
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.

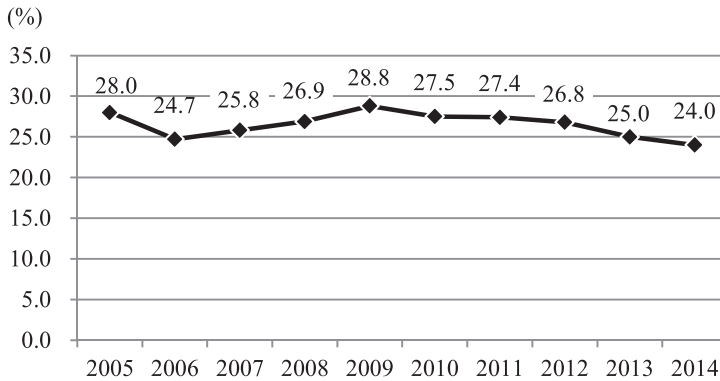
Cases recently filed with the Tokyo LRC are characterized not only by their abundance but also by their distinctive nature. Firstly, around 70% of ULP cases are filed by so-called community unions, which actively organize dismissed or dissatisfied workers across corporations in a given district. Secondly, 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 Inikai Jimukyoku, *Toroi Nenpo Heisei 26-nen*, Figure 2.
http://www.toroui.metro.tokyo.jp/pdf/05_1-1roudousouginotousei.pdf.

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

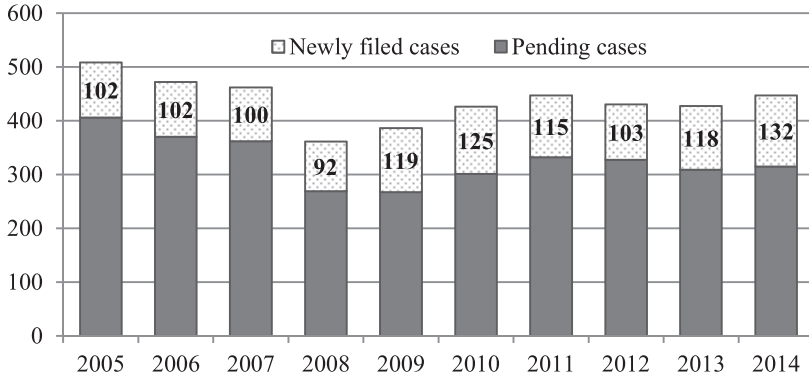
filed with each prefectural LRC, 44 out of 47 of them are engaged in conciliating individual labor disputes. However, the Tokyo LRC deals solely with collective labor dispute cases (1 and 2) and does not provide a conciliation service for individual labor disputes. This is partly because many collective 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 procedures³ 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>

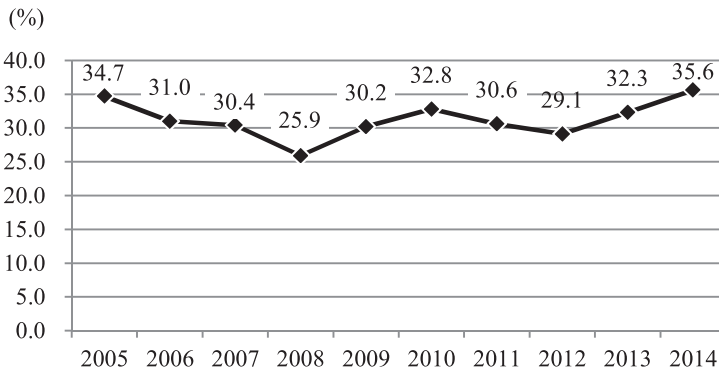
² In 2014, the Tokyo LRC handled 86 newly-filed cases out of 359 adjustment cases filed with all LRCs in Japan. Tokyo-to Rodo Inikai Jimukyoku [Tokyo LRC Secretariat], *Toroi Nenpo, Heisei 26-nen* [2014 annual report of the Tokyo LRC], Table 2. http://www.toroui.metro.tokyo.jp/pdf/12_toukeihyou1-21.pdf.

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



Source: Tokyo-to Rodo Inukai 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 Inukai 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 Inukai 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.

in Japan. Tokyo-to Rodo Inkai 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 Inkai Jimukyoku, *Toroi Nenpo Heisei 25-nen* [2013 annual report of the Tokyo LRC], 7; Tokyo-to Rodo Inkai 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 Inukai 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 on Tokyo-to Rodo Inukai 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
<u>Concluded cases</u>	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)
<u>Withdrawal or settlement</u>	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)
<u>Order issued</u>	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 Inkai 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 Inukai 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
Average 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
Average 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.