
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 doctrine²¹ has not developed in Japan.

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 Inkai 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.nlr.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.