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

*Kazuo Sugeno*

*President, The Japan Institute for Labour Policy and Training*

*Former Chairman, Central Labour Relations Commission*

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 ( $5 \times 3$ ) to 39 ( $13 \times 3$ ). As discussed later, this tripartite composition is the major organizational characteristic of LRCs, and this is reflected in the manner of their performance.<sup>1</sup>

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<sup>1</sup> 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.<sup>2</sup> 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,<sup>3</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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.<sup>4</sup>

## 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.

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<sup>4</sup> 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.<sup>5</sup>

## (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

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<sup>5</sup> 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.<sup>6</sup>

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<sup>6</sup> 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.<sup>7</sup> 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

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<sup>7</sup> 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.<sup>8</sup>

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

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<sup>8</sup> 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 Muroan 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.<sup>9</sup> 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.

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<sup>9</sup> 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.

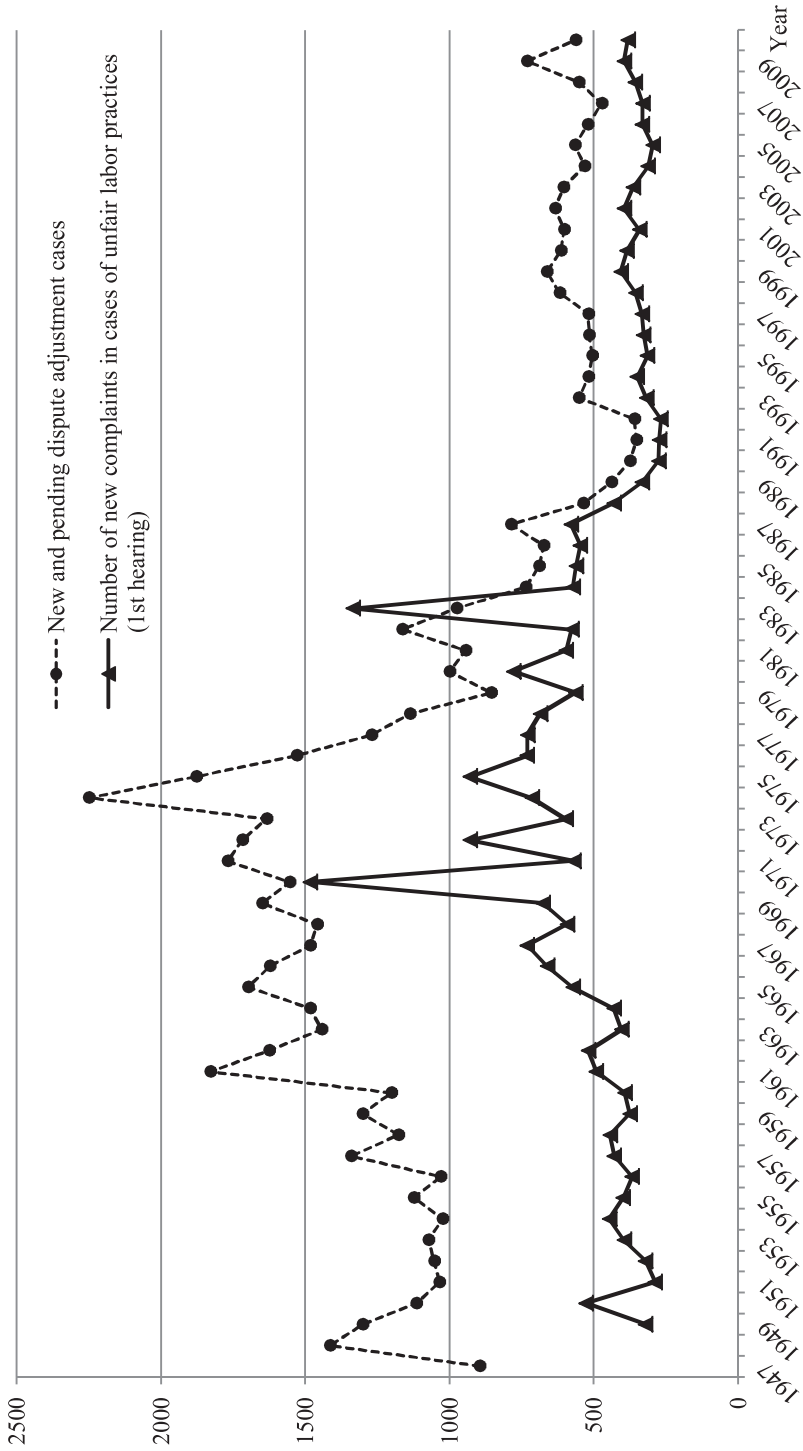
## IV. Challenges Faced by LRCs in the Era of Individual Labor Disputes

### 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.



Sources: 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%.<sup>10</sup> 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.

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<sup>10</sup> 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<sup>11</sup> 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<sup>12</sup> 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.<sup>13</sup> 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-

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<sup>11</sup> More exactly, Comprehensive Counseling Corners set up in Prefectural Labour Bureaus and Labour Standards Inspection Offices of the Ministry of Health, Labour and Welfare.

<sup>12</sup> 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.

<sup>13</sup> 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<sup>14</sup> 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<sup>15</sup>). 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.<sup>16</sup> Generally speaking, procedures are carried out by career judges handling not only labor law cases but also all kinds of other legal matters.<sup>17</sup> 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

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<sup>14</sup> 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.

<sup>15</sup> In 2013, it was 348, according to the Annual Report of the LRC.

<sup>16</sup> 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.

<sup>17</sup> 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,<sup>18</sup> 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

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<sup>18</sup> 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-

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

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<sup>19</sup> 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.