unions successfully established and spread the pattern of *shunto* wage hikes throughout industry.

3. Contributing to the Transformation of Enterprise Union-Management Relations

After experiencing bitter confrontations accompanied by major labor disputes until 1960, labor-management relations at major firms underwent a qualitative change. A typical pattern was that, in the process of a prolonged strike, a large number of dissatisfied members split away to form a second union, which quickly gained an overwhelming majority. Another pattern was that a change in leadership occurred within existing unions, e.g.

[9] At that time, labor-management relations in public corporations and national enterprises were placed under the jurisdiction of the Public Corporations and National Enterprises LRC (the Public Enterprise LRC).

through the process of union official elections, after the failure of a major labor offensive. In either case, new union leaders gained support from a great majority of members who were disenchanted with leftist ideology and were more concerned about their company's competitiveness.

In this way, by the end of the 1960s, labor management at larger firms in key industries such as steel, shipbuilding, automobile, chemistry and electronics came to be dominated by moderate enterprise unions. Unions under new leadership took the position of cooperating with management with a view to increasing productivity through joint consultation. On the other hand, they also sought to gain a proper share of the profit generated by increased productivity. The *shunto* described above became the mechanism for such unions to attain fair distribution of the economic growth of firms and industries.

In the process of union transformation described above, companies gave new union leaders full support, and sometimes even took initiatives in forming or altering union leadership. There was also overt or covert interference of managers with once dominant leftist unions to undermine their influence. Those unions thus filed a large number of complaints of unfair labor practices to LRCs in the 1960s. They typically denounced management's intrusion into union elections, encouraging groups of union members to become critical of the incumbent union leadership, soliciting their formation of split-away unions, etc.

Also, even after the union transformation was accomplished, leftist unions remained in a substantial number of major firms as minority unions. Covert maneuvers by management to reduce their influence also continued. Thus, adversarial minority unions continued to file unfair labor practice complaints to LRCs, most typically accusing management of discriminating against them or their members in negotiations or in wages and promotions *vis-à-vis* cooperative majority unions or their members within enterprises. These complaints increased in the 1970s, requiring LRCs to make their great efforts in dealing with the disputes.

It should be noted that LRCs made persistent efforts to settle such disputes by curing the antagonism and distrust entrenched in the parties. The difficulty of such unfair labor disputes lay in the fact that the same kind of charges kept being filed to a particular LRC almost every year, due to serious distrust and antagonism ingrained in such union-management relations. In addition, since most cases involved allegations of massive discrimination or difficult negotiation processes over the years, they required a time-consuming process to examine the facts. In addition, even when LRCs issued decisions on particular cases, they were almost always taken by appeal to the body of the next instance (the Central LRC or judicial courts), as if starting additional disputes between the parties.

What LRCs attempted, therefore, was to settle pending complaints by making vigorous and time-consuming efforts to adjust differences of views. Though taking several years to do so, LRCs were successful in settling accumulated cases between parties one by one or, in lucky cases, in one go.

Once such settlements were accomplished, union-management relations in those enterprises usually became completely stabilized. In that way, LRCs contributed greatly to the transformation of enterprise labor relations.

4. Undertaking to Reform the National Railway System

In the late 1980s, LRCs started to receive a special group of unfair labor practice cases that consumed much of their energy. These were cases of alleged discrimination against members of militant unions in the process of full-scale reorganization of the National Railways in 1985–86.

The government decided to carry out a drastic reform of the national railway system, which had been plagued with unstable industrial relations as well as accumulating huge debts. The system had been operated in the form of a public corporation, but the government decided to divide it into eight private regional railway companies. Some unions opposed the policy and resisted it stoutly, while other unions in the system decided to cooperate with the reorganization. Thus, many members of unions opposing the reorganization were not hired by the new companies or were assigned to useless jobs created for the purpose of absorbing redundant workers. The unions filed massive complaints to LRCs all over the country on this original discrimination in the process of reorganization.

The original complaints involved a complex legal issue of who should be responsible for the alleged discriminatory hiring and placement done in the process of reorganization. Such complaints also required LRCs to undertake difficult examination of facts to ascertain the existence of massive discrimination. Since both sides first adamantly refused to make a compromise for a settlement agreement, LRCs finally issued a series of remedial orders against the newly created railway companies. After review by the Central LRC, which endorsed the remedial orders, many of the orders were taken by appeal to judicial review. There, they were rescinded by the District Court, the Appellate Court and the Supreme Court, all of which denied the legal responsibility of the successor companies for the alleged discrimination made in the process of reorganization.

The plaintiff unions continued to file new unfair labor practice charges with LRCs regarding the difficulties of union-management relations with the successor companies. Such unions also appealed to the political parties to promote a political solution of the original discrimination cases. It took almost three decades until both the plaintiff unions and the successor companies became flexible enough to comply with the advice of the Central LRC on settling cases related to reorganization. The settlement was carried out in stages, reaching completion in the late 2000s.

The reorganization of the national railway system was a political project designed to carry out a full-scale reform of the nation's transportation system. It also marked the start of the privatization of nearly all national public enterprises. The project turned out to be a remarkable success in improving railway services. The severe and lengthy disputes between the opposing unions and the new railway companies were one of its very few negative her-

itages, with which LRCs struggled for more than two decades with energy and persistence. The significant task undertaken by LRCs to accomplish the reform of the national railways deserves due recognition.

5. Instructing Basic Rules of Industrial Relations through Dispute Resolution

One of the most typical unfair labor practice complaints LRCs had been receiving for 70 years is those arising from the reaction of the owners of small-scale firms against the unions that organize their workers. These owners tend to regard the relationship with their employees as a family relationship under their patronage. They therefore see the formation of unions as a revolt against their paternity and refuse to recognize them, or attempt to dispel the union members. This is particularly so when the workers are organized by a regional general or industrial union existing outside the firms. This is a classic type of unfair labor practice case that continues to be brought to this day.

In such cases, LRCs attempt to impart the basic rules and philosophies of trade union rights guaranteed by the Labor Union Act in their procedures. LRCs often find such an attempt more effectively attained through amicable settlement, by involving the owners of firms in settlement discussions. This role of education may be seen as the most basic function of LRCs.

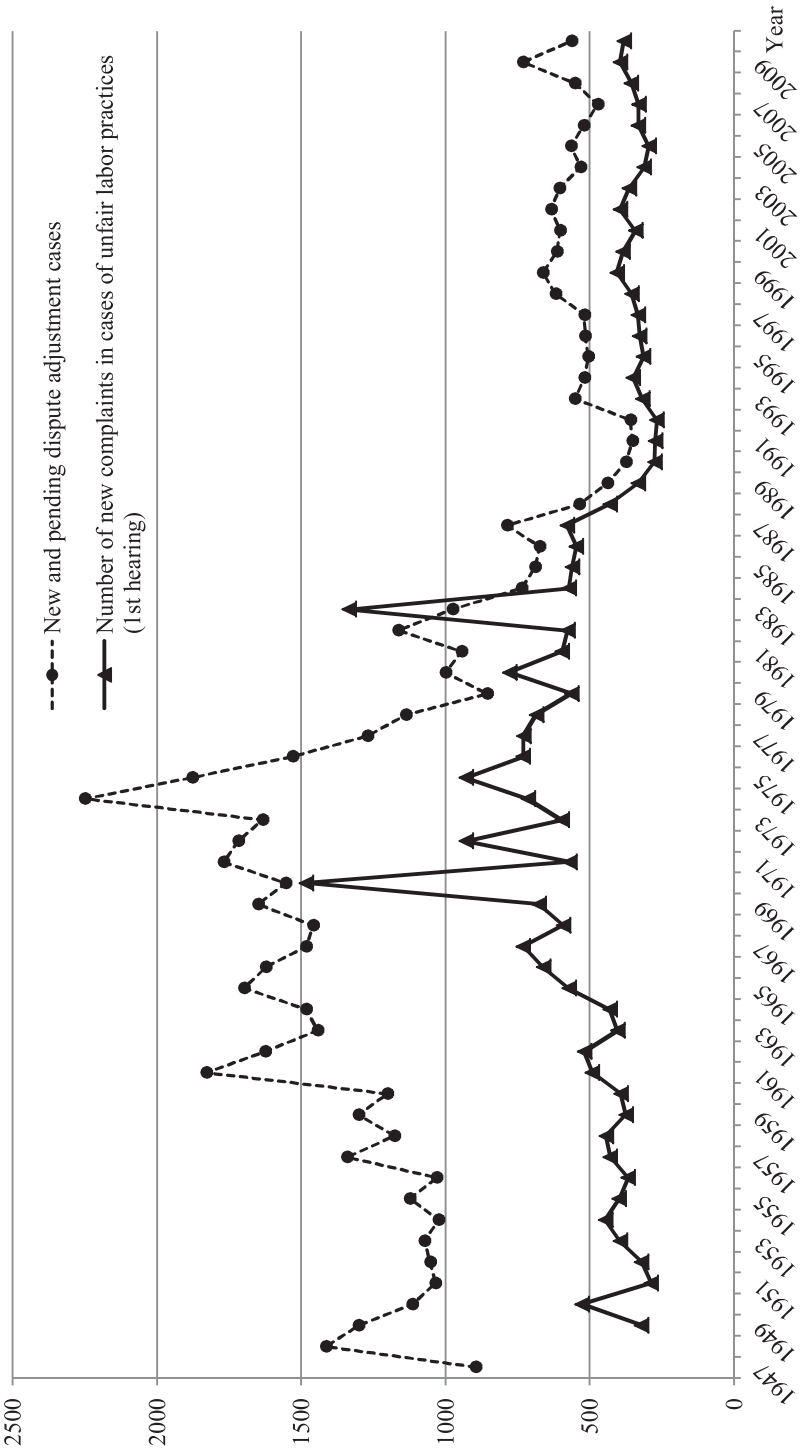
IV. Challenges Faced by LRCs in the Era of Individual Labor Disputes

1. The Decline of Collective Labor Disputes

The new stream of union-management relations has established the practice of resolving most issues autonomously between the parties, and the number of cases brought in to the Commissions has declined steadily.

The turning point was the 1977 spring wage offensive, in which the private railway unions stopped asking the Central LRC to mediate in their *shunto* wage disputes. The number of strikes decreased sharply in the late 1970s, and since the eighties this number has stabilized at a minimum level. The establishment of cooperative union-management relations was symbolized by the development of joint consultation procedures in which the parties share abundant managerial information and collaborate to promote their mutual interests. The strength of militant unions further diminished due to their difficulty in recruiting new young members in the face of the prevalence of cooperative industrial relations.

Thus, the number of complaints of unfair labor practices as well as requests for mediation has been decreasing since the late 1970s. As shown in Figure 1, the number of unfair labor practice complaints was well above 900 in the 1970s, but declined to 400–560 in the late 1980s and to 270–350 in the 1990s. As also shown in the figure, requests for conciliation of labor disputes numbered 2,200 in the early 1970s but have declined to below 500 since the late 1980s.



Souces: Annual Reports of the Central LRC.

Figure 1. Trends in Labor Dispute Adjustment Applications and Unfair Labor Practice Complaints

2. The Rise of Individual Labor Disputes

For a long time in Japan's post-World War II history, LRCs had been a single institution specializing in labor disputes. Yet, since the early 1990s, the number of disputes involving employment relations entered a conspicuously increasing trend. By the early 2000s, the number of civil litigation cases in District Courts involving labor relations tripled. The major types of these were civil actions involving employment relations, such as claims for unpaid wages, claims contesting termination of employment, and claims challenging the validity of disadvantageous changes in working conditions.

One can presume that the first and most important factor contributing to the increase in individual labor disputes could be the difficulties firms faced under the collapse of bubble economy and the advent of global competition coming together at the beginning of the 1990s. The Japanese economy entered a long-term slump, which became even more serious after the 1997 Asian financial crisis. Intensifying competition in global markets, and from rising Asian economies in particular, pressurized firms to make rigorous cost-cutting efforts.

Thus, firms restructured and reorganized their businesses by closing or cutting off unprofitable undertakings and subsidiaries, or shifting production sites abroad. Such pressures made firms resort to large-scale adjustment of employment, including suspension of new hiring, massive relocations of workers and encouragement to retire. Firms also introduced various measures to restrain wage levels or to distribute wages along with performance or achievements.

The diversification and individualization of workers in the labor market provides a second background to the rising trend of individual workers' grievances. Atypical workers (workers employed on part-time or fixed term contracts, workers dispatched from manpower agencies, and workers hired under self-employed contracts) increased significantly. Such diversification has been precipitated by the need of firms to make their workforce flexible and to cut personnel costs.

Another more basic factor behind decreased collective labor disputes and increased individual labor disputes is the steady decline of union density. The union organization rate used to be about 35% until the 1970s, but has been gradually decreasing since the 1980s. In the last few years, it fell below 18%.[10] Factors contributing to this declining trend are changes in industrial structure, working styles and workers' values, as well as drastic improvements in workers' educational backgrounds, etc. The rising trend of part-time and other atypical workers is another significant factor.

[10] Union density in 2014 was 17.5%, according to the Rodokumiai Kiso Chosa (Basic Survey of Labour Unions) by the Ministry of Health, Labour and Welfare.

3. Institution of Administrative Services for Individual Labor Disputes

(1) The Administrative Services of the Ministry of Health, Labour and Welfare Established by the 2001 Act

In light of the conspicuous phenomenon of increasing individual labor disputes, it became obvious that the postwar labor dispute resolution system lacked institutions specializing in such disputes. In greatest demand was the construction of specialized services to deal informally and expeditiously with individual labor conflicts. What was missing was, in the first place, a nationwide counseling service to be offered for various kinds of complaints brought in by individual workers. The agency in charge of this service would also offer an expeditious conciliation service if the party so requested.

Based on such an idea, the Ministry of Health, Labour and Welfare drafted the Act on Promoting the Resolution of Individual Labor-Related Disputes, which obtained parliamentary endorsement in 2001. The Law sets forth a statutory scheme to provide counseling and conciliation services at local offices of the Ministry[11] placed in each of the 49 prefectures.

Since the Ministry of Health, Labour and Welfare began such services in October 2001, cases received by the offices have increased rapidly. The offices have given counseling[12] for about 1,100,000 cases, of which about 250,000 have involved disputes over rights in employment relations. They have been conciliating about 5,000–7,000 cases in recent years.[13] Cases handled by these mediation services have involved dismissals and terminations of employment, inducement of resignation, transfers, alteration of the wage system, sexual and power harassment, and so on.

(2) Underdevelopment of LRCs' New Individual Labor Dispute Services Empowered under the 2001 Act

While creating the national labor administration's individual labor dispute resolution services, the 2001 Act also stipulated that local governments shall endeavor to provide ser-

[11] More exactly, Comprehensive Counseling Corners set up in Prefectural Labour Bureaus and Labour Standards Inspection Offices of the Ministry of Health, Labour and Welfare.

[12] When requested in person or by telephone, such local offices provide information and consultation services to both employers and employees regarding all kinds of issues arising from employment relations. Thus, employees may bring their grievances to these offices to clarify and assess their legal position. Parties using such services are frequently satisfied or relieved merely by understanding the merits or demerits of their case through such counseling. However, if the party using the service wishes to pursue a legal claim, the office may request the employer to appear in the office to discuss how to resolve the dispute. This advisory service is carried out informally and quickly.

[13] If the dispute is not resolved by the above services, and if one of the parties so requests, the head of the Prefectural Bureau can entrust the case to a conciliation service performed by a panel set up in the Bureau. The panel is usually composed of practicing lawyers or law professors serving on a part-time basis. If requested by either party to a dispute concerning employment relations, a member of the panel, with the assistance from the staff of the Office, ascertains the facts of the case and the allegations of both parties, and proposes a settlement. The service is offered without charge, and is accomplished expeditiously, in most cases, within one session lasting a few hours (within two months of the request for conciliation). The success rate of such conciliation services is about 40%.

vices similar to such national services. In accordance with this legislative request, 44 Prefectural LRCs[14] came to offer conciliation services to deal with individual labor disputes. The procedures of such conciliation services are similar to those for collective labor disputes, and conciliation is usually performed by a panel of three members representing each of public interests, labor and management. In addition to conciliation services, many of these LRCs offer counseling services for anyone with questions on employment relations.

LRCs have thus been pioneering the new field of individual labor disputes for about a decade. The advantage of LRCs' conciliation services for individual labor disputes is the participation of union and management representatives in the conciliation panel. They can persuade the respective party to appear in the process; they can also absorb the emotion of the parties and induce them to reach a settlement. In practice, the success rate of conciliation services performed by LRCs tends to be higher than those performed by the national administration. Yet, the number of conciliation cases received every year by LRCs is quite small in comparison to such services of the national administration (between 300–400 cases, even when totaling those of the 44 Prefectural LRCs[15]). With their background as expert institutions for collective labor disputes, LRCs still seem not to have become fully established as institutions offering efficient services for individual labor disputes.

(3) The Appearance of a New Judicial System to Resolve Individual Labor Disputes

The establishment of administrative services specializing in individual labor disputes highlighted the lack of any expeditious special procedure within the court system to deal with cases left unresolved through such administrative schemes.

Until then, there were several types of civil procedures, of which the formal civil procedure and the temporary relief procedure were the major ones.[16] Generally speaking, procedures are carried out by career judges handling not only labor law cases but also all kinds of other legal matters.[17] Unlike many European or other countries with a labor court system, there has been no court established in Japan to specialize in labor disputes.

Yet in the process of large-scale reform of the justice system, carried out at the beginning of the 2000s to make the judiciary more responsive to structural socio-economic changes, Japan came to establish, under the Labor Tribunal Act of 2004, a new judicial procedure specializing in individual labor disputes. This is the labor tribunal procedure, in

[14] The remaining three Prefectures entrusted such services to other departments of their governments, in consideration of the heavy case load of unfair labor practices and collective labor disputes dealt with by their LRCs.

[15] In 2013, it was 348, according to the Annual Report of the LRC.

[16] The other procedures are the small claim procedure and the civil mediation procedure, which are used for labor cases to some extent. The temporary relief procedure had been used as frequently as the formal civil procedure because of its flexibility, but became less and less used after the start of Labor Tribunal System described below.

[17] In the civil mediation procedure, the presiding career judge uses part-time mediators appointed for each case from among practicing lawyers or other knowledgeable citizens.

which either party to an employment relationship can bring a dispute of rights to the District Court with a request to invoke this procedure. Upon such a request, the court organizes a tribunal composed of one career judge and two part-time experts in labor relations (typically, a union official and a personnel manager). The tribunal first makes mediation efforts, and, if such efforts fail, renders a decision clarifying the merits of the case and specifying measures to resolve the case. The decision is not binding, and if either party objects, the case is automatically transferred to an ordinary civil procedure. The Law requires the tribunal to dispose of the case within three sessions, and is premised upon cases lasting only a few months.

Having been in practice for almost a decade, the tribunals are processing cases expeditiously, disposing of most cases within three sessions or a few months, as the Act requires. Moreover, they have been successful in resolving 70% of these cases with mediation. They have been rendering advisory decisions to 20% of the cases,[18] half of which are resolved without objection. Less than 10% of cases are thus transferred to a formal civil procedure, which, on the basis of having gone through tribunal procedures, tends to be processed more efficiently. Accordingly, the labor tribunal procedure has turned out to be quite a popular procedure for both employees and employers, in view of its fair, expeditious and effective dispute resolution. Receiving 3,700 cases annually in recent years, it is now one of the most significant systems in Japan's labor dispute resolution system. The formal civil procedure, on the other hand, is following close behind the labor tribunal procedure, receiving a little more than 3,000 cases annually.

(4) Decline of the Relative Significance of LRCs as a Labor Dispute Resolution Institution

Thus, one could say that the successful institution of the labor tribunal system specializing in individual labor disputes in judiciary courts has further diminished the relative significance of LRCs in the age of decreased collective disputes and increasing individual disputes. At the present stage, one may depict the entirety of the labor dispute resolution system in Japan in the following way. In its first layer resides a giant national labor administration offering nationwide efficient services, which is complimented by LRC services for both collective and individual disputes. Then, in the second layer one finds a variety of judicial schemes, the major examples of which are the labor tribunal procedure and the civil procedure.

V. Conclusion

The Japanese labor law system established after World War II attached the highest importance to collective bargaining disputes, the rights for which were established by the

[18] A little under 10% of cases are withdrawn.

postwar Constitution and Labor Union Act. LRCs were instituted to undertake the task of nurturing industrial relations along with the new labor law and resolving collective labor disputes arising therefrom. Until the beginning of the 21st century, LRCs had been the single statutory institution specializing in labor disputes.

As a matter of fact, until the 1980s, LRCs had in many ways played important roles in dispute-prone industrial relations. One can conclude, therefore, that in the first four decades of their 70-year history, LRCs played a dominant role in Japan's labor dispute resolution system. This could be regarded as the golden age of LRCs in Japan.

As the number of collective labor disputes declined in the late 1980s and the new field of individual labor disputes has been expanding since the 1990s, Japan has transformed its labor dispute resolution system by placing the latter disputes in the center. Nationwide administrative services of counseling and conciliation were established by the 2001 Act to offer informal, comprehensive and expeditious services, undertaken mainly by the national labor administration. LRCs were also empowered by the Act to offer counseling and conciliation services, but have not yet fully developed their services to an extent comparable to those of the national administration.

Then, the 2004 Act established a new judicial system specializing in individual labor disputes, which rapidly became a popular and efficient system. The success of the new judicial system could be said to have further blurred the significance of LRCs in the entire labor dispute resolution system in Japan.

Of course, it is still a fundamental mission for LRCs to adjudicate unfair labor practice complaints and adjust collective labor disputes effectively. Although reduced in number, union-management relations have also been generating significant new legal issues due to management responses to structural changes in recent years. Particularly noteworthy is the issue as to whether workers under contracts of self-employment, franchising or independent contractors are "workers" protected by Labor Union Act. Also of increasingly practical importance is another issue – namely, who exactly is the employer in various situations such as group companies, contracting out, worker dispatch arrangements, etc. LRCs have to continue tackling these issues by exhibiting their expertise in collective labor law and labor relations.

Yet, while maintaining and utilizing their accumulated expertise in collective labor relations, LRCs have to form and promote strategies to expand their activities in resolving individual labor disputes, which will surely continue to be the centerpiece of labor disputes in the coming decades. Such policies and strategies should be carried out in all LRCs through the use of their nationwide collaboration under the leadership of the Central LRC. Without the development of individual labor dispute services, it will also be difficult to revitalize their collective labor dispute resolution procedures.

LRCs have been making efforts in that direction in recent years. As a labor law aca-

demic who has been heavily involved in LRCs as a public-interest member,[19] the author sincerely hopes that LRCs will intensify full-scale efforts in a head-on response to the new situation of labor disputes.

[19] From 1983 onwards, the author served as a public interest member in the Tokyo LRC for 8 years and as a public-interest member of the Central LRC for 14 years. The author served as Chair of the Central LRC during the last 6 of these years.

The Present Situation and Issues of the Labour Relations Commission System

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1946, the system of Labour Relations Commissions (LRCs) was introduced in Japan. LRC members are divided equally among those representing the public interest, workers and employers, respectively, with a Secretariat to assist in administration. Each of Japan's 47 prefectures has its own LRC, with a Central Labour Relations Commission in Tokyo, making a total of 48 LRCs. These exercise their various powers as independent administrative agencies.

The main duties of LRCs are threefold. They consist of (i) issuing administrative orders to provide relief for labor unions and workers from unfair labor practices committed by employers so as to protect the right to organize, (ii) handling or "adjusting" collective labor disputes arising between labor unions and employers or employers' groups by means of conciliation, mediation and arbitration procedures, and (iii) conciliating individual labor disputes arising between individual workers and employers, regardless of whether a labor union is involved or not. The functions of (i) and (ii) are handled by all LRCs, while (iii) is provided by LRCs in 44 prefectures.

The LRC system has made a huge contribution to the formation of industrial relations and labor practices in Japan since World War II. Today, however, both the industrial structure and the labor market have changed, the organization rate of labor unions is in gradual decline, and collective industrial disputes have also decreased in number. In view of this, continuous efforts are being made to improve the LRC system and review its deployment, in order to identify how the system should be maintained and developed in future.

I. Introduction

Japan's Labour Relations Commission (LRC) system was launched on March 1st, 1946, pursuant to the former Labor Union Act (Law No. 51) of 1945.[1] That was nearly 70 years ago. The role of the LRC system was revised three years after it was launched, when the former Labor Union Act was amended as the new Labor Union Act (Law No.174 of 1949; hereinafter "LUA"). This system reaches us today.

[*] This paper merely expresses the personal opinion of the author, and does not necessarily represent the views of organizations to which the author is affiliated.

[1] To be more precise, one month before this, on February 1st, 1946, the Central Labour Relations Commission for Seafarers was created, with jurisdiction over labor relations for seafarers. This Commission has now been merged with the Central LRC. In legal commentaries on the LRC system, the corresponding sections of the systematic overview by the previous Central LRC Chairman are the most reliable (Sugeno 2002, 2012). Another helpful reference is the work by the previous Chairman of the Hokkaido LRC, who is also a leading Japanese researcher on unfair labor practice law (Doko 2014).

The main mission of Labour Relations Commissions (LRCs) is defined as being "to defend the workers' exercise of association and promote the fair adjustment of labor relations" (LUA, Article 19-2 paragraph 2). To fulfil this purpose, the 47 LRCs established by each of Japan's prefectural governments and the Central Labour Relations Commission (hereinafter Central LRC) established by the national government are now cooperating to tackle the following three types of dispute processing.

(i) Examining cases of relief against unfair labor practices[2]

(ii) Resolving labor dispute adjustment cases (conciliation, mediation or arbitration)[3]

(iii) Conciliating individual labor-related disputes[4]

From the very outset, LRCs have had the functions of examining cases of relief against unfair labor practices and adjusting labor disputes. They then acquired the additional task of conciliating individual labor-related disputes through the Act on Promoting the Resolution of Individual Labor-Related Disputes (Law No.112 of 2001), among others (however, this task is only undertaken by 44 Prefectural LRCs).

This paper will give an overview of the current structure and functions of these LRCs, as well as touching on some future issues.

II. Present Situation of LRCs

Since World War II, Japan's LRCs have served to protect workers' right to organize[5] as provided under Article 28 of the Constitution, and to handle collective labor-related disputes. The LRC system, with its 70-year history, has made a huge contribution to the establishment of collective industrial relations premised upon the existence and activity of labor unions. In particular, LRCs played an important role in promoting the formation of Japanese-style industrial relations between the immediate postwar period and the era of

[2] Influenced by the Wagner Act in the United States of America (1935), LUA, Article 7 (i) to (iv) set down provisions on the prohibition of unfair labor practices by employers in industrial relations and a system for administrative relief against them (prohibition of disadvantageous treatment, refusal to bargain collectively, control or interference, etc.). The 47 Prefectural LRCs take charge of the first instance, and appeals against the judgment of the first instance (administrative order) are reviewed by the Central LRC in Tokyo. These 48 LRCs are positioned as independent administrative agencies, and are regarded as quasi-judicial bodies. Furthermore, as the premise for procedures in the system of relief against unfair labor practices, etc., labor unions undergo eligibility screening as to whether they meet the requirements that they should be voluntary (LUA, Article 2) and democratic (LUA, Article 5 paragraph 2).

[3] Based on the Labor Relations Adjustment Act (Law No. 25 of 1946).

[4] Article 20 paragraph 3 of the Act on Promoting the Resolution of Individual Labor-Related Disputes provides for this. It specifies that the Prefectural LRCs can engage in processing individual labor disputes, and that the Central LRC will not itself do this, but will serve to advise and guide the other LRCs.

[5] Article 28 of the Constitution provides that "The right of workers to organize and to bargain and act collectively is guaranteed." This is interpreted as guaranteeing workers' right to organize, their collective bargaining rights, and their right to engage in industrial disputes.

high-level economic growth. However, as high-level growth came to an end, the unionization rate gradually started to fall, industrial action also decreased, and the nature of labor disputes changed. LRCs have also been affected by this process (see Figures 1, 2, 3 and 4).

LRCs are characterized as administrative agencies operated independently, with members representing the public interest ("public interest members"), members representing workers ("worker members") and members representing employers ("employer members") appointed in equal numbers by prefectural governments or the national government, and with a Chairman elected from among the public-interest members.[6]

The tripartite composition of LRCs (i.e. members representing the public interest, workers and employers) permeates many different situations. As well as attending the annual General Assembly of the National Labour Relations Commissions Liaison Council, the regular General Assemblies of each LRC, held about twice a month, and various other meetings, public-interest members together with worker and employer members as observers are involved in examining cases of relief against unfair labor practices.[7] In labor dispute adjustment cases, similarly, mediation is provided by public-interest members together with worker and employer members. In addition, this tripartite composition is usually used when conciliating individual labor disputes.

The tripartite system is useful for providing better solutions to problems, in that the worker and employer members, who have good knowledge of labor situations but sometimes find it hard to avoid conflicts of interests and opinions, and the neutral academic and professional experts mutually compliment each other in areas where they may be lacking in expertise.

Even so, the overwhelming majority of public interest, worker and employer members, who have a tenure of two years and may be re-appointed,[8] work on a part-time basis.[9]

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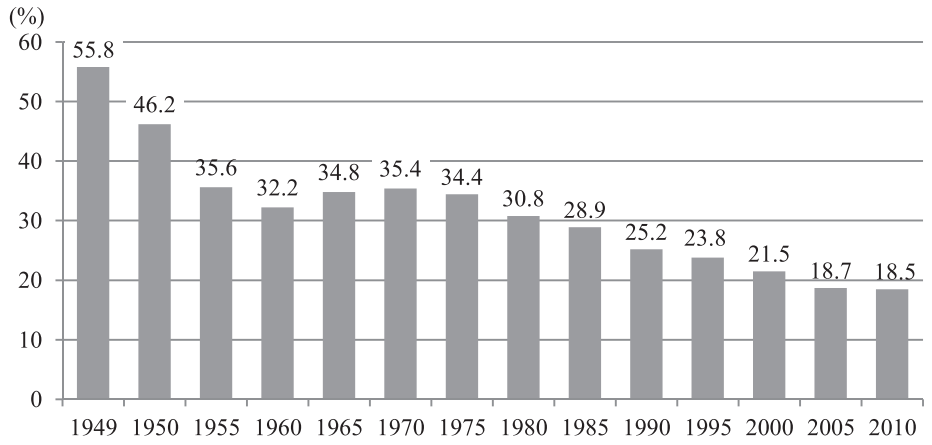
[6] LRCs are empowered to enact regulations, and they decide on numerous matters through group deliberation. Prefectural LRCs are assisted by a Secretariat consisting of local government employees, and the Central LRC by a Secretariat consisting of national public servants.

[7] Investigations and first instances are directed by public-interest members and panel deliberation is held only by public-interest members, while the worker and employer members merely have the role of stating opinions as observers. In reality, however, not only do public-interest members generally consult with worker and employer observer members while proceeding with investigation and first instances, but the observer members often play a central role in settlement work.

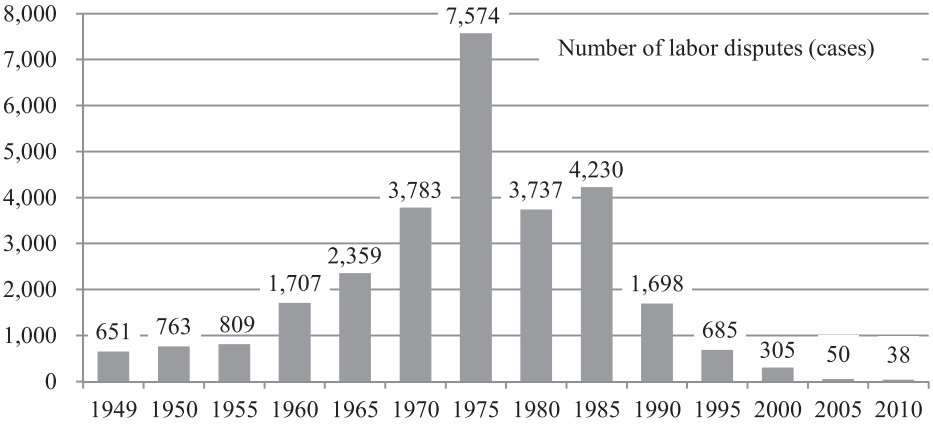
[8] The term of office and re-appointment are governed by LUA, Article 19-2. In actual practice, the basic rule in the Central LRC is a limit of 4 terms totaling 8 years, and an age of less than 70. In the case of Prefectural LRCs, similarly, members are appointed in accordance with certain basic rules, albeit with some differences. Besides this, public-interest members are appointed with the agreement of worker and employer members.

[9] The Central LRC has 15 members of each type, while Prefectural LRCs have anything between 3 and 13 members of each type, as specified by Cabinet Order (LUA, Article 19-3, Article 19-12; in addition, Prefectural LRCs may be increased by 2 members if prescribed by prefectural ordinance). Nationwide, there are 259 members of each type, making a total capacity of 777. If the 24 special adjustment members of the Central LRC are added to this, the entire organization consists of 801 members in all. Of these, only two members of the Central LRC (the Chairman and one Subcommittee



Source: Ministry of Health, Labour and Welfare, *Basic Survey on Labour Unions* (each year).

Figure 1. Estimated Unionization Rates



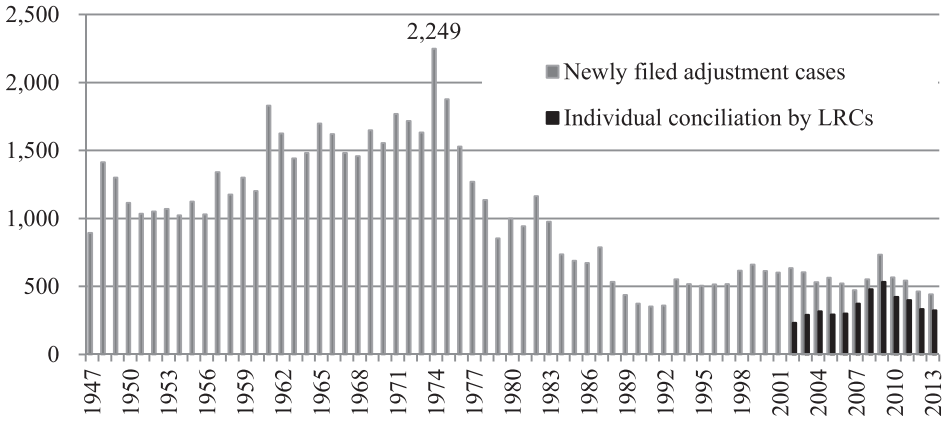
Source: Ministry of Health, Labour and Welfare, *Basic Survey on Labour Unions* (each year).

Figure 2. Cases of Industrial Action Lasting Half a Day or More

The part-time system allows members to hold other posts concurrently, and is therefore suited to attracting a broad spectrum of suitable personnel and stimulating the metabolism of the membership through regular replacement. It also helps to keep operating costs down.[10] But there are constraints inherent in this tenured part-time system. It makes it

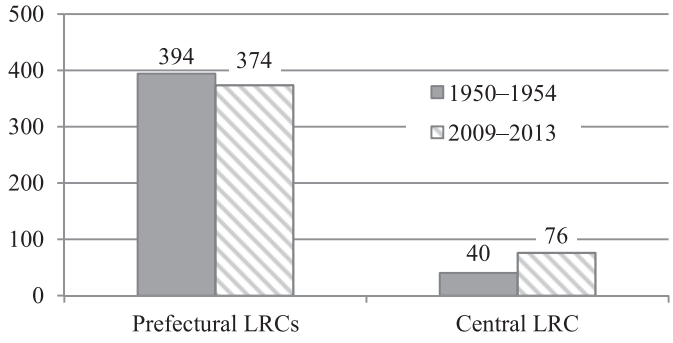
Chairman) are full-time, while all members of Prefectural LRCs (including the Chairman) are part-time members.

[10] Of the 48 LRCs, 15 including the Central LRC have a system of daily allowance payments for attendance by part-time members at meetings, etc., 17 combine daily allowances with monthly salaries



Source: Central LRC survey.

Figure 3. Number of Labor Dispute Adjustment Cases and Individual Labor Dispute Cases Newly Filed with LRCs



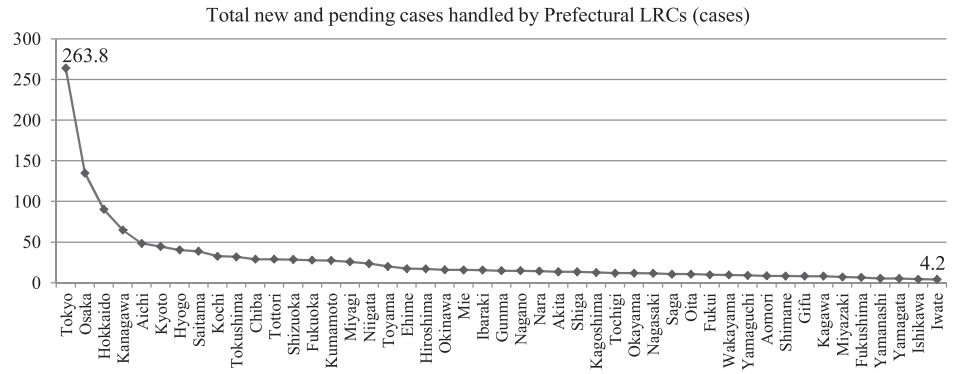
Source: Central LRC survey.

Figure 4. Cases of Relief against Unfair Labor Practices Newly Filed (Comparison of Annual Averages in Early and Recent 5-Year Periods)

harder to coordinate schedules for meetings, examination, adjustment and other functions, while members have to be replaced just when they have become familiar with their practical duties. In terms of achieving flexible operation and amassing expertise, this has been a problem ever since the system was launched.

Therefore, the mainly full-time employees of the Secretariat play an important role in assisting the part-time members and bear a heavy responsibility in facilitating the smooth organization of meetings, examination, adjustment, etc. Nevertheless, judging from personnel practices for public sector employees in Japan until now, posts specializing in legal

to make a fixed monthly sum, and only 16 have a monthly salary system.



Source: Central LRC survey.

Figure 5. Imbalance in Numbers of Newly Filed Cases with LRCs (Annual Averages for 2009–2013)

matters are unusual; most employees build "generalist" careers, in which they move about from job to job. So the question is how much specialist knowhow and technical skill they can gather and to what extent they can fulfil their duties when they are only in a post for a few years due to staff reassignment. LRCs that handle a large number of cases can provide a degree of response by appointing legal specialists in tenured or fixed-term posts and having employees with lengthy experience, but for LRCs that handle fewer cases, the reality is that they have to invest significant creativity in order to cope with the work (Figure 5).[11]

III. State of Processing Various Work

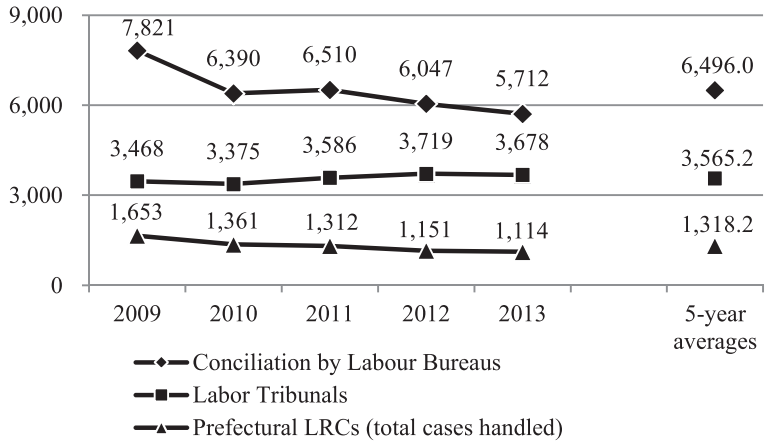
1. Overall Trends in Cases

Taking the five years from 2009 to 2013 as an example, LRCs receive fewer cases than other bodies that deal with labor disputes (Figure 6).[12] The annual averages over these five years are 6,496 applications for conciliation by Prefectural Labour Bureaus of the Ministry of Health, Labour and Welfare and 3,565 petitions to the Labor Tribunal system attached to District Courts, compared to a total of only 1,327 cases handled by all 48 LRCs (including labor dispute adjustment cases by the Central LRC).[13] Although there is some

[11] In the Central LRC, for example, three of the fifteen public-interest members have experience as judges, while another three legal assistants have been seconded from the legal profession (two serving assistant judges and one serving as public prosecutor). As well as this, various forms of training for members and employees are also undertaken regularly.

[12] The analysis from now on will focus on the five years from 2009 to 2013, the most recent period in which definitive statistical data are available.

[13] Adjustment cases handled by the Central LRC are those related to the public sector, those of a national character, and those that involve more than one prefecture and are judged appropriate to be handled by the Central LRC. Although there is no overlap in these, administrative review cases



Source: Central LRC survey.

Figure 6. Comparison of Newly Filed Cases with Labour Bureaus, Labor Tribunals and Prefectural LRCs in 2009–2013

overlap, the annual average of all cases received by extra-judicial labor dispute resolution bodies every year is 11,388, while the proportion of these handled by LRCs is 11.7%. Compared to 31.3% for the Labor Tribunal system and 57.0% for Labour Bureau conciliation, this is certainly a modest presence.[14]

However, LRCs not only have the characteristic of carefully responding to cases with their tripartite system, but also, while the Labor Tribunal system and Labour Bureau conciliation are exclusively aimed at handling individual labor disputes, LRCs are bodies with responsibility for processing disputes in collective industrial relations. As such, they are also characterized by an ability to deal with a combination of collective cases involving labor unions and individual cases of labor relations. Moreover, in their conciliation of individual labor disputes based on applications by individual workers unrelated to labor unions, a positive strength of LRCs is that they can also handle and process problems of employment rules relevant to all employees. In one sense, then, LRCs are used as a "last resort" for local labor disputes.

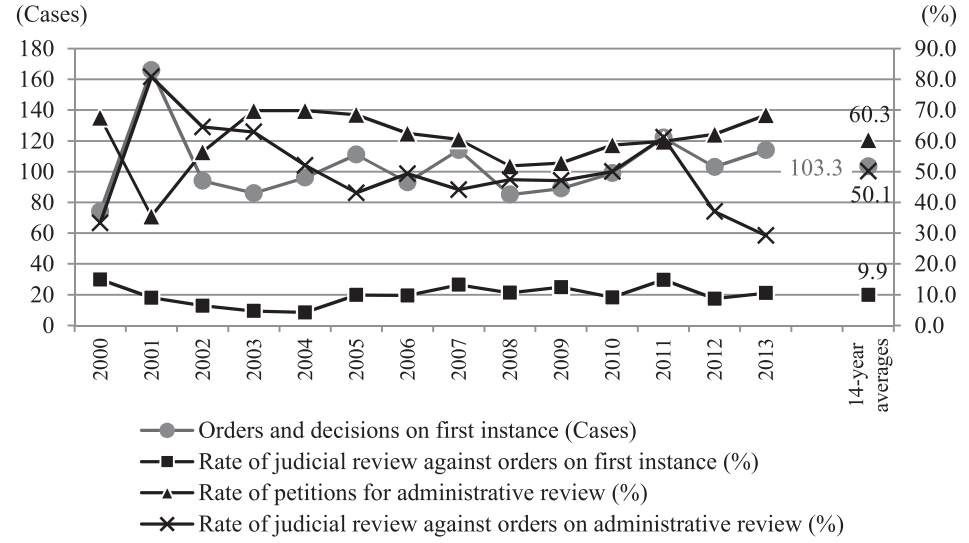
2. Trends in Cases of Relief against Unfair Labor Practices

Every year, there are around 374 petitions for relief against unfair labor practices; in recent years, this figure has been trending steadily at just under the 400 mark.[15] The

against unfair labor practices (77) overlap with appeals against cases originally examined by one of the Prefectural LRCs, and is therefore removed from the totals in the text.

[14] As a result, in the many meetings of a review committee studying ways of revitalizing LRCs, the issue of raising awareness of LRCs was tabled for discussion from the outset.

[15] The past peak was 1,480 cases in 1972.



Source: Central LRC survey.

Figure 7. Orders on First Instance by LRCs, Rate of Petitions for Administrative Review, and Judicial Review Rate (2000–2013)

average time needed to process cases was 98 days for the first instance and 248 days for administrative review between 1955 and 1959, but with the increasing complexity of cases, among other factors, this average exceeded 1,000 days at one time.[16]

In roughly two-thirds of cases, processing culminates in a settlement (or withdrawal based on a de facto settlement) at the first instance by Prefectural LRCs. In the remaining one-third of cases, the end result is an administrative order. About half of the orders resulting from the first instance are filed for administrative review by the Central LRC. Half of those re-examined by the Central LRC end in settlement or withdrawal, the other half being subject to judicial review by the court (Figure 7).

Any party to a labor dispute wishing to appeal against an LRC order may seek to have it revoked by filing for judicial review in a District Court. Just over 10% of orders by Prefectural LRCs are contested by judicial review, but nearly half of orders following administrative review by the Central LRC are subject to this process. The revocation rate of Central LRC orders has tended to be high in the past, but in recent years it has been around 10%. As a result, the judicial review rate is also in a decreasing trend. Finally, the rate at which quasi-judicial or judicial procedures by Prefectural LRCs, the Central LRC, District Courts,

[16] The past peak was 2,996 for first instances in 2001 and 2,137 days for administrative review in 2006. Under the 2004 amendment of the Labor Union Act, steps were taken to reduce the examination period, so that now the first instance lasts between 300 and just over 500 days, and administrative review between 500 and around 1,100 days. Each LRC has set a target period for examination, with 24 LRCs aiming for a period of up to one year and 24 LRCs up to 18 months.

High Courts and the Supreme Court are fully activated is thought to be less than 5% of all cases filed.[17]

3. Trends in Labor Dispute Adjustment Cases

Labor disputes do not occur with any great frequency in Japan today. This is thought to be because labor unions specific to individual companies (company unions) maintain close communication with the companies, and this has helped to build stable industrial relations. This is in no small part attributable to the LRC system.

In fact, from prewar days when labor unions had a negligible presence, the postwar unionization rate rose sharply in the second half of the 1940s, at one point exceeding 50%. The rate stood at around 35% during the period of high-level economic growth, and even the level of occurrence of industrial action was about average for a developed country. During this period, the Central LRC (and a public sector LRC that is now merged with it) served the role of adjusting major national disputes and labor disputes in the public sector, while Prefectural LRCs performed this function in localized labor disputes.

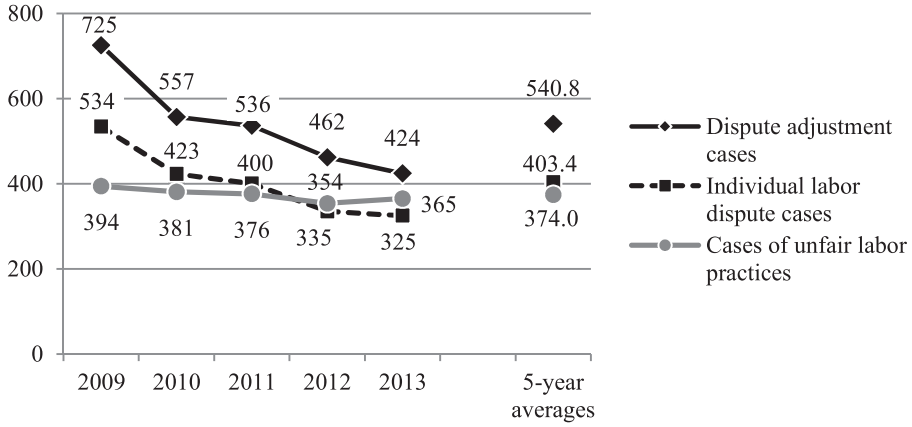
Between the immediate postwar years and the end of the high-level growth era up to the mid-1970s, adjustment was said to be "the jewel in the LRC crown." LRCs undoubtedly contributed to the formation and stability of Japanese-style industrial relations through their adjustment of various disputes. However, a gradual decline in the unionization rate and a sharp fall in the number of labor disputes has led to a decrease in cases of labor dispute adjustment. Nevertheless, statistically speaking, dispute adjustment cases have continued to outnumber cases of relief against unfair labor practices in recent years, as well cases of individual labor disputes not handled by three Prefectural LRCs (see Note 19) and the Central LRC (Figure 8).

4. Individual Labor Disputes

In Japan, it has long been argued that there is a strong need to protect workers' rights and interests through collectives known as labor unions, since it is difficult for individual workers to assert their own rights and interests. As such, LRCs used to be the only option as a quasi-judicial procedure for labor problems without recourse to the courts, and the collective bargaining rights of labor unions have been recognized, albeit relatively slowly.[18] In

[17] Various ways of addressing this are being discussed in academic circles and by the LRCs themselves—for example, permitting judicial review to seek revocation of a Central LRC administrative review order directly from the Tokyo High Court, bypassing hearings by the Tokyo District Court, or barring new evidence from being produced in judicial review—but none of these has materialized. A number of stumbling blocks have been pointed out under present circumstances. These include the fact that the Commissions mainly appoint part-time members, the fact that not all members are necessarily experts in labor law, the fact that the Secretariat staff who assist them do not necessarily have a high level of expertise either, and the fact that the revocation rate in past judicial review has not necessarily been low.

[18] In Japan, there is considerable freedom in setting up labor unions. If two or more workers gather



Source: Central LRC survey.

Figure 8. Breakdown of Newly Filed Cases with Prefectural LRCs

recent years, however, with the increase in non-regular part-time workers, workers on fixed-term contracts, and others, the union organization rate has declined, while on the other hand individual workers have come to assert their rights more frequently. The system of conciliation by Labour Bureaus and the Labor Tribunal system have been developed, leading to a proliferation of bodies involved in processing labor disputes.

LRCs started to handle individual labor disputes in view of these changes in social circumstances, but as there was no legal obligation to establish such a system, three Prefectural LRCs have opted not to do so.[19] Particularly enthusiastic about responding to individual labor disputes are LRCs in prefectures where there are not so many traditional collective cases (cases of relief against unfair labor practices and labor dispute adjustment cases), and where the working population is relatively small. According to statistics from 2009 to 2013, individual labor dispute cases are more numerous than collective cases in 20 LRCs, or more than 40% of the total (Figure 9). If the current social trend of decreasing collective disputes and increasing individual disputes were to continue in future, LRCs would be required to invest more serious effort in resolving individual labor disputes.[20]

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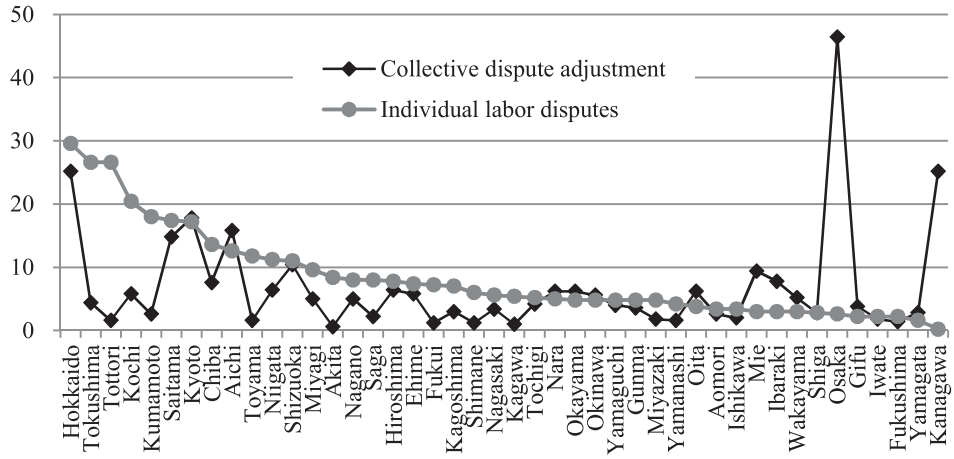
to decide rules and officers, they are legally treated as a labor union. In some specific companies, a single employee who joins in any local union can form a union to demand collective bargaining with the company. The legal interpretation is that this may not be refused without good reason.

[19] These are the three LRCs of Tokyo, Hyogo and Fukuoka, all of which handle numerous cases of relief against unfair labor practices and labor dispute adjustment cases. Moreover, these three prefectures also have separate systems offering consultation and conciliation on individual labor disputes set up within their local authorities, and it was probably judged appropriate to entrust the process to them.

[20] The response to individual labor disputes is also being discussed by the review committee studying ways of revitalizing LRCs. In recent years, it has always been raised as an agenda topic at General Assemblies of the National Labour Relations Commissions Liaison Council, where efforts by each LRC are introduced and discussed.



Source: Central LRC survey.

Figure 9. Comparison of Collective and Individual Newly Filed Cases with Prefectural LRCs that Handle Individual Labor Dispute Cases (Annual Average for 2009–2013)

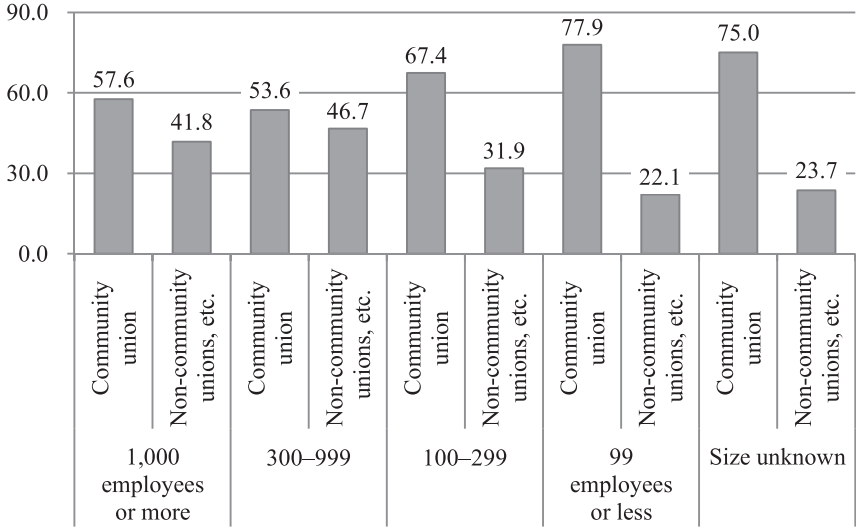
IV. Future Tasks

The LRC system was established soon after the war, as a mechanism for resolving collective industrial disputes. This system has contributed greatly to the formation and stability of industrial relations in Japan, thanks to its efforts in creating a framework for industrial relations through dispute resolution, protecting the right to organize, adjusting rights and interests, etc. So today, when industrial relations are stable but the organization rate has fallen and there are fewer collective disputes, has the raison d'être of LRCs diminished? In one sense, this cannot be denied as a long-term trend, as discussed above. But when examined from a different perspective, we can see that their social raison d'être has certainly not diminished at all.

Firstly, although cases of relief against unfair labor practices and labor dispute adjustment cases in Japan have decreased in number, the total still reaches nearly 1,000 cases every year.[21] For cases of relief against unfair labor practices, in particular, the number of cases filed for administrative review by parties in the last five years has far from decreased, compared to the first five years after the system was launched; if anything, the number has increased. The existence of a public body that deals with collective disputes is indispensable as a device for social stability, and it cannot be considered appropriate to overlook the existence of the LRC system or the knowledge and experience that have been amassed in it.

Moreover, the proportion of cases filed by company unions has decreased while the

[21] If cases adjusted by the Central LRC are added, the average over the five years from 2009 to 2013 was 921.6 per year.



Source: Central LRC survey.

Figure 10. Proportion of Community Unions Involved in Unfair Labor Practice Cases Processed in 2009–2013, by Company Size (%)

proportion filed by community unions that organize local small and medium-sized enterprise workers and non-regular workers has increased. Thus, in terms of protecting the right of workers with weaker social bargaining power, LRCs are still presumed to fulfil a certain role (Figure 10).

Cases involving community unions often concern situations in which the number of organized workers in individual companies is small and there is a high degree of localization. In that sense, the cases are undeniably small in scale.[22] However, they are also highly significant in that they help to protect the rights of dispatched workers (temporary workers), fixed-term workers, part-time workers, and workers on the borderline between contracting and employment who are now proliferating outside the world of regular employment, while also presenting new legal and policy issues. In fact, recent LRC orders that are important in terms of legal theory and have had a significant social impact have often been issued in connection with cases filed by community unions.[23] Besides this, cases involving community unions also throw up many issues in the relationship to legal doctrine and practical

[22] In cases involving community unions, if even a single worker in a specific company succeeds in organizing a union branch, the company enters an obligation to engage in collective bargaining with that union. If the company refuses to negotiate, or is insincere in its negotiating attitude, community unions often attempt to reach settlement via LRCs based on the prohibition of refusal to bargain collectively under LUA, Article 7 (ii). In this case, disputes lean more strongly toward the nature of individual labor disputes in essence, despite being conducted in the collective arena.

[23] Examples include the Central LRC order of July 15, 2010 in the Sokuhai case, and the Central LRC order of October 18, 2012 in the Showa case.

processing, arranged with company unions in mind.

Meanwhile, there is a degree of independence in the roles and significance of LRCs, in the sense that they can handle both collective and individual disputes and attempt detailed dispute processing based on the tripartite composition of workers, employers and public interest. As bodies specializing in processing labor disputes, relationships of social division of labor and cooperation are being formed in collaboration with various other agencies, and such moves should be further promoted.[24]

Another area to be explored is the idea of functions to prevent disputes in advance, i.e. educational or consultation functions, rather than processing after a dispute has arisen. As for the educational function, the Central LRC collaborates with LRCs all over the country to hold seminars on industrial relations about 18 times a year, with total audiences of more than 2,500 participants (2014), while Prefectural LRCs also send lecturers to senior high schools and labor counselors to give consultation at railway stations, among others. Education on labor law, employment and labor is important as general education for working citizens, and there is scope for LRCs to make a contribution by taking advantage of their tripartite composition.[25]

V. Conclusion

A legal system originating in the USA has been transplanted to Japan and has taken root in Japanese soil while undergoing peculiarly Japanese changes. Even today, it has still not lost its raison d'être. This much could be said in positive evaluation of the LRC system. However, all systems harbor the potential for system fatigue, if continued for a long time. And of course, the LRC system, with its history of 70 years, is not exempt from this danger. As such, everyone connected with the LRC system seems to be striving to ensure that the system does not lose its posture of challenging new issues in society. They are doing so by accumulating various efforts such as legal amendments, regular replacement of members and employees, and discussions and ideas within LRCs for activation, in order to prevent this kind of system fatigue from taking hold.

[24] Schemes for giving LRCs more positive roles, such as fulfilling a hub function between the various bodies responsible for processing labor disputes, have already been proposed (for example, Suwa [1992]). However, considering the position of LRCs within dispute processing as a whole, the stance of LRCs, etc., it will be difficult to attain this kind of situation directly from the present status quo without revising the whole system.

[25] As the unionization rate continues to decline, the search is on for appropriate ways of dealing with problems of a collective nature within companies. If an employee representation system were introduced, there should be scope for involvement by LRCs in addressing problems of electing representatives, their activities, and so on. Meanwhile, even for public sector employees whose remunerations are currently being reviewed by annual recommendation of the National Personnel Authority, there have been repeated proposals that these should be decided via autonomous industrial relations. If that were to happen, a new role could be created for LRCs.

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Labour Relations Commissions and Industrial Relations: The Era of Great Conciliators

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This paper describes the involvement of the Central Labour Relations Commission in adjusting major nationwide disputes over a period of about 15 years from its creation in 1946 until 1960. The purpose in doing so is to enhance understanding of the role played by Japan's Labour Relations Commissions in industrial relations. The discussion follows the course of four important disputes adjusted under the guidance of the Central Labour Relations Commission's 2nd Chairman Izutaro Suehiro and the 3rd Chairman Ichiro Nakayama—specifically, the 1946 Densan dispute, the 1946–47 wage dispute by public sector employees, the 1952 Tanro-Densan dispute, and the 1959–1960 Miike Mine dispute.

I. Outline and History of the Labour Relations Commission System

Japan's system of Labour Relations Commissions (LRCs) was created under the Labor Union Act, enacted as part of the labor reform movement during postwar occupation. With the enforcement of the Act on March 1st, 1946, Prefectural LRCs were established in the 46 prefectures, while the Central Labour Relations Commission (CLRC) was also set up as a body dealing with industrial disputes at national level.[1]

Let us now examine the scope of their authority. Until civil servants were deprived of the right to strike under instructions from the General Headquarters, the Supreme Commander for the Allied Powers (GHQ-SCAP) in July 1948, public sector employees also came under the jurisdiction of the Labour Relations Commission, and adjusting labor disputes in the civil service was one of the LRC's important tasks. Then, under the amended National Public Service Act in December 1948, civil servants in clerical/administrative posts lost their rights to collective bargaining and industrial action, and industrial relations came to be conducted under a system of personnel management by the National Personnel Authority as an independent administrative body.

However, a path to collective bargaining still remained for non-clerical workers in the public sector, in the form of the public corporations established in 1948 (only two at first—Japan National Railways and the Japan Tobacco and Salt Public Corporation). Now, since the right to strike was denied, a system for adjusting disputes through conciliation and arbitration was created. By 1956, the Labour Relations Commission for National Public Corporations (LRCNPC) was established. These were authorized to adjust labor disputes in three public corporations (the Nippon Telegraph and Telephone Public Corporation had

[1] Okinawa remained under US military control until May 1972.

been added in the meantime) and five non-clerical sectors (postal services, national forests, the Printing Office and Mint of the Ministry of Finance, and the Japan Alcohol Corporation). The LRCNPC was converted to the LRC for State-Owned Enterprises under administrative reforms in the 1980s. Finally, in 1988, the LRC for State-Owned Enterprises was integrated into the CLRC, whereupon independent LRCs with jurisdiction over the public sector ceased to exist. Labor unions representing employees in some independent administrative agencies that had not been privatized but continued their civil service status were then returned to the jurisdiction of the CLRC.

For non-clerical workers in local authorities, the Act on Labor Relations of Local Public Enterprises was enacted in 1952. As with the Public Corporations and Government Enterprises Labor Relations Act at national level, this prohibited industrial action while recognizing collective bargaining rights. Labor-management disputes by local public enterprises now came under the jurisdiction of the Prefectural LRCs, while the CLRC also came to be involved in re-investigating unfair labor practices.

Next, let us turn to the composition and functions of LRCs. In principle, Japan's LRCs all comprise three parties—labor, management and public interest. They are administrative bodies whose main remit lies in adjusting disputes and investigating unfair labor practices. LRCs were conceived and created under postwar occupation, and established under the Labor Union Act, which itself was strongly influenced by the US National Labor Relations Act. However, they differ greatly from the US National Labor Relations Board in both composition and functions.[2] The reason for this divergence from the US system is subject to ongoing research on legislative history, but is yet to be satisfactorily explained.

In terms of the actual work of LRCs, their tripartite composition was consistent with the fact that adjusting disputes was overwhelmingly the most important work of LRCs in their infancy. This tripartite composition is characterized by the fact that commissioners on both labor and management sides are not only experts recommended by their respective side, but are also currently active or only recently retired practitioners in their fields. For example, commissioners elected to the very first CLRC included Japanese Communist Party Secretary-General Kyuichi Tokuda, who was not even a union official. This was because, at the time, the most powerful national labor organizations were under the influence of the JCP, and its presence could not be ignored when adjusting disputes. Subsequently, too—from the 1950s to the 1960s, for example—both Kaoru Ota, Chairman of the General Council of Trade Unions of Japan ("Sohyo"), the largest national labor organization at the time, and Minoru Takita, leader of the All-Japan Trade Union Congress ("Zenro"), the second largest national labor organization, were labor-side commissioners of the CLRC.

The fact that currently active leaders of labor movements served as labor-side commissioners meant that they played an effective role in resolving disputes in cooperation with

[2] Even in the USA, some labor relations boards for public sector employees established at State level also handle both adjustment of disputes and investigation of unfair labor practices.

public interest commissioners and management-side commissioners, while at the same time speaking for the parties when adjusting disputes. On the other hand, friction between labor and management tended to spill over into LRCs when such friction became aggravated, and could have obstructed the dispute adjustment activity of LRCs.

Though carrying this latent risk, the tripartite system suffered no significant setbacks and was able to support the conciliation function of LRCs in adjusting numerous large-scale disputes. This was greatly assisted by the role of the public interest commissioners, and particularly that of the Chairman, who was elected from among the public interest commissioners. Particularly important guiding roles were performed by Izutaro Suehiro, who served as 2nd Chairman of the CLRC from 1947 to 1950, and Ichiro Nakayama, the 3rd Chairman from 1950 to 1960.

II. CLRC and Industrial Relations in the Immediate Postwar Era: The Era of Izutaro Suehiro

As the first CLRC Chairman, Masataro Miyake, was barred from office as part of a GHQ purge soon after his appointment, Suehiro could be described as the de facto first Chairman of the CLRC (including a period as acting Chairman). In this capacity, he came to play an important role. Suehiro, a Professor of Civil Law at the University of Tokyo Law Faculty, had conducted pioneering research as one of the few labor law researchers before the war. Backed by this research record, Suehiro went on to leave a big footprint on labor legislation and labor policy in the early postwar period. The most significant of these was probably his role in drafting the bill for the Labor Union Act. He became a member of the Labor Legislation Deliberation Committee set up as a Diet advisory body for drafting the bill, and displayed strong leadership in drafting the bill as the only expert on labor law.

Suehiro served both as a CLRC public interest commissioner (or, until the 1949 amendment, a neutral commissioner) and as a member of the Tokyo Metropolitan Government Labor Relations Commission and the Central Labour Relations Commission for Seafarers (which dealt with industrial relations for seafarers).[3] In these various capacities, he was involved in adjusting many important labor disputes in the early postwar years.

1. The October 1946 Labor Offensive by the Electric Industry Union (Densan)

The first important national labor dispute conciliated by the CLRC was the wage struggle by the power industry in October-November 1946. The power industry had been made a public interest business under the Labour Relations Adjustment Act, which was

[3] For seafarers, an organization for adjusting interests based on labor-management bodies had been set up before the war, and thus collective industrial relations were already established. Due to this background, a separate LRC came to be created for seafarers. The CLRC for Seafarers came under the jurisdiction of the Ministry of Transport, rather than the Ministry of Health and Welfare or the Ministry of Labour that was newly created in 1947.

promulgated on September 27 and brought into force on October 13, 1946. For that reason, partly because conciliation by a LRC was necessary as a prerequisite for industrial action, the labor union had no alternative but to request conciliation from the CLRC. GHQ-SCAP (which effectively ruled Japan after the end of the war) and the Japanese government had continued the wartime controlled economy, considering the state of Japanese industry due to the severe damage sustained during the war. But they were unable to control rampant post-war inflation, and labor unions, which had rapidly expanded their organization after the enforcement of the Labor Union Act, had issued demands for doubling or tripling wages. Even that could not keep up with inflation, and so, just a few months later, the unions started a movement demanding further wage rises.

As this went on, the labor union of the electric power industry, which had established its status as an industry-level organization, was not content merely to demand vast wage increases, but also developed a wage system and established a consistent scheme of wages. On the subject of rising consumer prices, meanwhile, it started wage talks in which it demanded the introduction of indexation. The CLRC receiving the conciliation request on November 1st and, after a painstaking conciliation effort, recognized the validity of the union's demands on November 15th. It then drew up a conciliation proposal in which these demands were accepted to a degree. However, the Japanese government (then under Prime Minister Shigeru Yoshida) issued a strong statement of rebuttal, in that recognizing the conciliation proposal would violate the government's inflation control policy. As a result, the CLRC conciliation was derailed. The CLRC then issued a Chairman's statement criticizing the government's hard line. Its content was fiercely critical of the government, demanding that "the Diet be dissolved and a General Election be held to let the people decide whether this government action is appropriate or not."

Following the breakdown of conciliation, the union decided to hold a simultaneous nationwide power strike lasting five hours on December 2nd. This pressurized the government into softening its stance. A change in the attitude of GHQ may have been behind this. At the time, GHQ did not adopt a stance of prohibiting strikes by the power industry, which exerted a huge social influence, on grounds that they negated the purpose of the occupation. The CLRC resumed the conciliation effort, and by November 30 had tabled a second conciliation proposal. Both labor and management accepted this, and the dispute was over.

Behind this confrontation between the government and the CLRC lay the fact that conciliation had run aground in the middle of a postwar economic crisis. Nevertheless, given that the system had only just been launched, it could be seen as a struggle for the raison d'être of system deployment, in the sense of defining the degree to which society and the government should respect the authority and powers of LRCs.

2. The Aborted General Strike of February 1st, 1947

Of the disputes adjusted by the CLRC in the early postwar years, one that was particularly large in scale and had a significant social impact was the wage dispute by public sector employees between the end of 1946 and early 1947. Private-sector production had not recovered from the devastation of war, and with spiraling postwar inflation, companies saw greater profit in waiting for prices to rise than in producing and selling. And although consumer prices were still under wartime control, the only effect of this was to encourage a burgeoning black market. People could not live on the goods delivered by the government alone, and so had no choice but to rely on the black market. Private companies had ways of profiting from the underground economy and distributing the resultant earnings in response to union demands, but public sector employees had no room for this sort of action. For, although their lives depended on the black market, their salaries were only paid at the official rate. The government's position was that it could neither lower the banner of inflation control nor accede to wage rise demands. This led to an explosion of labor movements by public sector employees. Private-sector labor unions converged with these, with the result that an indefinite general strike by nearly all industries was slated for February 1st, 1947.

This dispute was led by the left-wing National Congress of Industrial Organization ("Sanbetsu"), but the right-wing General Federation of Japanese Trade Unions ("Sodomei") was also involved in a combined struggle. This shows that the desire for wage struggle by public sector employees had risen to such a degree that it was no longer bound by the ideology of their leadership.

The task of adjusting this dispute fell at the door of the CLRC. However, the Japanese Communist Party (JCP), which effectively controlled Sanbetsu, aimed to use the proposed general strike as a platform not only for achieving pay rises but also for toppling the Yoshida administration and establishing a people's democratic government, in which it would itself be involved. As such, there was little prospect of the dispute being resolved, however successfully the CLRC adjusted the wage demand. Behind closed doors at the CLRC, JCP Secretary-General Tokuda, a labor-side commissioner at the time, took part in discussions on formulating a conciliation proposal in support of the wage rise and demanded a compromise from the management side. But to the general public waiting outside the CLRC, he gave a speech in which he vigorously agitated for the start of a general strike.

Faced with this situation, Suehiro and the other neutral commissioners made gradual progress in the conciliation process, with help from the management- and labor-side commissioners. Starting from a proposal to set the average wage at 1,200 yen, they made the management side (actually the government) concede to 1,600 yen just before the date set for the strike. In this process, the actual negotiation was carried out by the CLRC and the GHQ Government Section in charge of fiscal administration, with the management-side commissioners positioned between them. A central figure on the management side was Kazuo Imai,

Director-General of the Finance Ministry's Remuneration Bureau.[4]

However, since the Sanbetsu and JCP intentions had shifted from raising pay for public sector employees to a new target of regime change, these painstaking negotiations were to no avail, and the unions decided to call a general strike. At which point, GHQ intervened. General MacArthur, as Supreme Commander of the Allied Powers, issued a statement banning the general strike. The unions halted the strike action, which thereafter became known as the aborted General Strike of February 1, 1947.

Of course, in terms of the origin of this dispute, i.e. wage negotiations for public sector employees, the conciliation by the CLRC was by no means of minor importance. As a result of various other adjustment efforts outside the CLRC continuing after February 1947, this wage dispute by public sector employees concluded with a proposal to raise the average wage of public sector employees to 1,800 yen in July. This clearly underlined the significance of the CLRC conciliation process, which had taken it to 1,600 yen.

Given this pivotal role played by the CLRC in adjusting wages to cope with inflation, it was inevitable that the government and GHQ would start to monitor the CLRC's movements, as their interest lay in controlling consumer prices. In November 1948, the "three wage principles" (banning deficit financing, wage rises that influenced consumer prices, and price support subsidies) were announced under instruction from GHQ. The main aim of this was to ensure that wage rises were not reflected in controlled prices, and that there was no increase in subsidies in response to this. One of the main targets of these three wage principles was the CLRC, which had the task of adjusting labor-management negotiations and keeping wage levels in line with inflation. In fact, GHQ Labor Division Chief Chester Hepler is said to have ordered the CLRC not to engage in wage conciliation that would raise prices of products and services, and threatened to crush the CLRC if the order was not obeyed.[5]

There was never actually a situation in which the CLRC clashed with the government or GHQ on this problem, however. This was because, in 1949, the Dodge Line (a financial and monetary contraction policy designed to promote the independence and stability of the Japanese economy) was announced, price controls themselves were lifted, and a transition was made to a market economy. As a result, methods of adjusting wages also underwent a major change.

[4] Secretariat of the Labour Relations Commission for National Public Corporations, ed., *Kokyo Kigyotai-to Rodo Iinkai no Nijunen* [Twenty years of the Labour Relations Commission for National Public Corporations.] (Tokyo: The Institute of Labour Administration, 1971), 233.

[5] Statement by Ichiro Nakayama in Secretariat of National Labour Relations Commission Liaison Council, ed. *Rodo Iinkai no Nijunen* [Twenty years of Labour Relations Commissions] (Tokyo: National Labour Relations Commissions Liaison Council, 1966), 85.

III. Industrial Relations and the CLRC in the 1950s: The Era of Ichiro Nakayama

In 1950, Ichiro Nakayama became the third (effectively the second) CLRC Chairman. He was an economic theorist at Hitotsubashi University (until 1949, Tokyo University of Commerce) and was responsible for introducing the general equilibrium theory into Japanese economics. After the war, he not only left a huge mark as a policy expert involved in the reconstruction and development of the Japanese economy, but was also active as the most important dispute conciliator in the CLRC. He also exerted a powerful influence as a policy expert in industrial relations, proposing a variety of initiatives for stabilizing industrial relations. In 1946, he was appointed a commissioner upon the launch of the CLRC, became Chairman in 1950, and remained so throughout the upheavals of the 1950s, resigning in March 1960.

1. The 1952 Tanro-Densan Strike: The Largest Postwar Wage Dispute[6]

Postwar labor reforms initiated by GHQ caused Japan's labor movement to snowball into increasingly vigorous activity, in an environment of inflation and employment uncertainty. But a number of factors took this labor movement to a major turning point. One was the shift in GHQ labor policy toward suppressing the labor movement. This included stripping public sector employees of their right to strike in 1948, the amendment of the Labor Union Act in 1949, and the "Red Purge" of 1951 (when JCP members and their sympathizers were barred from certain workplaces). Another was the radical change in the economic environment due to the "shock therapy" of transition to a market economy, as well as large-scale cuts in fiscal expenditure under the Dodge Line. These dealt a devastating blow to the left-wing Sanbetsu congress, which had led the labor movement in the immediate postwar years, and the movement as a whole was in stagnation. As this went on, unions belonging to the right-wing Sodomei federation joined forces with others that had left Sanbetsu, some neutral unions that belonged to neither affiliation, and others to form the General Council of Trade Unions of Japan (Sohyo) as a new national center in July 1950. The labor movement of the 1950s would now revolve around the core of Sohyo. The CLRC led by Nakayama, who had incidentally been appointed Chairman in the same year, would have a strong interaction with this Sohyo labor movement throughout the 1950s.

The first peak of the 1950s labor movement was the wage struggle by the Japan Federation of Coal Workers' Unions (JFCU or "Tanro") and the All Japan Electric Workers Union (AJEWU or "Densan") in autumn 1952. Densan called strikes in sixteen waves, starting with the first on September 24th. The union fought hard, using electric power strikes among its tactical armory. These had a major impact on society, with lengthy power

[6] This section refers to statements in Ohara Institute for Social Research, Hosei University, ed., *Nihon Rodo Nenkan: Sengo Tokushu, Dai 26-shu* [The labour yearbook of Japan: Postwar special feature, volume 26] (Tokyo: The Ohara Institute for Social Research, 1970), Part 2 Sections 9 and 10.

outages affecting ordinary homes as the strikes went on. After Tanro had held a 48-hour strike on October 13th and 14th, labor unions of 17 leading companies called an indefinite strike starting on October 17th, on grounds that no progress was being made in negotiations. The strike continued for 61 days. As the energy revolution had yet to occur, coal was still the primary source of energy, both for industry and for ordinary homes. When the production of coal stopped and reserves started to fall dramatically, the situation also began to impact economic activity.

That year, the number of lost working days reached a total of 15 million, unparalleled before or since in the history of the postwar labor movement. Of this total, 11.82 million days were lost in the coal mining industry alone, revealing the sheer scale of strikes in this Tanro dispute. The Densan strikes also had a huge social impact, since they involved power outages. But fewer working days were lost as a result, because the union adopted a partial strike strategy in which only key personnel in power generation and transmission were called out. This meant that Densan union members suffered a smaller loss of income and less hardship in daily life as a result of the strikes. By contrast, mine workers who took part in all-out strikes lasting two months with meager backup funds suffered acute economic hardship. Sohyo canvassed for donations of funds from unions under its umbrella, but the outcome was far short of the level needed to fund such a large-scale strike. Yet even under these harsh conditions, the only major union to withdraw from the Tanro unified strike action was the Joban Coal Mine labor union. The others endured the harsh conditions of the struggle to the bitter end. This shows the sheer scale of expectation toward higher wages among mineworkers and their families.

Of the disputes by the Tanro and Densan unions, no mediation or conciliation was requested of the CLRC for the former, as both management and unions attempted to resolve the issue through collective bargaining. As a result, the CLRC took no direct action to adjust the dispute until the very final stage. Tanro had tabled a demand for a massive wage rise as a uniform demand for the industry. The response from the management side was that the Coal Mining Industry Federation agreed to unified collective bargaining, but its reply was that company-specific wage responses would be maintained. Not only did it refuse to accept any wage increase, but it also proposed the vast increase in the standard work quotas of workers paid by output. As such, the demands of the two sides collided head-on. No progress was made between August 13th, when the union tabled its demands, and the tenth round of talks on October 4th. At the 11th round on October 9th, the proposal to increase standard work quotas was revised (slight concessions was made), but the pay rise demanded by the union was flatly refused. As a result, the union launched strike action. Both sides remained entrenched, resulting in a waiting game without any collective bargaining for nearly 50 days until November 26th.

By contrast, the CLRC was involved in conciliation and mediation for the Densan dispute from an early stage. The Densan union tabled a demand for a huge wage rise to the Electric Utility Enterprisers Forum (the employers' group) on April 14th. When talks broke

down during the 5th round of negotiations on May 15th, the union asked the CLRC to conciliate, and on June 18th the first conciliation committee meeting was held. By September 6th, a conciliation proposal with an average offer of 15,400 yen per worker per month had been tabled. Although this fell short of the union's demands, it would have represented a wage rise of nearly 20%, taking account of consumer price inflation and other factors. However, the union immediately decided to reject the proposal after a vote by the Central Executive Committee on September 7th. The management side took longer to make up its mind, but on September 29th also declared that it could not accept the conciliation proposal.

After that, Densan continued time-limited strike action in waves, causing power outages, and the collective bargaining effort remained in deadlock. As this situation went on, it was decided in mid-November that CLRC Chairman Nakayama would launch a mediation attempt. Before that, on November 10th, the union had decided to start industrial action including a 40-hour continuous power strike starting on November 17th, but Nakayama strongly urged the union to cancel the strike. The union agreed to this, and although falling short of calling off the dispute, it changed its tactics.

On November 26th, the CLRC tabled a mediation proposal. On the wage rise demand, its content included an extension of the working week to 48 hours, though remaining in line with the conciliation proposal of September 6th. The management side declared its acceptance of this on November 28th. But Densan had already rejected the proposal on November 26th, deciding instead to escalate its tactics starting with a 40-hour continuous power strike from December 2nd. This seemed to signal an all-out confrontation between the union and management, but then the unified action by the union started to fall apart. Of the nine national power companies across Japan, individual agreements were concluded with Tokyo Electric Power Company (December 8th), Kansai Electric Power Company (15th) and Chubu Electric Power Company (16th) in disregard of Densan instructions. At Chubu, a 2nd union was formed, and this very soon came to have the majority of the company's employees as its members. As this represented an organizational crisis for Densan as an industry-level union, Densan headquarters also turned toward a compromise, and on December 18th agreed to a new mediation proposal. In this new proposal, the 48-hour working week had been modified to 42 hours. The management side did not oppose this, either.

The "hidden agenda" behind this power industry dispute was a quest to re-organize industrial relations after the transition to nine electric power companies. Japan's power industry between the war years and the immediate postwar era adopted a segmented system, whereby electricity was generated exclusively by the privately owned but state controlled Japan Electric Generation and Transmission Company (JEGTCO), while the electricity it supplied was delivered to homes and businesses by power distribution companies in various parts of the country. Electricity prices were under state control. This industrial structure was utterly transformed by the change to a system of 9 electric power companies on May 1st, 1951. JEGTCO was carved up into regional divisions, so that now 9 monopoly-style regional power companies were wholly responsible for all processes from generation to

transmission and distribution of electricity. And although the government control remained for electricity prices, the immediate postwar policy of maintaining low electricity prices and subsidizing costs was scrapped, shifting instead to a system of setting appropriate electricity prices in line with appropriate cost calculations.

Although the customary practice in other industries was to form unions at company level and to set up industry-level organizations as federations of these, Densan chose to keep the single industry format that had been formed in the immediate postwar era. In the 1952 dispute, too, the negotiating partner targeted by the union was not an individual company but the Electric Utility Enterprisers Forum, as a management-level group. The CLRC also engaged in mediation and conciliation on the premise of this bargaining system, but in its conciliation and mediation proposals, it was compelled to grant a degree of deferment to regional electric power companies that had low payment capability. Because the electric power companies responsible for supplying major cities had considerably higher capacity to pay, negotiating individually with companies could have been expected to yield higher wage rise offers for union members in these companies. However, Densan insisted on the same amount for the whole industry (though at the level of average wages), and refused to recognize these individual interests. This led to the division and collapse of Densan as a result of this dispute, and the shift to a system of company-level unions. At the conclusion of this dispute, individual company talks were held with Tokyo, Kansai and Chubu, resulting in a higher pay offer than the 15,400 yen won by Densan. In its final mediation proposal, the CLRC also seems to have given some consideration to Densan's position by not negating the unified industry offer. However, the system of unified industry negotiations by Densan was effectively dismantled after this dispute.

By late November, as the power industry dispute headed toward a conclusion as described above, the mining industry dispute also started moving toward a resumption of talks with a view to reaching a long-awaited resolution. On November 26th, the 12th round of collective bargaining was held after a 47-day hiatus. At the talks, the management side tabled a proposal for a compromise on increase standard work quotas. Then, at the 13th round on November 28th, a 4th offer was made, to the effect that the increase of standard work quotas would be abandoned and wages kept at their existing level. A clause was added offering a loan of 5,000 yen to each miner. But the union maintained the stance that it would make no compromise without a pay rise, and thus did not accept the management side's offer. The depletion of coal reserves was now having a serious impact on industry. On December 11th, the Japan National Railways was forced to reduce the number of trains in operation.

On December 2nd, the Minister for Labour attempted to reach a settlement by inviting both parties to explain their respective situations and persuading them to accept third-party mediation. On meeting the Minister, Chairman Nakayama conveyed his wish to mediate between the parties, on the 3rd both parties agreed to this, and mediation meetings were held on the 4th and 5th. Finally, on the 7th, Nakayama presented the CLRC mediation

proposal to the two parties.

Among others, the proposal consisted of a 7% wage rise that had been consistently rejected by the management side, and a deferment of standard work quotas. For the union side, therefore, it represented a degree of progress. But on December 8th, the Tanro Central Strike Committee rejected this mediation proposal by a vote of 29 to 28, in spite of the leadership's plan to accept it. Now forced into a corner, the Tanro leadership recognized the need to escalate its tactics and decided to call out all security personnel. There were fears that, if this were actually carried out, it could have serious consequences including flooding of mineshafts, which would in turn deliver a massive blow to coal production facilities.

In response, the government started taking steps to activate "emergency adjustment" as provided in Article 35-2 of the Labour Relations Adjustment Act (which, if activated, prohibits industrial action for 50 days). At a Cabinet meeting on December 15th, the government started the process for asking the CLRC's opinion, as required by law before activating emergency adjustment. The CLRC held an Emergency General Meeting, in which it settled on the opinion that "Emergency adjustment is unavoidable" after a majority vote by the public interest and management sides, overruling objections from the labor side. On receiving this opinion, the government decided to activate emergency adjustment on the 17th. And in response to this decision, Tanro in turn decided to call off the strike from the morning of the 17th.

Meanwhile, Chairman Nakayama prepared a 2nd mediation proposal and presented it to both parties with a view to resolving the dispute, given the imminence of emergency adjustment. This was almost the same as the 1st mediation proposal, but with an additional lump sum payment of 5,000 yen. The union side accepted this. The management side, judging itself to hold the stronger negotiating position with the activation of emergency adjustment, claimed that there was no further need for negotiation and resisted the proposal at first. Eventually, however, it also accepted, whereupon this lengthy dispute that had lasted 63 days was resolved. Chairman Nakayama had saved the union from the jaws of utter defeat by presenting his 2nd mediation proposal at the 11th hour, while overruling resistance from the labor side and consenting to the activation of emergency adjustment. Praise for his skill as a conciliator is said to have intensified following his resolution of this dispute.

2. The Miike Mine Strike[7]

If the 1952 Tanro and Densan strikes were the most important disputes in the early Nakayama years as CLRC Chairman, the strike in protest against layoffs at the Mitsui Miike Mine in 1959–60 was the most important dispute at the end of his tenure.

Behind this dispute lay the so-called "energy revolution," which was quickly gathering momentum during this period. This was also when the Japanese economy entered a pe-

[7] This section is based on statements in Sohyo 40-Year History Compilation Committee, ed., *Sohyo Yonjunenshi, Dai 1-kan* [A 40-year history of Sohyo, volume 1], (Tokyo: Daiichi Shorin, 1993), Chaps 2 and 3; Omutashi-shi [The history of Omuta city], http://omuta-miike.news.coocan.jp/history/1959-3.html.

riod of high-level growth and rapid economic expansion was underway, placing the economy as a whole on a favorable footing. However, the expansion of oil imports, partly influenced by the development of Middle East oil fields, exposed the coal mining industry to competition with oil as a cheaper and more amenable alternative. This placed the industry in a dire predicament, ushering in hardships including mine closures and mass layoffs of workers.

Mitsui Mining, Japan's largest coalmining company, was not spared the enormity of this impact. In January 1959, it presented unions at six of its mines with a proposal to lay off 6,000 workers, and concluded labor-management agreements with them. In April, it started offering voluntary redundancies, but only 1,324 workers took up the offer. So then, at the end of August, the company made a second offer of voluntary redundancies to 4,580 workers. Of these, 2,210 redundancies were allocated to the Miike Mine, the company's largest mine employing 15,000 workers and boasting the richest coal seams. In the five mines other than Miike, voluntary redundancies more or less reached the numbers proposed by the company, but there were fewer volunteers at Miike, where the labor union was waging an opposition campaign. Based on this situation, the company issued compulsory redundancy notices to 1,278 union members working at Miike Mine on December 10th.

This dispute increased in gravity not only because the scale of layoffs was so great but also because the company, in selecting workers for redundancy, had tried to include 300 union workplace activists whom it accused of obstructing its business. Since these activists were at the front line of union activities controlling production volumes at workplace level, they were in the midst of a struggle between labor and management over productivity and labor intensity. There was fierce antagonism between the company, which claimed that it would be impossible for productivity at the Miike Mine to recover unless these activists were removed, and the union side, which absolutely opposed this targeting of union activists, in that it constituted a serious attack on the union itself. The result was a hopeless impasse.

As a consequence of this antagonism, collective bargaining between the company and the Federation of Mitsui Mining Labor Unions (parent organization of the Miike labor union) broke down on November 12th, 1959. In response, the CLRC instigated *ex officio* mediation, and on November 21st Chairman Nakayama tabled a mediation proposal. On November 25th, both sides rejected the proposal. Meanwhile, the company issued voluntary redundancies requests to 1,492 employees on December 1st and 3rd, and on the 16th dismissed 1,210 workers who refused the request.

This was followed on January 25th, 1960, by a company lockout and retaliation from the union in the form of an indefinite strike. On March 17th, the Miike labor union split and a 2nd union was formed. The members of the 2nd union were willing to work under an agreement with the company, leading to violent clashes with the 1st union whose members tried to stop them. In one incident on March 29th, a member of the 1st union was stabbed to death.

On April 6th, Keizo Fujibayashi, who had been appointed the new Chairman following the resignation of Ichiro Nakayama in March, tabled a 2nd mediation proposal. The dismissals would be rescinded, but the dismissed workers would retire voluntarily. The company accepted this content, but the union, following long hours of debate at the Tanro Congress on April 17th, decided to reject it. The Federation of Mitsui Mining Labor Unions, which had advocated acceptance, walked out of the Congress in protest. The (1st) Miike labor union withdrew from the Federation of Mitsui Mining Labor Unions. Violent confrontation between this 1st union and the company and 2nd union, which were pushing for pit entry and resumption of production, continued thereafter. The 1st union tried to block coal shipments, with the support of Sohyo members. Ultimately, however, just before it came to a head-on confrontation between these and the police who came to remove them armed with a court mandate, the CLRC produced a 3rd mediation proposal. Bloodshed had been avoided at the last minute.

Although the 3rd mediation proposal (the Fujibayashi mediation proposal) was presented on August 10th, its content basically followed that of the 2nd mediation proposal. As such, the company accepted it, while the union, following fierce internal debate, decided to accept it at an Emergency Tanro Congress on September 6th, and the dispute moved toward a resolution.

The Miike mine strike is said to be the dispute that caused the most serious confrontation between labor and management since the war. To resolve it, the CLRC not only tabled three mediation proposals, but also strove to reach a solution through public and private approaches to the parties concerned. And when the dispute was finally resolved, it would surely have been impossible for the union to lay down arms without the CLRC's mediation. In terms of dispute adjustment, however, the most interesting and important of the three mediation proposals was the 1st proposal by Chairman Nakayama.

This was a very unusual mediation proposal in which, firstly, Nakayama criticized the obstruction of coal production and asked both labor and management to restore workplace discipline; secondly, though recognizing the need for layoffs as asserted by the company, his basic principle was to resolve the issue by offering voluntary redundancies, and the union would not obstruct this; thirdly, if the numbers accepting voluntary redundancies did not meet the required target, he would take steps to reach a resolution by transferring to a discussion between the company's Head Office and Tanro, together with the Federation of Mitsui Mining Labor Unions; and if even this did not solve the problem, a final resolution would be based on a ruling by the mediator, i.e. Chairman Nakayama himself. Since the possibility of resolving the problem through voluntary redundancies is thought to have been low, this means that the CLRC Chairman would have had to judge the appropriateness of personnel targeted by the company for compulsory redundancy as workers who were obstructing production. If both sides had accepted this mediation proposal, one wonders how Chairman Nakayama would have dealt with this conundrum. Sadly, the answer to that question will forever remain a mystery, as first the company, then the union announced their

rejection of the mediation proposal.

Bearing subsequent developments in mind, one feels compelled to say that it would have been better for both sides if they had swallowed this first mediation proposal. The union, though forced to change its policy and pressed into a position of having to accept dismissals, could have avoided the tragedy of division and degradation to a minority group. The company, for its part, could have avoided enormous dispute-related losses that were to affect its subsequent business fortunes, and could have coped with the upheaval of the energy revolution while preserving its business resources. And so, although the dispute itself ended in what seemed like a victory for the company, it had suffered deep wounds in the process. It had, as the saying goes, won the battle but lost the war.

IV. Conclusion

In this retrospective study, I have considered whether Japan's LRCs have contributed to the adjustment of labor disputes and the stability of industrial relations, based on the records of two CLRC Chairmen, Izutaro Suehiro and Ichiro Nakayama. From the 1960s onwards, there were fewer industrial disputes involving serious confrontation between labor and management, and changes also emerged in the role played by LRCs within industrial relations. But without the efforts of LRCs in adjusting disputes during the tumultuous postwar period, it is inconceivable that the subsequent stabilization of industrial relations could have been achieved. Everyone who enjoys the benefits of this today—labor and management officials, policy-making authorities, and the general public—should remember this fact when striving to challenge the various issues that will be faced by industrial relations in future.

The Law of the Labour Relations Commission: Some Aspects of Japan's Unfair Labor Practice Law

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The aim of this article is to explore aspects of Japanese law on unfair labor practices, with reference to the distinctive features of the Labour Relations Commission (LRC) system.

Modeled on the National Labor Relations Act in the United States, the Labor Union Act of Japan provides for a system of prohibiting and redressing unfair labor practices. Also, like the National Labor Relations Board in the United States, the Labor Union Act established a system of LRCs as independent administrative agencies in charge of unfair labor practice procedures.

These LRCs have some distinctive features, in that the law applied by LRCs as administrative agencies has the nature of administrative law, and that they tend to play the role of adjusting the relationship between labor and management, based on their function of dispute adjustment and their tripartite composition. These features of LRCs appear to have influenced Japan's unfair labor practice law. In this sense, Japanese unfair labor practice law can be said to be "the law of the LRC."

I. Introduction

The aim of this article is to explore aspects of Japanese law on unfair labor practices, with reference to the distinctive features of the Labour Relations Commission (LRC) system.

Modeled on the National Labor Relations Act in the United States, the Labor Union Act of Japan provides for a system of prohibiting and redressing unfair labor practices, although Japanese law only prohibits employers' unfair labor practices whereas the National Labor Relations Act also prohibits unfair labor practices by labor unions. Also, like the National Labor Relations Board (NLRB) in the United States, the Labor Union Act established a system of LRCs as independent administrative agencies in charge of unfair labor practice procedures. Through the procedures provided by the Labor Union Act, LRCs determine whether employers have committed unfair labor practices. If a LRC finds that an employer has indeed done so, it issues a remedial order. Although there are 49 Prefectural LRCs and a Central LRC in Japan, the term "Labour Relations Commission" or "LRC" here sometimes refers to the system of LRCs as a whole.

As this article demonstrates below, the fact that LRCs interpret and apply provisions regarding unfair labor practices under the Labor Union Act has provided a background for several features of Japanese law regarding unfair labor practices. In this sense, Japanese unfair labor practice law can be said to be "the law of the LRC."

In this article, Part II briefly outlines the system of LRCs under Japanese law, including their organizations and duties, pointing out distinctive features of LRCs. Then, Part III proposes that some aspects of Japanese unfair labor practice law are influenced by features of the LRC in Japan. Finally, Part IV summarizes the content of this article and points out that there is a room for more exploration to define aspects of Japanese unfair labor practice law.

II. LRCs under Japanese Labor Law

1. Organization of LRCs

The Labor Union Act of Japan established the LRC as a quasi-judicial tripartite administrative agency for resolving collective labor disputes. Japan's LRCs have the authority to adjust collective labor disputes through conciliation, mediation and arbitration, in addition to the authority to adjudicate and provide relief in unfair labor practice cases. In contrast, the NLRB in the United States has jurisdiction only in unfair labor practice cases.

Also, while the NLRB consists only of neutral members, the LRC is a tripartite agency composed of members representing public interests, labor and management. However, only members representing public interests can participate in deciding unfair labor practice cases. In unfair labor practice cases, members representing labor and management can only participate in hearings and submit their opinions, before members representing public interests deliberate and render their decisions.

Furthermore, the LRC as a system consists of the 49 Prefectural LRCs and a Central LRC. The Prefectural LRCs are local agencies belonging to each prefecture. On the other hand, the Central LRC is a national agency which mainly handles cases appealed from Prefectural LRCs.

As to the reasons why the task of resolving unfair labor practice disputes is entrusted to the LRCs rather than the courts, the Supreme Court of Japan has stated that situations caused by employers' unfair labor practices need to be corrected swiftly through a special administrative procedure. This is because it is difficult to define appropriate remedies in advance for unfair labor practices, which can take different forms in each case.[1] The Court has also indicated that LRCs are the most capable bodies for fashioning the appropriate remedy, since members of LRCs have expertise regarding collective labor relations.[2]

Moreover, the tripartite composition of the LRC was designed to promote the resolution of collective labor disputes with the aid of experienced members representing both labor and management.[3] In this sense, the LRC was not strictly modeled on the NLRB in the United States, which is composed only of members representing public interests. Before

[1] Daini Hato Taxi case (Sup. Ct., Grand Bench, Feb. 23, 1977), 31 Saiko Saibansho Minji Saibanreishu [Collected judgments in civil cases by the Supreme Court] 93, 96.

[2] *Id.*, 96.

[3] Kazuo Sugeno, *Rodo Ho* [Labor law], 10th ed. (Tokyo: Kobundo, 2013), 842.

World War II, the Mediation Commission under the Labor Dispute Mediation Act was composed of tripartite members. After the Labor Dispute Mediation Act was abolished and the Labor Union Act was enacted in 1945, the LRC succeeded to the tradition of a tripartite panel, apparently influenced by the composition of the Mediation Commission.

2. Duties and Procedures of LRCs

(1) Duties of LRCs

Japan's LRCs have a number of duties under the Labor Union Act. The most important of these are the resolution and adjustment of collective labor disputes. On the resolution of collective labor disputes, the Labor Union Act created procedures for redress against employers' unfair labor practices. As stated below, this procedure is adjudicative, in that a LRC issues a remedial order when it finds that an employer has committed unfair labor practices. The Labor Union Act also entrusts LRCs with the task of adjusting collective labor disputes between employers and unions through such measures as conciliation, mediation and arbitration. Thus, LRCs have the function of both adjudication and adjustment regarding collective labor disputes. The procedure for collective dispute adjustment is provided under the Labor Relations Adjustment Act.

With respect to relief against employers' unfair labor practices, workers and labor unions can bring a lawsuit before ordinary civil courts, as long as the dispute at issue is cognizable as a dispute regarding rights and duties under civil or private law. For example, workers who are dismissed by their employers because of their union activities can seek judicial relief declaring the dismissal invalid, since violating the prohibition of unfair labor practices makes the dismissal invalid under civil law. Unlike the NLRA in the United States, where judicial relief against unfair labor practices is preempted by the NLRA, the administrative procedure for relief against unfair labor practices does not preempt judicial procedures regarding disputes under Japan's Labor Union Act. Thus, administrative relief and judicial relief coexist with respect to disputes over unfair labor practices.

The LRC in Japan did not originally have jurisdiction over individual labor disputes. However, the Act on Promoting the Resolution of Individual Labor-Related Disputes, enacted in 2001, included a provision to the effect that local governments shall promote the resolution of individual labor disputes.[4] As a result, most Prefectural LRCs are now engaged in conciliating individual disputes. Although the Central LRC does not itself handle individual labor disputes, the Act provides that the Central LRC shall assist Prefectural Labor Commissions in promoting the resolution of individual labor disputes.[5]

[4] Article 20, paragraph 1 of the Act on Promoting the Resolution of Individual Labor-Related Disputes. This Act also established a national administrative system for promoting voluntary resolution of individual labor disputes.

[5] Article 20, paragraph 3 of the Act on Promoting the Resolution of Individual Labor-Related Disputes.

(2) Unfair Labor Practice Procedure

Provisions prohibiting employers' unfair labor practices in the Labor Union Act are basically similar to those in the National Labor Relations Act in the United States.[6] However, there are notable differences between the Japanese and US systems. For example, Japan has not adopted an exclusive representation system, and therefore, it is an unfair labor practice for an employer to refuse to bargain with a labor union that does not represent the majority of the employer's employees.

Under the Labor Union Act, the LRC is entrusted with the task of operating an administrative procedure for the relief of unfair labor practices, like the NLRB in the United States. This procedure is quasi-judicial, in that the employee and the employer each submit their arguments and evidence to the LRC, and the LRC issues an order based on its judgment as to whether the alleged unfair labor practice was in fact committed.

The unfair labor practice procedure begins when a labor union or its members file a complaint against an employer.[7] After clarifying issues and receiving submissions of documentary evidence, the LRC usually hears the testimony of witnesses.[8] The LRC then either issues an order that provides relief against the unfair labor practice or dismisses the complaint, depending on the merits of the case based on the facts and applicable law.[9] The LRC has wide discretion regarding the content of remedies for unfair labor practices. Typical remedies include orders to reinstate dismissed employees with back pay, to bargain with the union in good faith, or to cease and desist from interfering with union activities, depending on the content of the unfair labor practice. The purpose of such remedies by the LRC is not only to restore the status quo ante for workers and labor unions but also to prevent unfair labor practices from recurring, and thereby to ensure the stability of collective labor relations in the future.

Any party disagreeing with the LRC's order may request the District Court for judicial review.[10] Judicial review of the LRC's order is conducted *de novo* except in the case of remedies. With respect to contents of remedies, LRCs have wide discretion and the reviewing court cannot substitute its own judgment for that of the LRC.[11]

(3) Dispute Adjustment Procedure

The Labor Relations Adjustment Act provides for adjustment procedures to be carried

[6] Article 7 of the Labor Union Act.

[7] Article 27, paragraph 1 of the Labor Union Act. Unlike the NLRB that has the Office of the General Counsel, the LRC does not have a separate department that files an unfair labor practice complaint.

[8] *Id*.

[9] Article 27-12, paragraph 1 of the Labor Union Act.

[10] Article 27-19 of the Labor Union Act. Judicial reviews take place when an order by a Prefectural LRC is directly challenged, or when an order by a Prefectural LRC is referred by appeal to the Central LRC and the latter's order is challenged.

[11] Daini Hato Taxi case, *supra* note 1, at 96–97.

out by LRCs to promote the peaceful and voluntary resolution of collective labor disputes. The three main measures for adjusting collective labor disputes are conciliation, mediation and arbitration.

When a party (both parties in the case of arbitration) to a labor dispute requests adjustment, conciliation is chosen more often than mediation or arbitration. In conciliation, the chairperson of the LRC to which the request for adjustment was made appoints a conciliator or conciliators from a list of candidates to hear the parties' contentions and facilitate voluntary resolution of the case.[12]

Mediation is a slightly more formal process than conciliation. A tripartite mediation committee hears the parties' contentions, submits a draft settlement, and recommends that the parties accept the settlement.[13] Mediators are appointed from incumbent members of LRCs, representing public interests, labor and management.[14]

In the arbitration procedure, an arbitration committee consisting only of members representing public interests renders an arbitration award.[15] Although the arbitration procedure begins only when both parties consent, or when a collective bargaining agreement contains a provision that one of the parties may request arbitration, an arbitration award has a binding effect on both parties, similar to that of a collective bargaining agreement.[16]

3. Features of the LRC

From the description of Japanese law as explained above, the system of LRCs can be said to have the following features as a system for resolving labor disputes, especially in terms of unfair labor practice disputes.

(1) Administrative Agency

First of all, the LRC is a special independent administrative agency. Article 7 of the Labor Union Act, under which LRCs determine whether an employer has committed an unfair labor practice, has the nature of administrative law. Thus, LRCs issue remedial orders as an administrative action. As a result of an administrative order from a LRC, an employer who has committed an unfair labor practice is obligated to take remedial action for the workers and/or labor unions and to refrain from repeating unfair labor practices in the future. Here, the employer owes these obligations to the government from which the LRC's authority is derived.

In Japan, ordinary courts can also provide relief against unfair labor practices. However, such relief is only carried out by way of implementing private rights and duties. For example, recent lower court decisions have held that the right to collective bargaining under

[12] Article 12 of the Labor Relations Adjustment Act.
[13] Article 26 of the Labor Relations Adjustment Act.
[14] Articles 19 and 21 of the Labor Relations Adjustment Act.
[15] Articles 31 and 31-2 of the Labor Relations Adjustment Act.
[16] Article 34 of the Labor Relations Adjustment Act.

Article 28 of the Constitution of Japan is not a private right that can be enforced through judicial procedure.[17] Thus, according to such lower court decisions, the court cannot order an employer to bargain with a labor union, whereas a LRC as an administrative agency can order an employer to bargain collectively with a labor union.

In contrast, LRCs are not supposed to apply legal rules under private laws regarding contract and torts. LRCs merely apply Article 7 of the Labor Union Act. While the relief against unfair labor practices provided by courts is called "judicial relief," that provided by a LRC's order is called "administrative relief." It has often been pointed out that administrative relief has its own features which are different from those of judicial relief.[18]

(2) Adjustment of Labor Relations

Another important role of the LRC is to adjust relationships between parties to labor disputes. In addition to adjudicating disputes and providing relief in unfair labor practice cases, LRCs have the duty of adjusting collective labor disputes through conciliation, mediation and arbitration under the Labor Relations Adjustment Act. Although the procedure for adjusting such disputes is independent from the procedure for adjudicating unfair labor practice disputes, it is natural to assume that experience of the adjustment procedure has influenced the actual operation and mindset of LRC members in unfair labor practice cases.

The tripartite composition of LRCs enhances their role in adjusting collective disputes. Collective labor disputes are adjusted by balancing the interests of both parties. In a tripartite organization, such tasks are carried out more effectively since the members representing labor and management are well aware of the interests of both parties because of their experience and expertise. Although LRC members representing labor and management do not engage in adjudicating unfair labor practice cases, they participate in hearing sessions and submit opinions when the panel of members representing public interests deliberates and makes decisions on unfair labor practice cases. Such participation by members representing labor and management may influence, if not the content of decisions in each case, the mindset of members representing public interests in adjudicating unfair labor practice cases.

The tripartite composition also has the function of transplanting some features of typical Japanese industrial relations into the operation of LRCs. One of the distinctive features of typical Japanese industrial relations is the cooperative rather than adversarial nature of relations between labor and management, in which both labor and management attach im-

[17] E.g. Shinbun no Shinbunsha case (1975), 26 Rodo Kankei Minji Saibanreishu [Collected judgments on civil labor cases] 723. As a means of judicial relief against the unlawful refusal to bargain, however, a labor union may seek for a declaratory judgment that confirms that the union is qualified to demand collective bargaining. Kokutetsu case (Sup. Ct., Apr. 23, 1991), 589 Rodo Hanrei [Labor cases] 6.

[18] See, e.g. Ryuichi Yamakawa, "Futo Rodo Koi no Shiho Kyusai [Judicial relief against unfair labor practices]," *Journal of Labor Law*, no. 72 (1988): 106.

portance to the stable operation of the industrial relationship based on a consensus between them. Thus, in the course of adjusting the interests of parties to a dispute, stable development of collective labor relations becomes an important target. Even in the procedure for adjudicating unfair labor practice cases, respect for the stable relationship between labor and management may also influence the content of a LRC's decisions, through participation in hearing sessions as well as the submission of opinions by members representing labor and management.

III. Japan's Unfair Labor Practice Law and the LRC

The following are examples of some aspects of Japan's unfair labor practice law that are based on the above-mentioned features of the LRC.

1. Unfair Labor Practice Law as Administrative Law

(1) "Back Pay" Different from Wages

Since the LRC is an administrative agency, unfair labor practice law has the nature of administrative law. More specifically, as stated above, orders issued by LRCs for relief against an employer's unfair labor practice are administrative orders. While court judgments have the nature of enforcing private rights under civil law, LRCs need not follow rules regarding private rights under civil law.

Among other things, the content of the remedy required of the employer is essentially left to the wide administrative discretion of the LRC.[19] Here, a remedial order issued by a LRC against an employer is not an order to enforce the employee's private right, but an order through which the employer owes a duty to the government to take remedial action.

In cases where a LRC finds that an employer has dismissed employees because of their union membership or activities, the LRC usually orders the employer to reinstate the employees and to make a monetary payment ("back pay"), the amount of which is essentially equivalent to the wages the employee would have earned but for the dismissal. In some cases, such dismissed employees earn some income by working for another company. In light of the rule under private law, a dismissed employee ought to repay interim earnings actually earned after the date of the dismissal under Article 536, paragraph 2 of the Civil Code,[20] although the so-called mitigation doctrine[21] has not developed in Japan.

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[19] Daini Hato Taxi case, *supra* note 1, at 96.

[20] See the Akebono Taxi case (Sup. Ct., Apr. 2, 1987), 506 Rodo Hanrei 20. However, the Supreme Court has put a considerable limitation on such reimbursement, since Article 26 of the Labor Standards Act guarantees 60% of the average wage when an employer cannot provide for work for an employee for reasons attributable to the employer. *Id.*

[21] The mitigation doctrine is a common law rule on damages, to the effect that a plaintiff seeking damages is required to make reasonable efforts (e.g. to make interim earnings during a period of dismissal) to alleviate the injury caused by the defendant. This doctrine applies to the back pay remedy of the NLRB. See NLRB, Casehandling Manual 10558 (2011).

However, it became an issue whether LRCs should or may deduct such interim earnings from the amount of back pay when issuing remedial orders. The Supreme Court held in 1962 that LRCs must deduct such interim earnings, reasoning that the purpose of a back pay order is to restore the status quo ante of dismissed employees, and that, from such a viewpoint, it would be an excessive remedy for LRCs not to deduct such earnings.[22] This ruling was in opposition to the view of the Central and Prefectural LRCs. Objecting to this ruling, members of the Central LRC representing public interests reached an agreement that LRCs were not obliged to deduct interim earnings from back pay.[23] Then, in 1977, the Supreme Court changed its ruling and held that it should basically be left to the discretion of the LRC whether interim earnings should be deducted from back pay.[24]

The view of LRCs on this issue is based on the understanding that a back pay order is not an order to pay wages that dismissed employees would have earned under their employment contract but for the dismissal. Rather, according to the LRCs' view, the back pay order is an administrative order that the LRC has fashioned as a remedy for unfair labor practices committed by employers. Thus, LRCs need not apply the rule regarding interim earnings under the Civil Code, and may take into consideration whether the back pay order without deducting interim earnings would have the effect of dissipating the excessive burden on the dismissed employee as well as the cooling effect on union activities.[25] This is one example of a feature of Japan's law on unfair labor practices that arises from a feature of the LRC as an administrative agency.

(2) Doctrine of "Partial Employer"

Furthermore, although the determination of whether an employer has committed an unfair labor practice is not left to the discretion of LRCs,[26] rules regarding such determination sometimes develop beyond the scope of rights and duties under civil law. For example, while an "employer" under the Labor Contract Act means the party to an employment con-

[22] Zainichi Beigun Tokyo Chotatsucho Shibu case (Sup. Ct., Sep. 18, 1962), 16 Saiko Saibansho Minji Saibanreishu 1985.

[23] See Tetsuo Yamato and Kaoru Sato, *Rodo Iinkai Kisoku* [Regulations of the Labour Relations Commission], (Tokyo: Daiichi Hoki, 1974), 310.

[24] Daini Hato Taxi case, *supra* note 1, at 97–102. In this case, the Supreme Court held that the back pay remedy was subject to judicial review as to whether the LRC had exceeded its discretion in not deducting interim earnings from back pay in light of the recovery from economic loss suffered by the dismissed employee, as well as the recovery from harm suffered by the labor union of which the dismissed employee was a member. The Court held in the given case that the Tokyo LRC had exceeded the limit of its discretion in fashioning remedies, stating that the LRC had failed to consider that the dismissed taxi driver would have recovered his losses through back pay from which interim earnings were deducted, since it was considerably easy for the taxi driver in this case to find a similar job in the labor market for taxi drivers.

[25] Daini Hato Taxi case, *supra* note 1, at 99.

[26] Kotobuki Kenchiku case (Sup. Ct., Nov. 24, 1978), 312 Rodo Hanrei 54.

tract who directs and supervises employees and pays them wages,[27] an "employer" under the unfair labor practice system does not necessarily mean a party to an employment contract.

One case that illustrates this difference is the Asahi Hoso case,[28] In this case, three contractor companies had their employees work for their client company, whose business was broadcasting TV programs. A labor union that organized these employees demanded that the client company bargain collectively with the union on various matters including wage increases, direct hiring of the workers, providing rest rooms, etc. The client company refused, contending that the company was not an "employer" under Article 7 of the Labor Union Act, which prohibits unfair labor practices such as refusing to bargain with the union. Therefore, the union filed a complaint for unfair labor practice procedure. The Central LRC issued a remedial order, finding that the client company in this case was an "employer" under Article 7 of the Labor Union Act regarding matters related to employees' work at client companies' workplaces. Although the Tokyo High Court revoked the order of the Central LRC, the Supreme Court of Japan upheld it.

The client company in this case did not conclude employment contracts with the workers organized by the union. It is clear that the contractor companies were employers as parties to employment contracts ("contractual employers") with these workers. Indeed, the contractual employer paid wages to these workers. Furthermore, the union engaged in collective bargaining with the contractor companies and even concluded collective agreements with them. Nevertheless, the Supreme Court upheld the decision of the Central LRC that the client company was an "employer" under Article 7 of the Labor Union Act, reasoning that the client company's control and power over the workers were at least partially equivalent to those of a contractual employer, since the client company was engaged in directing and supervising the workers. According to the Supreme Court's opinion, however, such "employer" status of the client company is recognized only with respect to matters in which the company is deemed equivalent to the contractual employer such as work environments and working time. This implies that the client company was not an "employer" with respect to the wages of these workers, since the client company did not pay or control wages to these workers.

The doctrine that an entity can be an "employer" in the context of unfair labor practice procedure if such an entity is at least partially deemed equivalent to a contractual employer is called the doctrine of the "partial employer."[29] This doctrine was developed by the LRCs and was eventually supported by the Supreme Court. If the status of "employer" were analyzed from the viewpoint of rights and duties under employment contracts, it would be

[27] Article 2, paragraph 2 of the Labor Contract Act.

[28] Asahi Hoso case (Sup. Ct., Feb. 28, 1995), 49 Saiko Saibansho Minji Hanreishu 559.

[29] See Ryuichi Yamakawa, "Rosoho 7 Jo to Bubunteki Shiyosha Gainen [Article 7 of the Labor Union Act and the concept of 'partial employer']," *Gekkan Roi Rokyo* [Monthly journal of consultation association of members representing labor in Labour Relations Commissions], no. 693 (2014): 2.

difficult to create such doctrine, since it is difficult to recognize a "partial employer" as a party to an employment contract. On the other hand, when the status of the "employer" is analyzed in the context of administrative law, as one of the statutorily required elements for the LRC to issue remedial orders for unfair labor practices, there is no need to cling to the contractual status of the client company. In this sense, the doctrine of the "partial employer" is a product of the LRC as an administrative agency.

2. Unfair Labor Practice Law as a Tool for Adjusting Collective Labor Relations

(1) Remedies for Unfair Labor Practices

As stated above, the Supreme Court of Japan has stated, when deciding on the issue of deducting interim earnings from back pay, that remedies by the LRC were meant to restore the status quo ante, i.e. the pre-existing situation if the unfair labor practice had not been committed by the employer.[30] However, LRCs did not accept this view, and the Supreme Court later changed its view and agreed with them.[31] Now the Court and LRCs have a common understanding that the purpose of remedies for unfair labor practices is to restore and ensure normal collective labor relations. In cases of judicial review of remedies for unfair labor practices, the court should determine whether the LRC has gone beyond the scope of discretion in fashioning the content of remedies, in light of the purpose of remedies as described above.

Based on such an understanding, Japan's LRCs have sometimes utilized remedies designed to adjust the relationship between unions and employers. For example, LRCs have utilized so-called "conditional relief."[32] "Conditional relief" is an order requiring an employer to take remedial action on the condition that the union meets certain requirements, such as submitting documents in which the union expresses apology for its reproachable conduct. This remedy, based on a notion similar to the proverb "It takes two to make a quarrel," is designed to establish a stable relationship between the employer and the union by requiring both parties to recognize their respective responsibility for the dispute. In this sense, this remedy has the nature of adjusting the relationship between the employer and the union, and serves the purpose of the "ensuring normal collective labor relations."

In the United States, the NLRB also has discretion in fashioning the content of remedies for unfair labor practices. However, the purpose of NLRB remedies is the "encouragement of the practice and procedure of collective bargaining and the protection of the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing."[33] Compared with the interpretation of the purpose of

[30] Zainichi Beigun Chotatsubu case (Sup.Ct., Sep. 18, 1961), 16 Saiko Saibansho Minji Hanreishu 1985.

[31] Daini Hato Taxi case, *supra* note 1.

[32] *E.g.* Nobeoka Yubinkyoku case (Tokyo High Court, Apr. 27, 1978), 29 Rodo Kankei Minji Saibanreishu 262.

[33] Virginia Electric & Power Co. v. NLRB, 319 U.S. 533, 546–47 (1943).

remedies against unfair labor practices in Japan, this view appears less flexible and has less affinity to remedies to adjust the relationship between the employer and the union. In fact, there appears to be no precedent for "conditional relief" as utilized by LRCs in Japan.

Thus, a distinctive feature of Japanese unfair labor practice law is an understanding that the purpose of remedies for unfair labor practices includes ensuring normal collective labor relations, and the actual use of remedies to adjust the relationship between the parties through such remedies as "conditional relief."[34] As stated above, the LRC has an affinity to adjusting relationships between employers and unions, because of its tripartite composition and the fact that LRCs have a duty of adjusting collective labor disputes as well as adjudicating unfair labor practice cases. Although it would be difficult to prove a causal relationship between the nature of the LRC and the utilization of remedies with the nature of adjustment, it is plausible that this nature of the LRC lies behind such remedies.

(2) Emphasis on Voluntary Settlement

It is a common understanding among members of LRCs that voluntary settlement is the best way to resolve disputes in unfair labor practice cases.[35] In fact, about 70% of cases filed before Prefectural LRCs are resolved by voluntary settlement.[36] Behind this understanding is the view that settlement can resolve labor disputes more rapidly and effectively, and can stabilize labor relations between the parties in the future. In the course of facilitating settlements, members of LRCs representing labor and management lend significant assistance. During settlement sessions in each case, for example, members representing management often go to the waiting room of the employer (respondent), ask the employer's view on settling the case, and encourage the employer to reach a settlement. This is also the case with members representing labor, who often encourage the union or workers to settle.

If the purpose of the system for relief against unfair labor practices is to realize union rights as "public rights," the resolution of disputes over unfair labor practices should not be left to the voluntary disposition of private parties. In the United States, where the view of "public rights" is strong, the resolution of unfair labor practice disputes based on private voluntary settlements is contingent on the NLRB's approval of the remedial action agreed by the parties. According to the NLRB, "Because the Board must enforce public interests, and not private rights, it may reject a non-Board adjustment that violates the National Labor Relations Act or Board policy."[37]

In Japan, the unfair labor practice system is also regarded as having public value. Article 28 of the Constitution, which guarantees workers' rights to organize and to bargain and

[34] Another example of remedies that have the nature of dispute adjustment is the so-called "consultation" order, through which a LRC orders an employer to consult the labor union regarding the details of remedial action.

[35] Sugeno, *supra* note 3, at 853.

[36] See the website of the Central LRC (http://www.mhlw.go.jp/churoi/shinsa/futou/futou03.html).

[37] See the website of the NLRB (https://www.nlrb.gov/what-we-do/facilitate-settlements).

act collectively, lies behind the unfair labor practice system. It is widely acknowledged that these union rights have the nature of "public order."[38] The 2004 amendment of the Labor Union Act established a provision regarding the settlement of unfair labor practice disputes. Article 27-14, paragraph 2 provides that, "When a settlement has been established between the parties and both parties make motions before the order-for-relief, etc., becomes final and binding, and when the LRC finds that the content of the settlement is appropriate to maintain or establish normal order of labor relations between the parties, the unfair labor practice procedure shall terminate." Although LRCs are required to make a finding as to whether the content of the settlement is appropriate to maintain or establish normal order of labor relations between the parties, the contents of the parties' voluntary agreements reached in the course of unfair labor practice procedure are mostly respected by LRCs. Also, before this provision was incorporated into the Labor Union Act, voluntary settlements functioned to resolve the case and end the procedure in the form of withdrawal by one of the parties.[39] Thus, when resolving unfair labor practice disputes, the agreement of the parties is a controlling factor, and voluntary settlements based on agreement between the parties are highly evaluated.

Such emphasis on the importance of voluntary settlements can be attributed to the nature of the LRC as an organization for adjusting the relationship between labor and management. This nature, in turn, derives from the LRC's composition as a tripartite organization as well as its duty to adjust collective labor disputes.

IV. Conclusion

Under Japan's Labor Union Act, LRCs have responsibility for administering procedures regarding the provision that prohibits employers' unfair labor practices. Under this system, LRCs have some distinctive features in that the law applied by them as administrative agencies has the nature of administrative law, and that they tend to play the role of adjusting the relationship between labor and management, based on their function of dispute adjustment and their tripartite composition.

These features of LRCs appear to have influenced Japan's unfair labor practice law. Firstly, the back pay remedy is not necessarily governed by the rules of private law under the Civil Code, since LRCs apply administrative law. Also, the term "employer" under Article 7 of the Labor Union Act has a different meaning from the "employer" in employment contracts. Secondly, since LRCs have the function of adjusting the relationship between labor and management, their remedies for unfair labor practices have the nature of adjusting relationships between the parties. Thirdly, it is common practice for LRCs to emphasize and

[38] Sugeno, *supra* note 3, at 27.

[39] The premise of this disposition is that private parties, i.e. unions (workers) and employers, become parties to unfair labor practice procedures in Japan as stated at note 6, while the General Counsel of the NLRB plays the role of plaintiff in unfair labor practice procedures in the United States.

promote voluntary settlements in unfair labor practice cases.

Of course, these features of LRCs cannot fully explain all aspects of Japan's unfair labor practice law. For example, the cooperative relationship between labor and management in Japan may have influenced the narrow interpretation of the provision that requires the exclusion of managerial employees from labor unions, as a condition for protection under the Labor Union Act.[40] Thus, in order to analyze Japan's unfair labor practice law from a comparative viewpoint, the background to this law needs to be explored further.

[40] See Ryuichi Yamakawa, "Strangers When We Met: The Influence of Foreign Labor Relations Law and Its Domestication in Japan," *Pacific Rim Law & Policy Journal* 4 (1995): 363.

Unfair Labor Practice Cases Handled by the Tokyo Metropolitan Government Labor Relations Commission

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The Tokyo Metropolitan Government Labor Relations Commission (Tokyo LRC) handles one-third of all unfair labor practice cases and a quarter of all collective dispute adjustment cases filed with the 47 Labour Relations Commissions in Japan. It therefore plays a significant role in dispute resolution and establishing norms in Japan's collective labor relations. To clarify the functions of the Tokyo LRC, this paper focuses on its handling of unfair labor practice (ULP) cases entrusted to tripartite members of the Commission.

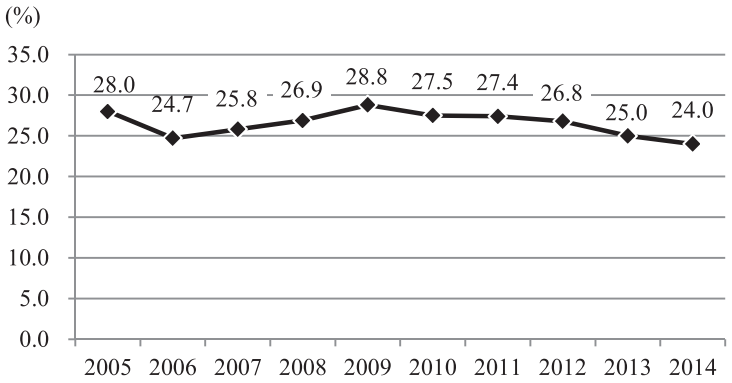
Cases recently filed with the Tokyo LRC are characterized not only by their abundance but also by their distinctive nature. Firstly, around 70% of ULP cases are filed by so-called community unions, which actively organize dismissed or dissatisfied workers across corporations in a given district. Secondly, ULP cases occurring in other prefectures are often filed with the Tokyo LRC because the company head office or labor union is located in Tokyo. And thirdly, a number of cases where more than one union exists in a defendant company and the minority union alleges discriminatory treatment by the employer against its members are also characteristic of cases in Tokyo.

The Tokyo LRC places more significance on settlement-oriented handling than on simply swift adjudication of cases, since settlement represents a final and conclusive resolution of a dispute and is effective in establishing better labor relations for the future. However, this approach tends to prolong the ULP procedure. Thus, how to reconcile the promotion of settlement and the need to expedite procedures is one of the challenges the Tokyo LRC faces today.

I. Introduction

This paper introduces the recent activities and significance of the Tokyo Metropolitan Government Labor Relations Commission (hereinafter "Tokyo LRC"), where the author served for 11 years as a member representing public interests.

Japanese Labour Relations Commissions (hereinafter "LRCs") are given three powers to deal with labor disputes: (i) "Adjudication of unfair labor practice (hereinafter "ULP") cases," i.e. adjudication of unfair labor practices such as discriminating against union members for their membership or activities, refusing to bargain collectively with labor unions, and interfering with or dominating union activities; (ii) "Adjustment of collective labor disputes," i.e. conciliation, mediation and arbitration of collective labor disputes; and (iii) "Conciliation of individual labor disputes," i.e. conciliation of individual labor disputes arising between individual workers and employers, regardless of whether a labor union is involved or not. Partly due to the declining number of collective labor dispute cases



Source: Tokyo-to Rodo Iinkai Jimukyoku, *Toroi Nenpo Heisei 26-nen*, Figure 2. http://www.toroui.metro.tokyo.jp/pdf/05_1-1roudousouginotyousei.pdf.

Figure 1. Ratio of Adjustment Cases Filed with the Tokyo LRC to All Adjustment Cases in Japan

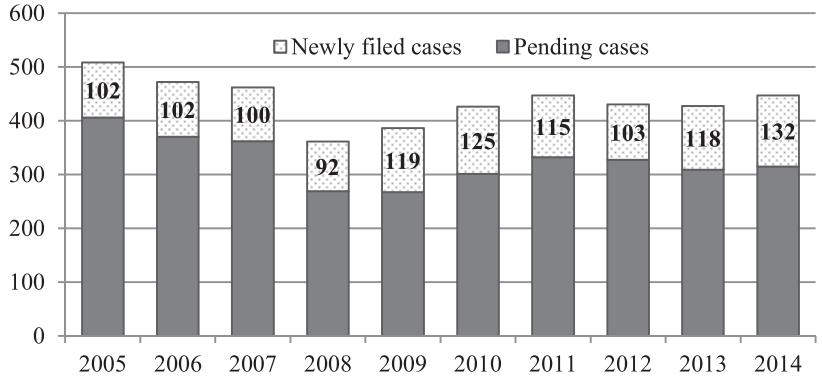
filed with each prefectural LRC, 44 out of 47 of them are engaged in conciliating individual labor disputes. However, the Tokyo LRC deals solely with collective labor dispute cases (1 and 2) and does not provide a conciliation service for individual labor disputes. This is partly because many collective labor dispute cases are filed with the Tokyo LRC, and partly because other administrative organizations called *Rodo Sodan Joho Senta* [Labor Consultation and Information Centers] actively provide consultation and conciliation services concerning individual labor disputes in Tokyo.[1]

The Tokyo LRC handles about a quarter of the collective adjustment cases filed with all prefectural LRCs (see Figure 1).[2] As such, the Tokyo LRC plays a significant role in dealing with adjustment cases in Japan. However, labor dispute adjustment procedures[3] in the Tokyo LRC are mainly handled by its personnel, and only a few cases are entrusted to members of the Tokyo LRC. In contrast, all ULP cases must be adjudicated by members representing public interests, with both labor and management members participating in procedures as observers. In other words, ULP procedures are handled by the tripartite members of the Tokyo LRC. Since the Tokyo LRC is most notably characterized by ULP adjudication procedures, this paper focuses on ULP cases handled by the Tokyo LRC.

[1] Labor Consultation and Information Centers in Tokyo received more than 100,000 inquiries for labor consultation in 2014. http://www.metro.tokyo.jp/INET/OSHIRASE/2015/08/20p8h601.htm

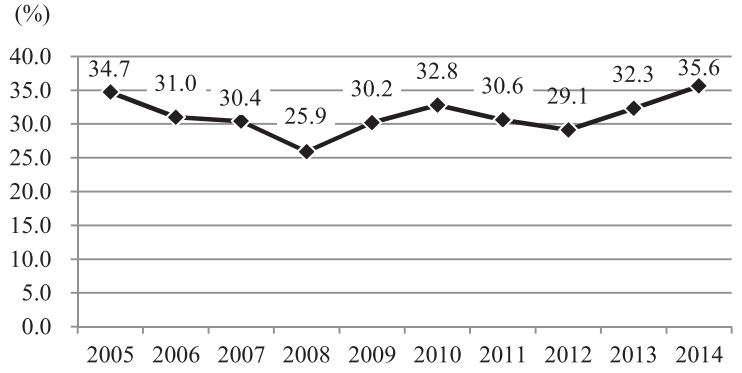
[2] In 2014, the Tokyo LRC handled 86 newly-filed cases out of 359 adjustment cases filed with all LRCs in Japan. Tokyo-to Rodo Iinkai Jimukyoku [Tokyo LRC Secretariat], *Toroi Nenpo*, *Heisei 26-nen* [2014 annual report of the Tokyo LRC], Table 2. http://www.toroui.metro.tokyo.jp/pdf/12_toukeihyou1-21.pdf.

[3] Some 99% of adjustment procedures involve conciliation. Mediation and arbitration are very rare.



Source: Tokyo-to Rodo Iinkai Jimukyoku, *Toroi Nenpo Heisei 26-nen*, Figure 3. http://www.toroui.metro.tokyo.jp/pdf/06_hutousinnsagaikyou.pdf.

Figure 2. Recent ULP Cases Filed with the Tokyo LRC



Source: Tokyo-to Rodo Iinkai Jimukyoku, *Toroi Nenpo Heisei 26-nen*, Figure 4. http://www.toroui.metro.tokyo.jp/pdf/06_hutousinnsagaikyou.pdf.

Figure 3: Ratio of ULP Cases Filed with the Tokyo LRC to All ULP Cases in Japan

II. Number of Unfair Labor Practice Cases Filed with the Tokyo LRC

Since the Labor Union Act came into force in 1946, the number of cases filed with the Tokyo LRC has increased year by year. In 1975, cases dealt with by the Tokyo LRC reached 427.[4] Since then, the Tokyo LRC has regularly handled around 400 cases per year (see Figure 2). Of 447 cases handled in 2014, 315 were carried over from the previous year and 132 were newly filed.

The number of ULP cases filed with the Tokyo LRC amounts to more than one-third of all ULP cases filed with LRCs in Japan (see Figure 3).[5]

[4] See Tokyo-to Rodo Iinkai Jimukyoku, *supra* note 2, Toriatsukai Kensu Ichiran Hyo.

[5] In 2014, the Tokyo LRC handled 132 newly filed cases out of 371 ULP cases filed with all LRCs

III. Characteristics of Cases Filed with the Tokyo LRC

The Tokyo LRC is characterized not only by the large number of cases filed but also by the uniqueness of those cases.

1. Cases Filed by Community Unions

One of the characteristics of filed cases is that around 70% of cases newly filed with the Tokyo LRC are brought by community unions.[6] Community unions are unions that organize workers in a given district across companies, especially small and medium-sized ones. Many of their members enter the community union after dismissal by their former employers. Typical cases filed by community unions are as follows. A dismissed worker consults with a community union about his or her dismissal and enrolls in the community union. Then the community union requests collective bargaining with the former employer concerning the illegality of the dismissal and the reinstatement of the worker. Many employers refuse to bargain with the union, since they have not met the union and they no longer regard the union member in question as their employee. Thus, the community union files a case with the Tokyo LRC, alleging that the employer has committed an unfair labor practice by refusing to engage in collective bargaining without justifiable reason.

Under established practice at LRCs in Japan, employers owe a duty to bargain in good faith with such community unions, even if the dismissed worker was not yet a member of the union at the time of the dismissal, and even if the union organizes only a small number (or even only one) of the workers of the defendant employer. Unlike the US National Labor Relations Act, the Japanese Labor Union Act does not adopt an exclusive representation system requiring the majority support of employees in the bargaining unit. Instead, Japan advocates a system of plural unionism, whereby each labor union has an equal right to collective bargaining irrespective of the number of union members or supporters.[7]

The key issue in cases filed by community unions is the validity of individual dismissals. Many of these are settled by the former employer paying settlement compensation. By utilizing unfair labor practice procedures, therefore, community unions play a de facto role of representatives resolving individual disputes. The increase in cases filed by community unions, amounting to two-thirds of ULP cases handled by the Tokyo LRC, reveals how the nature of ULP cases is changing.

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in Japan. Tokyo-to Rodo Iinkai Jimukyoku, *supra* note 2, Table 23. http://www.toroui.metro.tokyo.jp/pdf/13_toukeihyou22-38.pdf.

[6] Of newly filed cases, 63.6% in 2013 and 72.7% in 2014 were filed by community unions. See Tokyo-to Rodo Iinkai Jimukyoku, *Toroi Nenpo Heisei 25-nen* [2013 annual report of the Tokyo LRC], 7; Tokyo-to Rodo Iinkai Jimukyoku, *supra* note 2, at 7.

[7] On Japanese plural unionism, see Kazuo Sugeno, *Japanese Employment and Labor Law* (Durham, NC: Carolina Academic Press, 2002), 602; Takashi Araki, *Labor and Employment Law in Japan* (Tokyo: Japan Institute of Labor, 2002), 162.

Table 1. ULP Cases against Employers Located outside Tokyo

	2010	2011	2012	2013	2014
Total cases newly filed	125 (100.0)	115 (100.0)	103 (100.0)	118 (100.0)	132 (100.0)
Employers located outside Tokyo	19 (15.2)	14 (12.2)	13 (12.6)	24 (20.3)	30 (22.7)

Source: Based on Tokyo-to Rodo Iinkai Jimukyoku [Tokyo LRC Secretariat], *Toroi Nenpo, Heisei 26-nen* [2014 annual report of the Tokyo LRC], Table 25. http://www.toroui.metro.tokyo.jp/pdf/13_toukeihyou22-38.pdf.

Table 2. Cases with More Than One Union in a Defendant Company

	2010	2011	2012	2013	2014
Total*	119 (100.0)	115 (100.0)	103 (100.0)	111 (100.0)	132 (100.0)
Cases with more than one union	23 (19.3)	26 (22.6)	25 (24.3)	23 (20.7)	31 (23.5)

Source: Based onTokyo-to Rodo Iinkai Jimukyoku, *Toroi Nenpo, Heisei 26-nen*, Table 27. http://www.toroui.metro.tokyo.jp/pdf/13_toukeihyou22-38.pdf.

Note: *Cases filed by individuals are excluded.

2. Cases of ULP Occurring in Other Prefectures and Filed with the Tokyo LRC

Another feature of ULP cases handled by the Tokyo LRC is that cases of unfair labor practice occurring in other prefectures are filed with the Tokyo LRC because the labor union or the employer's head office is located in Tokyo. Of cases newly filed with the Tokyo LRC, for instance, 22 out of 103 cases in 2012 (21.4%) and 33 out of 118 cases in 2013 (28.0%) occurred in other prefectures (including those partially occurring in Tokyo).[8]

As Table 1 shows, 12–22% of ULP cases handled by the Tokyo LRC in the last five years have been against employers located outside Tokyo.These numbers include cases where union members worked in Tokyo. The number of cases where both employers and workers were located outside Tokyo was 10 out of 13 cases in 2012 and 16 out of 24 cases in 2013. These cases were filed with the Tokyo LRC because the labor union offices were in Tokyo.

3. Cases Where More Than One Union Exists in a Company

The fact that more than 20% of filed cases relate to companies with two or more labor unions is another characteristic of cases handled by the Tokyo LRC (see Table 2).

[8] The author thanks Ms Miyuki Amano and her colleagues at the Tokyo LRC for their detailed analysis of these cases.

There are two different types of these cases with more than one union. The first and rather new type is one involving an enterprise-based union and a community union. A typical case is one in which a current or former worker who is not satisfied with the treatment of his or her complaint by the enterprise-based union, or whose complaint has not been heard because he or she is not a member, joins an external community union. Thus, in most cases of this type filed by community unions, it is alleged that the company refused a request for collective bargaining with the community union, as mentioned above (see III.1).

The second and traditional case of more than one union is found in larger companies where a cooperative majority union and a militant minority union exist. In the late 1940s and 50s, the current minority union was the sole union and organized the vast majority of workers in the company. The union adopted a radical and confrontational approach toward the management, and often engaged in prolonged strikes. However, its ideological strategy was not supported by ordinary workers. Dissatisfied union members split away from the radical union and formed a second union. The second union gained the majority support of ordinary workers and continues to be the majority union today. In several larger companies in Japan, however, the militant union led by leftist union activists has not disappeared but remained as a minority union. These minority unions in larger companies often file cases with the Tokyo LRC alleging that the company has unfairly treated minority union members and/or intervened in the union's management and activities in order to weaken its power and influence in the company.

IV. Actual Situation of Unfair Labor Practice Cases Handled by the Tokyo LRC

1. Settlement-Oriented Approach

The actual disposition of ULP cases handled by the Tokyo LRC is predominantly settlement-oriented. About 70–80% of ULP cases are resolved by either withdrawal or settlement (see Table 3). Some cases have been resolved without commitment by the Tokyo LRC, but most withdrawal and settlement cases are resolved by vigorous activity and persuasion by the LRC, and by the labor and management members in particular.

In the past, it was contended that ULP cases constituted a violation of public order and should therefore not be settled by private agreement between the parties but should be officially adjudicated by LRC orders. However, that view is no longer supported, at least by the Tokyo LRC.

In the Tokyo LRC, settlement is believed to be a better resolution than issuing orders, for several reasons. Firstly, labor relations constitute a continuous and bilateral relationship, and thus adjudication clarifying whether an employer's alleged conduct is illegal or not will not serve to develop a fair and better relationship for the future. This is especially true under the Japanese Labor Union Act, where employers' unfair labor practices are prohibited but those of labor unions are not. Since a deterioration in labor relations is often caused by both

Table 3. Cases of Withdrawal, Settlement and Order

	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Concluded cases	138 (100)	110 (100.0)	193 (100.0)	94 (100.0)	85 (100.0)	94 (100.0)	120 (100.0)	121 (100.0)	112 (100.0)	124 (100.0)
Withdrawal or settlement	104 (75.4)	80 (72.7)	153 (79.3)	75 (79.8)	67 (78.8)	77 (81.9)	96 (80.0)	90 (74.4)	82 (73.2)	93 (75.0)
Withdrawal	19 (13.8)	10 (9.1)	17 (8.8)	6 (6.4)	13 (15.3)	23 (24.5)	18 (15.0)	23 (19.0)	15 (13.4)	17 (13.7)
Settlement without LRC commitment	12 (8.7)	7 (6.4)	28 (14.5)	24 (25.5)	15 (17.6)	12 (12.8)	8 (6.7)	8 (6.6)	13 (11.6)	12 (9.7)
Settlement with LRC commitment	73 (52.9)	63 (57.3)	108 (56.0)	45 (47.9)	39 (45.9)	42 (44.7)	70 (58.3)	59 (48.8)	54 (48.2)	64 (51.6)
Order issued	34 (24.6)	30 (27.3)	40 (20.7)	19 (20.2)	18 (21.2)	17 (18.1)	24 (20.0)	31 (25.6)	30 (26.8)	31 (25.0)
Full remedy	14 (10.1)	9 (8.2)	11 (5.7)	4 (4.3)	9 (10.6)	4 (4.3)	14 (11.7)	7 (5.8)	9 (8.0)	4 (3.2)
Partial remedy	17 (12.3)	8 (7.3)	13 (6.7)	12 (12.8)	5 (5.9)	9 (9.6)	9 (7.5)	17 (14.0)	16 (14.3)	15 (12.1)
Substantial dismissal	1 (0.7)	11 (10.0)	16 (8.3)	3 (3.2)	1 (1.2)	4 (4.3)	1 (0.8)	6 (5.0)	4 (3.6)	12 (9.7)
Formal dismissal	2 (1.4)	2 (1.8)	-	-	3 (3.5)	-	-	1 (0.8)	1 (0.9)	-

Source: Based on Tokyo-to Rodo Iinkai Jimukyoku, *Toroi Nenpo, Heisei 26-nen,* Table 22. http://www.toroui.metro.tokyo.jp/pdf/13_toukeihyou22-38.pdf.

parties' improper behavior, unilateral condemnation of the employer's acts will not necessarily help to improve relations for the future. Secondly, if the LRC issues a remedial or dismissal order, the dissatisfied party will often appeal to the Central LRC or to the courts. The parties will therefore be forced to continue the dispute. In contrast, settlement is a final and conclusive resolution of the dispute. Thus, even if it takes more time than issuing an LRC order, settlement is a more speedy resolution in the long run.

2. Recent Situation of ULP Procedures Handled by the Tokyo LRC

ULP procedures are divided into two stages: investigation [*chosa*] to clarify issues and receive documentary evidence, and hearings [*shinmon*] to hear the testimony of witnesses. According to statistics from 2010 to 2014 for the Tokyo LRC (Table 4), the average number of investigation sessions was 5.9 while that of hearings was 1.34 per case. The average number of witnesses was 1.6. However, these statistics include settled cases. In ordered cases that failed to reach a settlement, i.e. difficult and complicated cases, more investigation sessions, hearings and witnesses were required. The average number of investigation sessions was 8.78, that of hearings was 3.62, and the number of witnesses was 4.08.

Table 4. Average Number of Investigations, Hearings and Witnesses

	2010	2011	2012	2013	2014
All concluded cases	94	120	121	112	124
Investigations	5.1	5.5	5.9	6.3	6.7
Hearings	1.2	1.5	1.2	1.6	1.2
Witnesses	1.6	1.6	1.5	1.6	1.5
Ordered cases	17	24	31	30	31
Investigations	7.9	7.0	7.6	9.7	11.7
Hearings	3.5	3.2	3.4	4.5	3.5
Witnesses	4.4	3.6	4.2	4.2	4.0

Source: Based on Tokyoto Rodo Iinkai Jimukyoku, *Toroi Nenpo, Heisei 26-nen*, Table 34. http://www.toroui.metro.tokyo.jp/pdf/13_toukeihyou22-38.pdf.

3. Problem of Prolonged Procedures

The most challenging issue the Tokyo LRC faces is its prolonged procedures. Since the Tokyo LRC receives difficult and complicated cases, it takes time to conclude these procedures. Especially in cases involving more than one union, where minority unions allege persistent discrimination by the employer against minority union members, prolonged hearings of many witnesses are often required to determine whether the unfavorable treatment was caused by the employer's anti-union motives or by the union members' poor performance. At the Tokyo LRC, there have been several exceptionally prolonged cases which have taken more than five years to conclude.[9] When such unusual cases are included in statistics, the average figures become distorted. For instance, 15 prolonged cases concerning Showa-Shell Co. were concluded in 2011. Thus, the simple average including these prolonged cases was 1071.3 days, but the figure excluding these cases decreases to 498.8 days. Therefore, the Tokyo LRC publicizes two sets of data, i.e. one including and one excluding these exceptionally prolonged cases (see Table 5).

The average number of days required to conclude ULP cases between 2010 and 2014 (excluding exceptionally prolonged cases) was 449. This means that it takes about 15 months to obtain an order from the Tokyo LRC. This is slower than ordinary court proce

[9] A typical prolonged case goes something like this: a minority union alleges discrimination by the employer against minority union members in the yearly performance evaluation. Even when the LRC issues a remedial or dismissal order, the losing party often lodges an appeal. But before the Supreme Court can reach a final decision on the appellate case, similar ULP cases are filed every year by the same minority union, because they deem every yearly evaluation by the employer to be discriminatory against minority union members. The issues under contention are almost the same as in the previous case, but the union files the complaint to avoid the statute of limitation. In such a situation, ULP procedures are sometimes suspended to await a decision by the Supreme Court. When the Supreme Court reaches a decision on the appealed case, procedures are then restarted based on the Supreme Court's decision.

Table 5. Average Days Required for Conclusion (Days per Case)

	2010	2011	2012	2013	2014
Total cases	94	120	121	112	124
Avarage days required for conclusion	397.8	1,071.3	542.5	646.4	465.0
Total cases (Excluding exceptionally prolonged cases)	92	103	120	108	123
Avarage days required for conclusion (Excluding exceptionally prolonged cases)	365.1	498.8	478.3	452.5	450.3

Source: Based on Tokyo-to Rodo Iinkai Jimukyoku, *Toroi Nenpo, Heisei 26-nen,* Table 37-3. http://www.toroui.metro.tokyo.jp/pdf/13_toukeihyou22-38.pdf.

dures in labor-related cases. In the past, labor litigation in courts was notoriously prolonged. But thanks to vigorous efforts by the courts, the average period for labor-related cases was reduced from 18.5 months in 1992 to 11.4 months in 2009. Thus, expediting procedures has always been an important challenge for the Tokyo LRC.

As mentioned above, this is where the dilemma lies. Issuing orders swiftly does not necessarily lead to a speedy solution of the dispute, because the dissatisfied party will appeal. Time-consuming settlements could provide a more speedy conclusive resolution. Thus, instead of abandoning the settlement-oriented approach, the Tokyo LRC endeavors to rationalize investigation and hearing procedures by fixing all the dates of sessions in advance, reducing the number of witnesses, and holding direct examinations and cross-examinations on the same day.[10] Through these expedited procedures, the Tokyo LRC distinguishes between cases that should be dealt with speedily and those that require more careful treatment, and induces the parties to reach an amicable settlement.

V. Conclusion

The Tokyo LRC handles more than one-third of all ULP cases in Japan. These include cases of larger companies with head offices located in Tokyo, newly developing community union cases, and difficult cases involving more than one union. Therefore, the way the LRC handles these cases has had a significant impact on industrial relations and the development of rules governing collective labor relations in Japan. Indeed, many important case law rules have emerged from cases originally filed with the Tokyo LRC.

Examples include the Daini Hato Taxi case, which recognized LRCs' broad discretion

[10] These measures should have been applied much earlier. In the past, employers were naturally not eager to expedite ULP procedures, but labor unions also usually requested more witnesses and sufficient time to prepare their cross-examination, since unions were not always represented by lawyers.

in determining the content of remedial orders,[11] the Nissan Motor Co. case, which specified the employer's duty to maintain neutrality (whereby employers must not treat one union more favorably than others based on the union's general character, tendencies, policies, etc.),[12] the Nestle Japan (Tokyo, Shimada) case, which limited LRCs' discretion in ordering remedies,[13] and the Shin Kokuritsu Gekijo case, which expanded the scope of employees in ULP cases.[14] All of these were first examined by the Tokyo LRC.

The Tokyo LRC has maintained its quality in handling ULP cases through collaboration between competent members and well-trained personnel. Thanks to an abundance of cases, both newly appointed members and the personnel of the Tokyo LRC have been given precious opportunities for on-the-job training. However, the large volume of cases and the settlement-oriented approach lead to prolonged remedial procedures. How to reconcile expedited procedures with time-consuming settlement is a challenge that the Tokyo LRC needs to address.

Another challenge is the proper handling of individual labor law matters. Currently, more than 70% of ULP cases are brought by community unions, and the issues raised belong not to genuine collective labor law but more to individual labor law. This ranges from the validity of dismissal to mental illness, and to drastically developing legislation on non-regular employment, such as laws governing part-time, fixed-term and temporary agency workers. Therefore, the members and personnel of the LRC are required to update their knowledge on changes to regulations governing individual labor relations. In any event, the Tokyo LRC is destined to play a significant role in the Japanese system of Labour Relations Commissions, and the author believes that it will successfully address the new challenges it faces.

[11] Daini Hato Taxi case (Sup. Ct., Grand Bench, Feb. 23, 1977), 31 Minshu 93.
[12] Nissan Motor Co. case (Sup. Ct., Apr. 23, 1985), 39 Minshu 730.
[13] Nestle Japan (Tokyo, Shimada) case, (Sup. Ct., Feb. 23, 2005), 49 Minshu 281.
[14] Shin Kokuritsu Gekijo case (Sup. Ct., Apr. 12, 2011), 65 Minshu 943.

The Mechanism of Employment Portfolio Formation: Empirical Study through Qualitative Analysis

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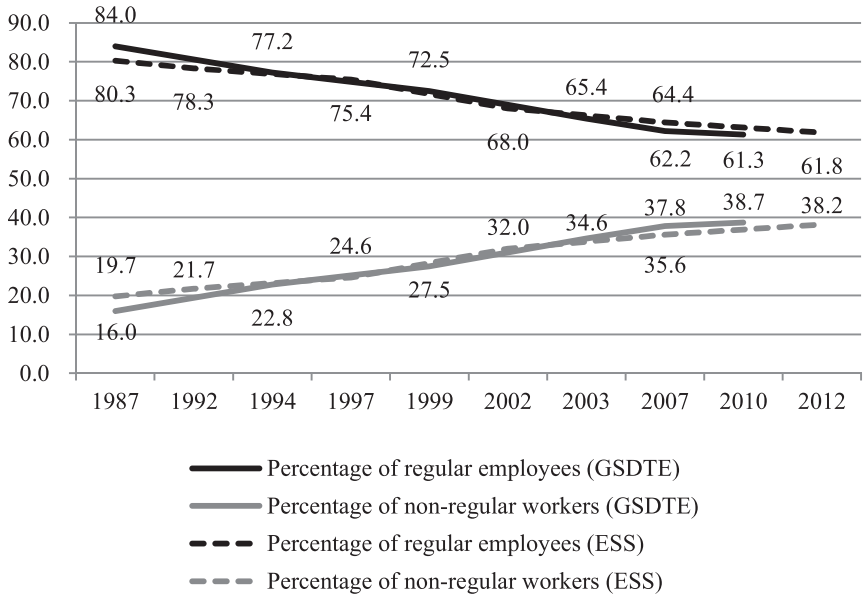
If the term "employment portfolio" is defined as securing the staff numbers required to accomplish certain work and assigning the work between them, its definition also refers to how the personnel of a workplace is composed from different employment types, including the extent to which non-regular workers are used. Over around the last twenty-five years, Japanese companies have increased and developed their use of non-regular workers, but a clear picture of the mechanism that encourages companies to use non-regular workers has not yet been formed. In order to elucidate that mechanism, it is necessary to analyze how those on the demand side (the companies) form the employment portfolios of their organizations. Analysis was conducted regarding the way in which companies form their employment portfolios, focusing on the responsibility centers (what the responsible persons in an organization are responsible for) and the approaches (the methods of deciding staff numbers and payroll budgets). The analysis revealed that the approach is determined according to which type of responsibility center the organization falls under, and the approach in turn determines how the employment portfolio is formed. This sequence is the mechanism of employment portfolio formation as defined in this paper.

I. Introduction

The objective of this paper is to elucidate the mechanism of employment portfolio formation within companies, using qualitative analysis as a basis. More specifically, the analysis leads to a clear picture of the logic behind the formation of employment portfolios.

The term "employment portfolio"[1] refers to the combination of several different employment types. The term was adopted in the Japan Federation of Employers' Association's 1995 publication, *Japanese Management for the New Era: The Direction We Should Strive for and the Practical Strategies Entailed*. The original use of the term "portfolio" refers to a strategic combination of investments aimed at mitigating risks while effectively gaining returns. The term "employment portfolio" therefore reflects applying such principles to employment management. Based on the definition of portfolio, the term "employment portfolio" implies "creating the optimum personnel composition in order to efficiently accomplish the work of an organization." Needless to say, the terms "optimum" and "efficiently" include the sense that each company mitigates risk (the risks of providing employment

[1] While "employment portfolio" is not an academic term, it is widely recognized among researchers and practitioners, and the term has been used in other research papers (for example, Nitta [2008] and Abe [2011], etc.) In this research, the term "employment portfolio" is used to refer to "a combination of several different employment types."



Sources: *General Survey on Diversified Types of Employment* (GSDTE) conducted by the Ministry of Health, Labour and Welfare, and the *Employment Status Survey* (ESS) conducted by the Ministry of Internal Affairs and Communications.

Figure 1. Changes in the Percentages of Regular Employees and Non-Regular Workers

security[2]) and gains returns (returns on investments in human resources, and profits secured by decreasing personnel costs) by utilizing non-regular workers in accordance with the circumstances of the company.

How has the use of such strategic combinations of employment types by companies affected workplaces? To answer this question concisely, the increased use of non-regular workers across Japan since the 1990s (which in fact began in the 1980s) provides a glimpse of those affects. Here "non-regular workers" refers to workers with a fixed employment term, and includes both those who are directly employed (such as contract employees and part-timers) and those who are indirectly employed (such as dispatched workers and employees of contractors).

Data from the General Survey on Diversified Types of Employment (GSDTE) and the Employment Status Survey (ESS), conducted by the Ministry of Health, Labour and Welfare and the Ministry of Internal Affairs and Communications respectively, demonstrates how the use of non-regular workers has developed in Japan over around the last twenty-five

[2] "The risk of providing employment security" refers to the risk that arises due to the fact that once a company has employed a regular employee, it becomes difficult for them to make that employee a subject of employment adjustment, because it is difficult for companies to dismiss regular employees. This is in contrast to many non-regular workers, who are on fixed-term contracts and can therefore have their employment terminated as suits the circumstances.

years (see Figure 1). Both surveys show that the percentage of regular employees[3] was above 80% in the 1980s, but fell below 80% in the 1990s, and has dropped to under 65% since 2000. In contrast, the percentage of non-regular workers[4] was under 20% in the 1980s, but exceeded 20% in the 1990s, and has since grown to nearly 40% since the year 2000.

As far as these two sets of data demonstrate, while the percentage of regular employees continues to decline, the percentage of non-regular workers is rising. Based on the figures alone, the percentage of regular employees has fallen over 20%, while the percentage of non-regular workers has increased by the same amount.

II. Issues for Analysis and Analysis Methods

This paper seeks to analyze why the use of non-regular workers has increased to such an extent, and to determine what mechanism is encouraging the use of non-regular workers.

However, it is extremely difficult to provide answers to the above questions. One of the reasons for this is the existing research available on non-regular workers. A significant amount of the prior research on non-regular workers focusses primarily on analysis from the perspective of the supply side (the workers), and there is insufficient analysis from the demand side (the companies). As it is the demand side that determines the employment portfolio of a workplace or organization as a whole, it is difficult to provide answers to the aforementioned questions without conducting analysis of the demand side. The subject of analysis in this paper is therefore the demand side.

It is also necessary to consider what form of approach to adopt. This paper focusses on the formation of employment portfolios. Prior research of existing employment portfolios such as that of Lepak and Snell (1999) has set out a number of employment types and how they each correspond to different categories of skills and value as human resources, etc. If those analysis results are followed, they suggest that the way in which human resources are utilized is selected on the basis of those categories.

However, such research results cannot always be applied to Japanese companies. While in the United States and Europe job content is typically defined and specialized, allowing companies to determine the skills and human resources value required in advance

[3] The percentage of regular employees as given in the GSDTE is the number of "regular employees" divided by the "total number of workers" (the number of regular employees plus the number of workers other than regular employees). The percentage of regular employees as given in the ESS is the number of "regular employees (or "regular staff")" divided by the total number of "employees excluding executives of the company, etc."

[4] The percentage of non-regular workers as given in the GSDTE is the number of "workers other than regular employees" divided by the "total number of workers" (the sum of "regular employees" and "workers other than regular employees"). The percentage of non-regular workers as given in the ESS is the sum of "part-time workers, side-job workers (*arubaito*), temporary agency workers, contract employees, temporary contract workers (*shokutaku*)*, and other non-regular workers" divided by the number of "employees excluding executives of the company, etc." (*Lit. "entrusted workers"; typically former employees who have been temporarily reemployed after retirement.)

and allocate the appropriate human resources accordingly, in Japan, it is not common for job content to be clearly defined. It is therefore difficult for Japanese companies to decide beforehand what skills and human resources values are needed. This is due to the fact that in Japanese companies the process of human resources allocation starts with determining the staff numbers required for the organization as a whole, and an individual worker's job content is not decided until they have been allocated to a certain position. The situation in Japan is therefore the opposite of the logic demonstrated in the prior research.[5]

As this suggests, the results provided by the prior research described above are thought to diverge significantly from the actual circumstances in Japanese workplaces. If this understanding is accurate, it means that no logic has yet been defined to explain employment portfolios in Japan. Therefore in order to reveal the factors encouraging the utilization of non-regular workers in Japan, the only possible option is to trace the process by which employment portfolios are formed. More specifically, it is necessary to conduct analysis from the perspective of staff management, under which the staff numbers and their allocation (namely, the assignment of work) are determined according to the actual circumstances of the company concerned. Moreover, as non-regular workers receive lesser treatment in comparison with regular employees, it is also necessary to look at staff management from the perspective of total personnel costs, including the wages paid to non-regular workers. Together these approaches raise the following questions: On what criteria do companies make decisions regarding the staff numbers? How does the management of total personnel costs relate to these decisions? How are total staff numbers then allocated? (Is the work separately allotted?). In other words, this analysis focusses on the following four points: (i) the criteria used for calculating staff numbers, (ii) decisions on staff numbers, (iii) management of total personnel costs (including wages paid to non-regular workers), and (iv) the assignment of work.

It is typically the case in Japanese companies that while regular employees are managed by the human resources department at the company head office, non-regular workers are managed at the business site or department level, and as a result the head office human resources department does not always have precise information on the non-regular workers that are utilized by the business sites and departments. The analysis in this paper is therefore based on case studies, as it is necessary to interview each relevant entity in a company (such as the head office human resources department and the person responsible for, or the managerial division of, the business site or department) in order to gather information on the four points above.

[5] This is the principal reason why the insights provided in prior research on employment portfolios cannot be applied to Japan. It is due to this reason that, as noted by Honda (2004), as the use of part-time workers increases, some part-time workers are expected to take on some of the work duties formerly assigned to regular employees, resulting in increases in the skills of part-time workers and improvements in their treatment to suit the level of those increases. Honda describes this as the "qualitative shift" of part-time workers to the mainstream workforce.

This paper is based on a series of research surveys on employment portfolios conducted and supervised by the author (JILPT [Japan Institute for Labour Policy and Training] 2011, 2012, and 2014, particularly JILPT 2014[6]). Please refer to those surveys for further information.

III. Frameworks for the Analysis of Employment Portfolio Formation

In order to understand the formation of employment portfolios, it is important to clarify the concepts of "responsibility centers" and "approach." "Responsibility centers" indicate the characteristics involved when staff numbers and payroll budgets are determined. "Approach" refers to the methods of determining the staff numbers and the payroll budgets. This section provides more detailed explanations of these two concepts.

1. Responsibility Centers

"Responsibility center" is a term used in managerial accounting to indicate the nature of what the responsible persons in an organization are responsible for.[7] It is thought that as the responsible person is expected to fulfill their set targets, their decisions on staff numbers and payroll budgets are formed on the premise of fulfilling those targets. Therefore the circumstances of the responsibility center impact on the kind of personnel composition with which the organization's work is conducted, in other words, the employment portfolio. As shown in Table 1, there are four types of responsibility center.

A "profit center" is responsible for profits remaining after costs have been deducted from income. In this case the person responsible is responsible for fulfilling profit targets by increasing sales and keeping down costs. Moreover, companies are ultimately profit centers.

A "revenue center" is responsible for output measured in monetary terms, and is controlled by sales. The person responsible at the revenue center is given sales targets, but is not granted the authority over costs such as the costs of personnel and supplies. In other words, the person responsible is not able to increase or decrease costs such as personnel costs, and is also not expected to do so. They are therefore only responsible for fulfilling their sales targets.

A "discretionary cost center" is not able to rationally calculate the required costs, and decisions on the required costs are entrusted to the judgement of management. Here "discretionary" refers to the inability to rationally calculate the "correct" or "appropriate" amount of costs.

A "designed cost center" is responsible for the rationally calculated amounts of costs used for the labor, materials, electricity, etc. required to generate a certain level of output. A

[6] Available in Japanese at: http://www.jil.go.jp/institute/reports/2014/0166.html. A summary in English is available at: http://www.jil.go.jp/english/reports/jilpt_research/2014/no.166.html.

[7] For a detailed explanation of each responsibility center, see Anthony and Govindarajan (1988).

Table 1. Types of Responsibility Center

Type	Content	Financial indicators (Examples)
Profit center	Responsible for profits remaining after costs have been deducted from income measured in monetary terms	Profit
Revenue center	Responsible for output measured in monetary terms	Sales
Discretionary cost center	Not able to rationally calculate the required costs; decisions on the required costs are entrusted to the judgement of management	Costs are not financial indicators
Designed cost center	Responsible for the rationally calculated amounts of costs used for the labor, materials, electricity, etc. required to generate a certain level of output	Costs (sum total of labor costs, material costs, component costs, and energy costs, etc.)

Sources: Nakamura and Ishida (2005) and Nakamura (2006, 196), partly amended.
Note: In addition to the above, there are "investment centers." However, "investment centers" have been excluded from this paper because they are considered to be a special form of profit center, and they have not been included in the survey.

typical example of a designed cost center is a manufacturing floor. On the manufacturing floor, it is possible to calculate appropriate costs on the basis of production output. In this case the person responsible is expected to adhere to the costs involved in production.

2. Approach: The Method of Deciding Staff Numbers and Payroll Budgets

The "approach" refers to the method of deciding staff numbers and payroll budgets, that is, the method of forming the employment portfolio. Takahara (2012) suggests that there are three methods for deriving appropriate staff numbers and payroll budgets[8]: the financial approach, the work volume approach, and the strategic approach.[9]

Under the financial approach, staff numbers and payroll budgets are calculated with the utmost priority placed on securing profits. On the basis of this definition, it would appear that staff numbers and payroll budgets are determined unilaterally from the financial perspective, but they are also checked against the volume of work. For example, if the staff numbers determined according to the financial approach are lower than the staff numbers

[8] Takahara (2012) uses the term "appropriate" in the sense that "'appropriate' staff numbers refers to the number of staff required to secure target profits, process the necessary work, and engage in investment-focused activities aimed at generating future profits, and the personnel costs of providing such staff are 'appropriate' personnel costs."

[9] Ishida (2005) introduces a case study on the research and development division of Toyota. His analysis demonstrates that in this division, the ratio of technical staff to administrative staff (namely, the ratio of staff who are directly engaged in the profit-making work of the company to staff who are indirectly engaged in such work) is utilized when calculating the numbers of administrative staff required. It is thought that in some cases staff numbers are decided based on this ratio.

derived from the work volume, the staff numbers based on the financial approach are set as the appropriate staff numbers, and greater efficiency is demanded in processing the work. On the other hand, if the staff numbers determined according to the financial approach are higher than the staff numbers derived from the work volume, a larger profit than the target profit can be expected, and as the number of staff required to conduct the work are secured, the staff numbers derived from the work volume are considered the appropriate staff numbers. In addition to being used in profit centers, the financial approach may also be adopted by operating divisions (such as manufacturing floors, etc.), which are designed cost centers.

Under the work volume approach, the emphasis is on carrying out the work that arises. Therefore in order to use the work volume approach, it is necessary to estimate the work volume in some form or another. In this instance, the forecasted sales figures are used. The work volume approach is therefore used by revenue centers, which place emphasis on sales.

Under the strategic approach, staff numbers and payroll budgets are decided by management from the perspective of the company's investment. The strategic approach is applied to the divisions that are involved in investing in the future of the company by engaging in activities aimed at generating future profits, such as planning, research, new projects, and reform. When deciding staff numbers and payroll budgets for these departments, it is necessary to take the viewpoint that the decisions that have been made must be carried through regardless of whether or not there are demands to reduce the staff numbers of the company as a whole. It is therefore thought that less pressure to decrease staff numbers is placed on divisions to which the strategic approach is applied in comparison with other divisions. The strategic approach is applied to discretionary cost centers (such as planning divisions and research and development divisions, etc.).

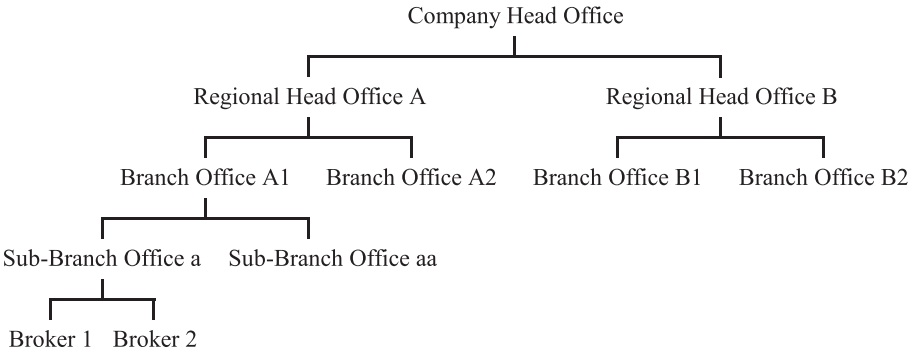
IV. The Mechanism of Employment Portfolio Formation

The following sections introduce mechanisms of employment portfolio formation on the basis of specific case studies. Each case study corresponds to one of the responsibility centers listed in Table 1.

1. Profit Center: General Insurance Company (Company N)

Company N is a major company in the field of general insurance. It has more than 10,000 employees, of which around 8,000 are regular employees, accounting for 77.2% of the total number of employees. The remaining 22.8% are non-regular workers, such as contract employees and part-timers. As shown in Figure 2, the organizational structure of the company consists of a four-layered framework: company head office, regional head offices, branch offices, and sub-branch offices.

Company N uses the financial approach to decide its staff numbers and overall payroll budget. It sets a current net profit as its target, and adopts a process of determining the "approximate sales figure" and the "amount of expenditure" necessary to fulfil the target.



Source: JILPT (2014, 124).
Note: Depending on the area, there may be sales offices under the sub-branch offices.

Figure 2. The Organization Chart of Company N (Schematic)

The targets are formulated on the basis of the figures for the previous fiscal year, and are relayed down from company head office to the regional head offices, from the regional head offices to the branch offices, and from the branch offices to the sub-branch offices. When the targets are relayed down, given that not all business sites will necessarily be able to fulfil their targets, company head office observes the circumstances of the regional head offices—Regional Head Office A and Regional Head Office B, as shown in Figure 2—and makes adjustments to the target figures. The same kind of adjustment is carried out by regional head offices for the branch offices, and by the branch offices for the sub-branch offices.

The total number of staff of Company N is determined within the scope of the overall personnel costs. At the same time, there is pressure to decrease staff numbers by a certain rate in order to achieve Company N's personnel plan, "Operating with a workforce of XX employees in FY 20XX." The company therefore works within these two restrictions to decide total staff numbers (including regular employees, contract employees, and part-time employees), also incorporating into that figure the numbers of new recruits and the number of non-regular workers to be converted to regular employees. This total staff number is the "maximum staff quota" and is decided up to the level of regional head offices and branch offices. The staff numbers for sub-branch offices are decided by the branch offices.

The staff numbers are decided according to the following process. Firstly, the human resources department at company head office receives requests for staff, which are sent from the sub-branch offices to the branch offices and from the branch offices to the regional head offices, which then submit requests to company head office. Many of these are requesting increases in staff numbers on the basis of work volume. The head office human resources department decides the staff numbers for regional head offices on the basis of observation of the growth potential (population increase, etc.) and profitability (sales and balance) of the area that the relevant organization is in charge of. These results are relayed

down to the branch offices.

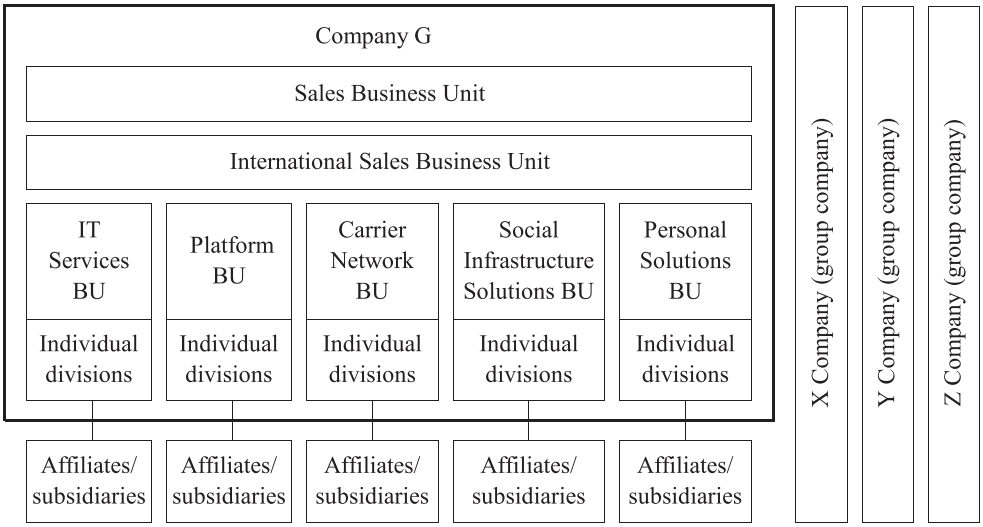
As described above, the human resources department of company head office decides and allocates the staff numbers down to the branch office level. At the same time, as both the regional head offices and the branch offices have the responsibility to produce profits, the relevant organization adjusts the staff numbers and payroll budgets within its field of authority. For example, the regional head offices allocate regular employees and payroll budgets predominantly to branch offices with high profitability, while in the case of branch offices with low profitability, they increase the percentage of non-regular workers and secure profits by limiting costs as far as possible. From the point of view of the regional head office, it is necessary to fulfil profit targets by making adjustments within the scope of staff numbers and the payroll budget provided to them by head office. The same kind of adjustment is made between branch offices and sub-branch offices.

As this case study shows, the utilization of non-regular employment is considered and the employment portfolio formation of Company N is ultimately determined at the profit center in the process of the application of the financial approach to determine the staff numbers and payroll budgets on the basis of securing profits.

2. Revenue Center: IT Solutions Division, Electrical Equipment Manufacturer (Company G)

Company G is a Japanese electrical equipment manufacturer. As shown in Figure 3, Company G has five business units (BU). The BU have the following characteristics: (i) they are made up of multiple divisions and act as a head office for those divisions; and (ii) they are independent companies in nature, as they are granted authority and budget from corporate headquarters and are responsible for generating profits in return. In addition to the five BU, there is a "sales business unit," which is responsible for domestic sales, and an "international sales business unit," which is responsible for international sales. The five BU and two sales business units make up Company G. The Company G group includes a number of subsidiaries and affiliates, which are linked to each BU. At the time of survey (2010), there were just under 25,000 employees working for Company G alone, and around 140,000 employees working for Company G along with its group companies and other consolidated subsidiaries (310 subsidiaries in total [118 in Japan and 192 overseas]).

This case study looks at the IT Solutions Division of Company G. The IT Solutions Division provides network systems and related services to telecommunications companies and the media. The division is made up of regular employees, dispatched workers, and employees of contractors. The personnel composition of the division is 41.5% regular employees (including temporarily-transferred employees), 5.3% dispatched workers, and 53.2% employees of contractors. The division has two main types of work: sales and systems engineering. The sales work is conducted by regular employees and dispatched workers, while the systems engineering work is conducted by regular employees and employees of contractors (employees from affiliates and subsidiaries). Moreover, the non-regular workers



Source: JILPT (2012, 25).

Note: The organizations within the bold line make up Company G at the time of the survey. In addition to the five BU and two sales business units shown in the chart above, Company G also includes a corporate headquarters.

Figure 3. Organization Chart of Company G Group

who work in the IT Solutions Division possess skills that the regular employees of Company G do not have, and there are no disparities between the non-regular workers and the regular employees in terms of the level of their skills.

The total number of regular employees of Company G is decided by the human resources department of the corporate headquarters. That process begins with the BU submitting requests for staff to the human resources department. The requests from the BU are often for staff increases. As when combined these requested numbers may at times exceed the number of new recruits hired by Company G, while demonstrating understanding to the BU's requests, the human resources department also places a certain amount of pressure on the BU to reduce human resources, taking into consideration the risks of providing employment security, etc., and looking at the sales, current personnel costs, and annual numbers of retirees for each BU, as well as the total personnel costs of Company G as a whole, etc.

Once this process is complete and the total number of staff has subsequently been decided, corporate headquarters assigns numbers of regular employees to each division. As the numbers of regular employees decided by corporate headquarters are a given, the individual divisions are not permitted to increase or decrease the numbers independently. Therefore at this stage the payroll budget is decided in accordance with the number of regular employees. However, target figures such as sales and operating profits are given unrelated to the num-

bers of regular employees. The IT Solutions Division seeks to receive as much work as possible in order to fulfill their assigned profit targets on the basis of the numbers of regular employees decided by corporate headquarters. As a result, there is the possibility that the division will receive a higher work volume than is possible for their regular employees alone to complete (the work volume is not always a set amount). The division therefore looks at the possibility of using non-regular workers in order to eliminate personnel shortages.

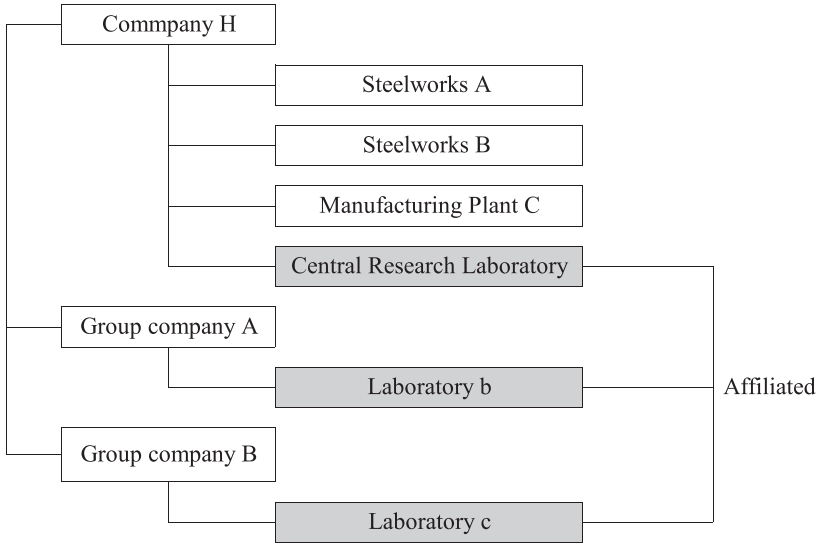
As described above, it is thought that the IT Solutions Division looks into the use of non-regular workers in response to the work volume (work volume approach) and the employment portfolio is formed on an ad hoc basis to suit different circumstances as they arise.

3. Discretionary Cost Center: Research and Development Division, Steel Manufacturer (Company H)

Company H is a Japanese steel manufacturer. This case study looks at Company H's Central Research Laboratory. The Central Research Laboratory is the department that generates the sources of future profits, and its corporate policies (management decisions) have an impact on the direction of research and the allocation of researchers, etc.

At the Central Research Laboratory the business plan is formulated based on the previous fiscal year, and this is used as a basis for deciding the personnel structure and budgets for the next fiscal year. Looking at the specific process, the Central Research Laboratory draws up a draft proposal for the business plan having looked into the personnel and research equipment required for each research topic on the basis of Company H's long-term plan and mid-term plan (3 years). Using the various company plans and market trends as a basis for judgement, the laboratory director determines the personnel structure for the next fiscal year by applying an order of priority to the existing structure. As the laboratory director is an executive officer the personnel and budgets set forth in the business plan are essentially approved. As the personnel structure for the next year is decided through such a process, it has seen no significant changes over the last few years. The payroll budget is decided in accordance with the personnel structure and assigned to the laboratory. As a result the personnel structure and payroll budget of the laboratory essentially remain the same.

If changes do occur in the portfolio formation of the laboratory, they are due to rationalization (improvements to business efficiency) conducted in times of recession. There are researchers (regular employees), technicians (regular employees), and employees of contractors (regular employees of the group companies, Group Company A and Group Company B, shown in Figure 4) working at the laboratory. The technicians are responsible for assisting the research conducted by the researchers and work together with the researchers, while the employees of contractors engage in different work to the technicians, performing work that has been separately assigned to them. In late 2009, the laboratory looked into the possibility of entrusting all the work that was assigned to the technicians to employees of contractors. The laboratory conducted an inspection of the work and also



Source: JILPT (2012, 65).

Figure 4. The Organization Chart of Company H

gathered opinions from researchers, but the decision was made to retain the technicians due to the risk that if the work of the technicians was entrusted to employees of contractors in order to prioritize cost management, compliance issues could arise (such as the risk of "disguised contracting," (*giso ukeoi*), in which the user company directly supervises and instructs employees of contractors in the same way as they would utilize dispatched workers, while avoiding administrative responsibility for them).

As described above, the employment portfolio of the Central Research Laboratory is ultimately formed in the process of the staff numbers and payroll budgets being established through management decisions on the basis of the research system of the previous fiscal year (the strategic approach). As a result, the formation of the employment portfolio essentially does not change significantly.

4. Designed Cost Center: Manufacturing Division, Electrical Equipment Manufacturer (Company J)

Company J is a Japanese electrical equipment manufacturer. This case study looks at Factory X, Company J's main factory. The principal work of the factory is orders received for system design and development regarding vehicle information, the design and development of power generation control systems, and telecommunications systems development. As the work of the factory, including the system maintenance, is conducted over a long time span (around 3 years), it has the characteristics that the continuity of the work is high, and in comparison with factories for mass production, there are no significant shifts in the work

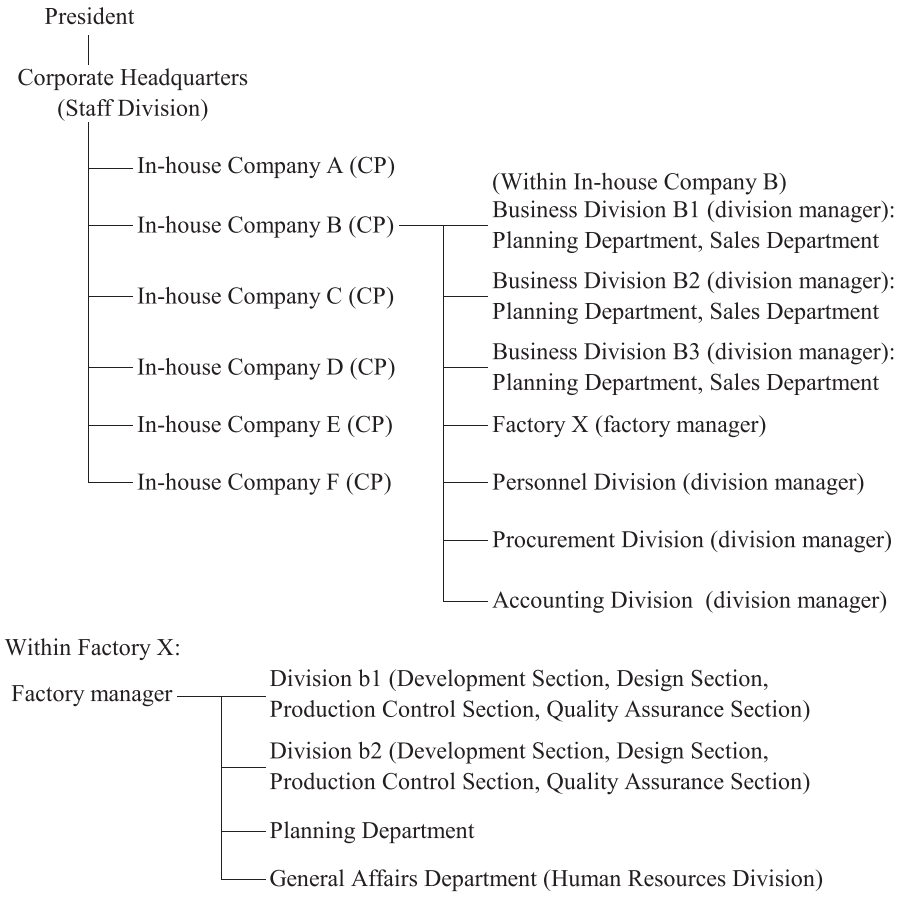
volume (fluctuations between busy and slow periods). At the time of survey (2013), the personnel composition of X Factory was as follows: 2,913 regular employees (57.5% of all X Factory employees), 15 temporary contract workers (*shokutaku*) (0.1%), 73 dispatched workers (4.7%), and 2,042 employees of contractors (37.7%).[10]

As shown in Figure 5, Company J consists of a three-layered structure: corporate headquarters, in-house companies, and business sites. Company J conducts business forecasts (estimations of sales) with the aim of increasing sales, and decides its personnel structures for the next fiscal year on that basis. A bottom-up method is used to do this. At Factory X each of the departments puts together the staff numbers and payroll budgets required to fulfil the sales targets prescribed by Company J, and gives them to the human resources division of the factory. The grounds used to decide these staff numbers and payroll budgets are the work volumes (man-hours) for the next fiscal year. Once discussions have been completed with each of the individual departments, the Factory X human resources division consults with the planning division to confirm that the business plan and the personnel plan correspond with each other. After consulting the planning division, the human resources division decides the number of staff that will be requested by Factory X.

Once Factory X's requested number of staff has been decided, the requested number is communicated to In-House Company B (Company B), as shown in Figure 5. When Company B receives the personnel requests from the business divisions and business sites, its human resources division carefully examines the grounds for the requests. The criteria used for examining the grounds for the requests are the contents of the personnel plan. The personnel plan (three-year plan) is established on the basis of the mid-term plan, which is formulated in accordance with the business forecasts for the next three years. As a result, the grounds for the personnel requests may be questioned if there are discrepancies between the personnel plan and the personnel requests. However, as the personnel requests of the business divisions and business sites are formed on the grounds of the work volume, they are essentially approved. The human resources division of Company B consolidates each of the respective requests and seeks final approval from the company president (CP). As the CP has received an explanation from the planning division regarding the business plan and draft budgets for the next fiscal year, the CP confirms that the human resources proposal provided by the human resources division is in line with the business plan and the draft budgets. Once this has been confirmed, the CP gives their final approval, and the proposal is given to corporate headquarters as the proposal for Company B.

Corporate headquarters consolidates and carefully examines the personnel requests from each in-house company. The criteria used are whether or not there are discrepancies between the mid-term plan and the personnel request, and, where there are discrepancies, the cause for those discrepancies. However, as the final approval of the CP has been

[10] Contractors include group companies and companies with no capital ties that are in the vicinity of Factory X.



Source: JILPT (2014, 69).
Note: "CP" stands for "Company President."

Figure 5. Organization Chart of Company J

acquired at the in-house company level, the in-house company proposals are approved. As a result the staff numbers for each in-house company are decided, and the sum of these staff numbers is the overall number of regular employees for Company J for the next fiscal year. Once the total number of regular employees has been decided, the staff numbers are assigned from corporate headquarters to the in-house companies and from there to business sites and business divisions. These assignments are essentially decided in accordance with the staff numbers accumulated through a bottom-up decision-making process and payroll budgets are allocated in accordance with staff numbers.

Moreover, there may be cases in which the requested numbers of regular employees are not assigned. In such cases, the in-house companies and business sites assign an order of priority when allocating regular employees. If the number of regular employees is lower

Table 2. Main Allocations and Division of Work by Employment Type

Workplace	Personnel Composition	Division of Work
Manufacturing floor	Regular employees (line workers: high-school graduates), employees of contractors	Work content is clearly divided, such that regular employees engage in the development stage, and employees of contractors engage in mass production.
System development	Regular employees (technical staff: university graduates), dispatched workers (temporarily-transferred employees)	5−6 staff members form one team, which includes around one temporary agency worker. Regular employees and dispatched workers engage in the same work.
Research and development within system development	Regular employees (technical staff: university graduates), dispatched workers (temporarily-transferred employees)	The regular employees are focused in the departments closely related to basic research, and the upstream process within research and development.
System design	Regular employees (technical staff: university graduates), dispatched workers (temporarily-transferred employees)	5−6 staff members form one team, which includes around one temporary agency worker. Regular employees and dispatched workers engage in the same work.

Source: JILPT (2014, 80).

Note: As Company J complies with the Revised Worker Dispatching Act (2012), workers dispatched from group companies (that are temporary employment agencies) are treated as "temporarily-transferred employees." There are therefore currently a large number of temporarily-transferred employees.

than requested, the persons responsible for each business or project respond through such methods as making room in the budget, outsourcing work, and arranging for the dispatch of workers from the temporary employment agencies within the group. However, as the person responsible is managed according to whether or not they are adhering to the budget prescribed in the plan, they are not permitted to exceed the scope of the budget even in such circumstances.

Let us now look at how the personnel allocations of Factory X are decided. There are two main workplaces at Factory X: the system design and development workplace, and the manufacturing division. The system design and development workplace employs regular employees and dispatched workers (currently temporarily-transferred employees), and the manufacturing floor employs regular employees and employees of contractors. It is important to note that there is no disparity between the workers' skills depending on their type of employment (regular employee, dispatched worker, or employee of a contractor). The work is therefore divided as shown in Table 2.

At the system design and development workplace (excluding the research and development sections) teams are formed on the basis of their individual abilities and skills, with

no relation to their employment types. As the personnel costs of dispatched workers are lower in comparison with those of the regular employees of Company J, the use of dispatched workers allows costs to be reduced. On the manufacturing floor, regular employees of Company J are primarily responsible for the initial stages of the process, which entail a high level of uncertainty regarding the work, while the employees of contractors are assigned to the later stages of the process, which have a low level of uncertainty. Here, the personnel allocation of individuals is decided in the context of mitigating the risks that a business may not develop smoothly, and achieving profitability (securing profit) balance between the business units of the business. Similar processes are also seen in the research and development sections of the system development field.

As this demonstrates, at X Factory of Company J, staff numbers and payroll budgets are determined according to the work volume approach, and non-regular workers are utilized in the course of adhering to business expenditure.

5. Summary

The case studies addressed above are summarized in Table 3. Table 3 demonstrates the following two points.

Firstly, each of the responsibility centers corresponds with an approach used to decide the staff numbers and personnel costs (methods of employment portfolio formation): profit centers use the financial approach, revenue centers and designed cost centers use the work volume approach, and discretionary cost centers use the strategic approach.[11] This demonstrates that the responsibility center prescribes the approach.

Secondly, the formation of the employment portfolio is characterized according to the responsibility center. As the profit centers place emphasis on securing profits, payroll budgets are decided on the basis of financial indicators, and staff numbers are determined within the scope of those budgets. The employment portfolio is formed as the result of such a process. At the revenue centers, sales targets are set as an alternative indicator of work volume, and the staff numbers and personnel costs required to fulfil those targets are determined. However, because the work volume changes, the employment portfolio is formed on an ad-hoc basis in accordance with the circumstances. At the discretionary cost centers, as the staff numbers and payroll budgets are decided according to corporate strategy (management judgments), the basis is the structure of the previous fiscal year. As a result, employment portfolio formation of discretionary cost centers essentially does not change significantly. At the designed cost centers, staff numbers and payroll budgets are decided using the work volume approach on the basis of the production plan. As the person responsible is expected to comply with the budget decided in the plan, it is within that scope that the use of non-regular workers is decided, and that the employment portfolio is formed.

[11] In addition to the case studies covered in this paper, it is thought that this argument also applies to other cases. For more information, please see JILPT (2014, 150).

Table 3. Responsibility Centers and Methods of Deciding Staff Numbers and Personnel Costs

Responsibility Centers	Methods of Deciding Staff Numbers and Personnel Costs	Characteristics of Employment Portfolio Formation
Profit center: Company N	Financial approach	Importance is attached to financial indicators (particularly profit targets), and staff numbers and payroll budgets are decided with the aim of fulfilling those targets. The utilization of non-regular workers is considered within the scope of the budget provided to the business site or workplace, and the employment portfolio is formed accordingly.
Revenue center: IT Solutions Division (Company G)	Work volume approach	The work volume is predicted on the basis of sales figures, and this is used to derive the number of staff required to carry out the work volume. As the work volume may change at times, the employment portfolio is formed on an ad-hoc basis, in accordance with the circumstances.
Discretionary cost center: Central Research Laboratory (Company H)	Strategic approach	The staff numbers and payroll budgets are decided on the basis of the personnel structure of the previous fiscal year and by management judgements. As a result the employment portfolio formation essentially does not change significantly.
Designed cost center: X Factory (Company J)	Work volume approach	Staff numbers are calculated with sales figures as an alternative indicator of work volume. As the order volume contains costs and profit, the people responsible for each project are managed according to whether or not the budget set out in the plan is being upheld. Within that scope, the employment portfolio is formed.

Source: Based on JILPT (2014, 150, Figure 6–1–2).

In summary, together these two points lead us to the following relationship: the condition of the responsibility center prescribes the approach (the method of employment portfolio formation), which in turn establishes the characteristics of employment portfolio formation.

V. Conclusion

To conclude, let us look at two points that can be raised on the basis of the results of the analysis that has been conducted so far.

Firstly, the analysis in this paper demonstrates the mechanism for forming employment portfolios. It reveals that the approach (the method of employment portfolio formation) is decided according to which type of responsibility center the organization falls under, and the approach in turn leads to the formation of the employment portfolio. The mechanism of employment portfolio formation is therefore the following sequence:

Type of responsibility center → Approach → Employment portfolio formation decided

Secondly, Japanese employment portfolios cannot be explained using the insights provided by prior research. If we look closely at the process of employment portfolio formation in Japanese companies, it can be seen that personnel management is conducted separately according to employment type, such that the head office human resources department primarily manages regular employees, and the business sites and workplaces manage non-regular workers who are not managed by the head office human resources department. Once the head office human resources department has decided the number of regular employees and the payroll budget, these are assigned to the business sites and workplaces, and workplace allocation and individual job content are determined as a result. As this logic is the opposite of the insights presented in prior research, prior research cannot be used to explain Japanese employment portfolios. There may be those who respond to this by arguing that Japanese employment portfolios are formed on the basis of skills, on the grounds that employees' jobs and skills differ according to their employment type. If that were the case, skill would surely be used as a criterion in deciding staff numbers and payroll budgets, in other words, in the process of forming the employment portfolio. As noted earlier in this paper, in Japan it is invariably the case that employees are first assigned their job content, and then begin to accumulate the required skills as they pursue the job. This is the reason why in Japan it is possible to see a "qualitative" rise in the presence of part-timers and other such non-regular workers in the mainstream workforce—in other words, non-regular workers are increasingly being given key roles similar to those of regular employees.[12]

Finally, let us look at the policy implications that this paper provides regarding the question of what should be done in order to increase the number of non-regular workers who are able to convert to regular employment. As highlighted by the Ministry of Health, Labour and Welfare (2012a and 2012b), it is necessary to secure opportunities for non-regular workers to convert to regular employment, particularly those who are working as non-regular workers involuntarily. Discussions on the topic of conversion to regular employment typically involve strong calls advocating the necessity for the improvement of workers' skills, but that alone will not guarantee an increase in non-regular workers converting to regular employment. This is because, as the analysis in this paper clearly demonstrates, companies adopt three criteria when deciding the number of regular employees:

[12] In the case study of Company A in JILPT (2011) part-timers began to take on a portion of the work that was the responsibility of regular employees. Furthermore, in the case studies raised in this paper (Company G IT Solutions Division and Company J Factory X) there were cases in which it was not certain that regular employees had higher skills than employees in other employment types.

finances, work volume, and strategy. Simply encouraging the improvement of workers' skills will therefore not lead to an increase in the number (quota) of regular employees in companies.

In that case, what possible measures are there for providing opportunities for conversion to regular employment? One potentially effective method is the use of restricted-regular employment. According to JILPT (2013) there are two types of restricted-regular employment: the type that is aimed at regular employees, and the type that is utilized as a source of opportunities for non-regular workers to convert to regular employment.[13] The way of working of restricted-regular employees whose work location, etc. is restricted overlaps in many ways with that of non-regular workers, and makes it easy to accommodate the needs of the workers. Moreover, companies that utilize restricted-regular employees gain the benefit that due to the limitations on their ways of working, etc. the personnel costs of restricted-regular employees are lower than those of regular employees in the managerial career track (*sogoshoku*). Whether or not it will be possible in the future to increase the opportunities for regular employment—the stable form of employment—is dependent on to what extent paths that allow non-regular workers to convert to restricted-regular employment can be developed.

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[13] The limitations on work content differ between the two types. The type aimed at regular employees is utilized such that the specified work location is kept the same (limited-location) while the limitations restricting work duties are removed. In contrast, in the case of the type used as a means for non-regular workers to convert to regular employment, the strong limitations on work duties remain. As differences in work content are reflected in treatment, it is possible that salaries may differ among restricted regular employees at the same organization, if both types of restricted regular employees are allocated to the same organization.

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