

Occurrence Mechanism and Resolution Process of Labor Disputes
—Cases of Community Unions (Kyushu Area)—
Summary

This research was conducted from April 2007 to March 2009 by Oh Hak-Soo (Senior Researcher of the Japan Institute for Labour Policy and Training),

○Awareness of Issues and Method of Research

In recent years, the number of individual labor disputes has been increasing. For dispute resolution, a system of mediation by prefectural Labor Bureaus and Labor Relations Commissions and an industrial tribunal system were started, through which administrative and judicial efforts began to be made. In addition to these administrative and judicial systems, some labor unions have assumed a function of resolving individual labor disputes. Major labor unions with such a function include community unions, general nationwide labor unions, local unions of regional federations and local unions of the National Confederation of Trade Unions (“Zenroren”). They are all labor unions organized outside of companies. In this research, three community unions in the Kyushu Area are mainly taken up to examine their roles in the resolution and prevention of individual labor disputes.

The survey was carried out in a series of five interviews between December 2007 and February 2009. The interviews were conducted with the executives of each of the three community unions and union members (including former members) who had resolved their disputes through the union, for about two hours each time. An individual labor dispute arises basically when a worker files an objection against what they cannot accept concerning their relations with the company and takes action to resolve the problem. Therefore, whether a dispute arises or not depends largely on how the worker recognizes and judges the issue under a specific set of circumstances. In order to elucidate the mechanism by which a dispute arises, it is quite important to carefully examine how the worker thinks. In view of the importance of this point, in this paper the workers’ remarks are presented in their original wording as far as possible. The survey was conducted on officials at three unions: Rengo Fukuoka (“F Union”), Oita Fureai (“O Union”) and Rengo Kagoshima (“K Union”) and 19 members introduced by these unions.

○Research Contents

The main contents of the research are as follows: In the first place, “community union” means a labor union rooted in the local community, and any worker, including part-time or dispatched workers or foreign workers, can join as a single individual. The first community union was Edogawa Union, which was organized in 1984 under the slogan of “*Fureai, Yuai and Tasukeai* (Rapport, Friendship and Mutual Aid).” After that, community unions were organized throughout the nation. As of September 2008, 74 unions in 31 prefectures participated in the Community Union National Network (“National Network”), and the number of union members reached about 15,000 in total. Each community union is basically an independent labor union, and their activities are not the same. Still, the resolution of labor disputes is listed among their commonly performed activities.

Among the three community unions, I will focus here on F Union and examine its role in the resolution and prevention of individual labor disputes. F Union, which was established in December 1996, had 411 members as of August 31, 2007. The number of members is generally on the increase, though there are a lot of entries and withdrawals. Since F Union handles the labor consultation service of Rengo Fukuoka, all requests for consultation to Rengo Fukuoka are automatically forwarded to F Union whether by telephone, direct visit or other medium. Although the number of requests for labor consultations has been on the decrease since it peaked in FY 2003 at 928, an average of about two labor consultations are sought each day. The breakdown of labor consultation requests made in FY 2007 by form of employment is 53.7% from regular employees, 12.6% from part-time workers, 8.6% from dispatched workers, 7.7% from contract employees, 5.1% from “*arubaito*” (limited-term or after-school part-time) workers, and 12.2% for others.

In the 11 years since its establishment in December 1996 to 2006, F Union has accepted 693 cases of individual labor disputes (involving 1,374 union members) and requested collective bargaining in many of them. Among these cases, 70.0% were about employment, 16.7% were about wages, 6.1% were about labor contracts, and 7.2% were about other issues. Most of these cases, or 79.9%, were settled by voluntary dispute resolution approaches such as collective bargaining, while some cases were referred to Labor Relations Commissions (11.6%) or brought to court (8.5%).

Looking at the breakdown, by type of employment, of workers involved in 41 dispute cases in which F Union made a request for collective bargaining to the company concerned in a one-year period from October 2006 to September 2007, a large majority, or 34 cases (82.9%), concerned regular employees, while part-time and dispatched

workers were involved in one case each (2.4%), and contract workers were involved in five cases (12.2%). By gender, more male workers were involved than female workers: 26 cases for male and 19 cases for female workers.

F Union functions not only to help resolve individual labor disputes but also to prevent them. One of the measures to prevent disputes is to have the activities of F Union introduced in local newspapers or publicized by local broadcasting stations. The employers who read such articles or watched such broadcasts probably thought that if they caused any personnel or labor problems, they would be forced to enter into bargaining by the union or the issue could be brought to the regional Labor Relations Commission or to court, and they became careful about personnel and labor management so that no problems would occur. In this way, the publicity is believed to have led to the prevention of disputes. Also, F Union sometimes makes demands that would prevent a recurrence of disputes and have them accepted during collective bargaining.

Next, I will briefly describe and compare 19 cases of labor disputes presented in the full report, summarize them mainly based on their similarities, and classify them. The cases are classified into the following four patterns in terms of how the disputes arose. The first is the status-improvement pattern. These are the cases where the worker demands a higher status than the current one (in terms of post, capacity, position, or working conditions such as their wage and bonus) from the company and the conflict of claims between the worker and management gives rise to a dispute.

The second is the status-reinstatement pattern. In these cases, the worker protests their lowered status and demands the company reinstate them to their former status and the company refuses the demand, causing the dispute to arise.

The third is the subsistence pattern. This pattern can be subdivided into cases concerning an economic aspect and those concerning a physical and mental aspect. In the economic aspect, the worker, claiming that they barely subsist with their current status or the lowered working labor conditions, demands an improvement in their status or recovery of the former working conditions from the company in order to subsist economically, and the dispute arises when the company disregards or refuses the worker's demand. In the physical and mental aspect, a worker who thinks that they cannot sustain their life physically or mentally under the current situation seeks help from outside the company, and in this process the dispute arises.

The fourth pattern is the retaliation pattern. The worker demands the recovery of their dignity and humanity, which have been violated or denied, or carries out revenge against the management who did such things, and a dispute arises in this process.

These four patterns are not mutually exclusive and two or more patterns rather combine in many cases. Therefore, the above classification is not absolute but relative.

The patterns of dispute resolution can be classified into three. The first pattern is voluntary resolution. In this pattern, the union challenges the company employing the union member, who joined the community union for the purpose of dispute resolution, to enter into collective bargaining and resolves the dispute through negotiation with the company. Most labor disputes are settled through voluntary resolution. The second pattern is resolution with the intervention of the Labor Relations Commission. In this pattern, the company refuses the union's approach for voluntary resolution by not accepting the request for collective bargaining, etc. and the union files a request for examination of unfair labor practices or adjustment of labor disputes with the Labor Relation Commission to settle the dispute. The third pattern is settlement through judicial organs, industrial tribunal, etc. The union refers disputes that have not been settled by the Labor Relations Commission to judicial proceedings or directly refers them to judicial proceedings without bringing them to the Labor Relations Commission. The number of cases brought to the industrial tribunal for rapid resolution has been increasing recently.

Also, these three patterns of dispute resolution are not mutually exclusive. Considering the fact that workers can seek an order, decision or judgment from the Labor Relations Commission through the courts with the union's support, all can rather be regarded as part of an attempt at voluntary resolution led by the union. However, I classified dispute cases into three patterns in order to examine the social expansion of dispute resolution.

In the following sections, I will examine the mechanisms by which disputes arose and the resolution processes, limiting to 16 cases of individual labor disputes and excluding three cases of collective labor disputes, and discuss suggestions that may lead to dispute prevention and smoother resolution for each employment style.

1. Regular employees

1) Dispute occurrence mechanism and suggestions for dispute prevention

1. In all cases except for the case of T.U. (a cement mixer truck driver, 51 years old, male) which did not lead to a dispute, the dispute concerned encouragement by the company to retire. Although the case of I.W. (a hotel sales representative, 39 years old, male) was a dispute over unpaid overtime, he felt that he was being encouraged to retire. The case of T.Y. (an office clerk of a major paper company, 41 years old, female) was a case of pressure to quit on female workers over 30 years old. Mr. IW was forced

to work so hard that his life was threatened. K.B. (a professor of junior college, 68 years old, male) was suspended from teaching classes and repeatedly encouraged to retire. N.N. (a sales representative of camera shop, 52 years old, male) was encouraged to retire by being excluded from receiving payment of an executive allowance and an announcement by the company of its intention to cut one employee. In the case of S.R. (a university assistant professor, 44 years old, male), it was falsely claimed that he had agreed to retire. In these ways, they were encouraged to retire.

2. Behind the encouragement to retire were: a customary practice in the workplace that runs counter to the Equal Employment Opportunity Act in the case of Ms. TY; personal attacks by the president of the company in the case of Mr. IW; an unfair demand from the junior college's side that was made in violation of the initial employment contract and troubles with students in the case of Mr. KB; the company's reorganization and the inability to go out when he was in hospital in the case of Mr. NN; and the university's failure to prepare replacement classes in the case of the closure of the department in the case of Mr. SR.

3. In all five cases, in light of the legal principle concerning abuse of the right of dismissal and the legal principle setting forth four requirements for dismissals for the purpose of reorganization¹, the acts of the employers to encourage retirement are highly likely to constitute violations of laws and regulations. In the case of Ms. TY, the company violated the Equal Employment Opportunity Act, as the company admits. In the case of Mr. IW, the issue was not limited to the nonpayment of a large amount of overtime pay. He was "murderously overworked" and it is not too much to say that he was close to dying from overwork. Legal compliance by management would result in preventing labor disputes.

4. In all five cases, I cannot guess the extent to which it was inevitable for the company's side to encourage these workers to retire. However, if they had kept in close communication with the workers in question, disputes may not have occurred. If the employer's side had checked the initial contract with Mr. KB and sought out facts about his troubles with students, if they had confirmed the situation of Mr. NN's inability to go out during his hospital stay, and if they had confirmed that Mr. SR had no intention of retiring, it seems quite possible that the disputes would not have occurred.

¹ For details, refer to "Labor Laws [Second Revised Edition of the Seventh Edition]" by Kazuo Sugeno (2007) (Kobundo), Volume 3, Chapter 4, Section 2 "Dismissal" (Japanese)

2) Dispute resolution process and suggestions for early resolution and prevention of disputes

1. The dispute resolution process in the case of Ms. TY was: visit the labor and welfare office of Fukuoka Prefecture → introduction to F Union → entry into F Union and a voluntary resolution of the dispute through collective bargaining by F Union. The dispute was resolved smoothly probably because the union obtained evidence on cutbacks of female workers. It took about three months to resolve the dispute.

In the case of Mr. IW, as he already knew about K Union from past experience, he joined K Union and the dispute was resolved voluntarily through collective bargaining by K Union. He received nearly the full amount of unpaid overtime pay he was due probably as a result of the superbly-combined effect of the determined attitude of the secretary general of the K Union, Mr. IW's core position and experience at the company, the social environment favorable to workers, and persuasion by the company's lawyer. It took about four months to resolve the dispute.

The resolution process of the case of Mr. KB was: consultation with teachers of another university and introduction to F Union → entry into F Union and voluntary resolution through collective bargaining by F Union. It seems that Mr. KB's prompt action and the union's appropriate negotiation strategy contributed to an early resolution. The dispute was resolved in about two months

In the case of Mr. NN, the resolution process was: heard about F Union from younger brother and found F Union by searching on the Internet → entry into the union and collective bargaining by the union → refusal of collective bargaining by the company → resolution through collective bargaining attended by the regional Labor Relations Commission. It took about five months for the dispute to be resolved mainly because the company's side raised an objection to the existence of F Union itself.

The case of Mr. SR went through the following process before resolving the dispute: introduction to O Union by a colleague → entry into the union, the union's request for collective bargaining and the university's firm attitude → petition to the district court for a provisional disposition to preserve the position (decision admitting the dismissal) → appeal to the high court of the decision of the district court on the petition for provisional disposition and filing a lawsuit in the district court → settlement in the high court (temporary payment of wages) → the district court's judgment on the lawsuit nullifying the dismissal, and a refusal of collective bargaining for return to work and appeal to the high court by the university → high court's judgment nullifying the dismissal → return to the university. The whole process took about two and a half years. It took such a long time for repeated trials and judgments of the district court

and the high court because the alleged reason for retirement/dismissal was changed from retirement by agreement to disciplinary dismissal by the university's side, which maintained an unyielding attitude not to withdraw the dismissal.

In order to realize an early resolution, the (employer's) side is required to respond to the union's request for negotiation in a sincere manner and take a realistic attitude in line with the actual circumstances.

2. The dispute over encouragement to retire was resolved by the worker's retirement in three cases other than the cases of Mr. KB and Mr. SR. Even so, everyone expressed gratitude towards the union for its efforts. They, of course, thanked the union's rapid response (Ms. TY and Mr. KB), and Mr. NN also thinks that the union's action helped prevent his death from overwork, saying, "If I had endured everything without taking action, I may have died from overwork... No one talked to me because I was out of my mind." Mr. IW highly appreciated the union as he was able to negotiate with the company on an equal basis thanks to the union which exists outside the company as a social body.

3. In two cases, resolution of the dispute directly led to dispute prevention. In the case of Ms. TY, she requested the company to take measures to prevent a recurrence of the dispute and the company accepted. As a result, the practice of pressuring female workers over 30 years old into retiring, which would give rise to another dispute, has allegedly been ended. Mr. IW also demanded improvements in working conditions for his colleagues and obtained a reply from the company stating "the company shall make efforts so that the working conditions for employees will be improved." Affection for colleagues by workers involved in disputes and the negotiation strategy of the union help bring about the prevention of disputes.

3) Classification of patterns of occurrence and resolution of disputes

The process of occurrence and resolution of disputes for regular employees are summarized as above. Table 1 below shows which of the four patterns are applicable to each case. In the case of Ms. TY, her continued employment was jeopardized by the company's encouragement for her to retire in the form of pressure on female workers over 30 years old to quit, and she visited F Union in order to stop the practice and be reinstated to her status and continue working. As a result of collective bargaining, Ms. TY managed to be reinstated to her previous status as the company withdrew the suggestion of early retirement and apologized. However, she decided to retire because, she said, "My feeling that I was betrayed by the company lowered my motivation and I lost my enthusiasm to keep on working."

Mr. IW felt a sense of physical crisis as he was, in spite of a serious disease, aortic valve insufficiency, transferred to an extremely busy post which led to his being encouraged to retire by being forced to work deadly long hours. He initiated the dispute because he needed to solve the issue of encouragement to retire and unpaid overtime, which was excessively long, in order to subsist, and he had to prepare economically to undergo an operation. Moreover, based on the determination that “I would not just put up with this; I have to rise up and fight whether I win or lose,” he rose up to retaliate against the president who assaulted his dignity and thus the dispute arose.

Mr. KB, who feared that he might be forced to retire because of his suspension from teaching classes due to troubles he had with students in addition to repeated encouragement to retire, joined F Union with a view to win reinstatement of his status and continue working, and the situation developed into a dispute.

Mr. NN joined F Union in order to protect his current status from the crisis of job loss implied by a cut in salary due to his exclusion from receiving payments of executive allowances and an announcement of the company’s intention to cut one employee. His desire to recover from the crisis, coupled with the desire to live by avoiding the risk of death from overwork, gave rise to the dispute.

Mr. SR joined O Union in order to win reinstatement in the position he assumed before he was dismissed by the university, which asserted that he agreed to retire with the closure of the department he belonged to, stating that the assertion was not true because he never agreed to retire, and thus the issue developed into a dispute.

Mr. TU joined K Union out of fear that his retirement allowance would not be paid. Although his case did not develop into a dispute because the retirement allowance was paid, his experience revealed that there are many potential disputes in provincial areas ripe for retaliation, as is symbolically indicated by his shocking remark, “If we were in the Edo period, I would have liked to pull out my sword and cut off the president’s head.”

Looking at the pattern of dispute resolution, the cases of Ms. TY, Mr. IW and Mr. KB are classified as voluntary resolutions through the union’s collective bargaining. The case of Mr. NN was resolved through the regional Labor Relations Commission and the case of SR was finally resolved through a lawsuit and a hearing before the regional Labor Relations Commission.

[Table 1] Patterns of Occurrence and Resolution of Labor Disputes of Regular Employees

Type	Case 4 Ms. TY	Case 5 Mr. IW	Case 6 Mr. KB	Case 7 Mr. NN	Case 8 Mr. SR	Case 9 Mr. TU
Dispute Occurrence						
Status-improvement						
Status-reinstatement	◎		◎	◎	◎	
Subsistence						
Economic		○				
Physical/Mental		◎		○		
Retaliation		○				◎hidden
Dispute Resolution						
Voluntary Resolution	○	○	○			
Regional Labor Relations Commission				○	○	
Lawsuit					○	

Note:1) Dispute occurrence ◎: most strongly applicable; ○: strongly applicable; Blank box: not applicable
 2) Dispute resolution ○: utilized; Blank box: not utilized
 3) “Lawsuit” includes labor trial.

2. Non-regular employees: Part-time workers

In this section I will review the occurrence mechanism and resolution process of disputes involving part-time workers, dispatched workers, and (disguised) outsourced workers, which have been a major issue in Japanese society since the late 1990s. First, I will focus on part-time workers, who occupy the largest portion of non-regular employees.

1) Dispute occurrence mechanism and suggestions for dispute prevention

1. First, I will examine the mechanism by which the disputes arose. S.M. (52 years old, male), who had been working full-time hours as a part-time driver of a pickup bus for a driving school for 11 years, joined F Union in order to eliminate uncertainty about his employment and anxiety about his life caused by a transfer and drop in hourly wage as a result of the employer outsourcing driving division work to a worker dispatch company, causing the dispute to arise. The complete ban on overtime work and drop in his hourly wage threatened the livelihood of Mr. SM, who lives alone.

In the case of S.K. (a food processing company worker, 49 years old, female), the company was going to force her to retire even though she did not say, “I will retire now.” Ms. SK visited administrative bodies and the union in an attempt to work off her

frustration, and as a result the issue developed into a dispute.

K.G. (a guard of a supermarket, 39 years old, male) thought that the trouble which arose from his “thoughtless behavior” would be resolved by submitting a written apology. However, he was ordered to be transferred from Kagoshima to either Tokyo or Osaka. This transfer was unacceptable to Mr. KG, who was taking care of his disabled parents. Later, he was ordered to submit a letter of resignation and was excluded from all work shifts. In order to resolve the issue of forced retirement, he visited K Union, which had been helping him for five years, and became a member. In this way the issue developed into a dispute.

S.S. (a food sales person, 58 years old, female) received a dismissal notice from the company mainly for reasons of a single complaint filed against her by a customer and her chatting at another shop. Thinking that these reasons did not deserve dismissal, and based on the result of a consultation with her husband over her doubts about the dismissal notice, she visited the Labor Standards Inspection Office to seek clarification and was introduced to F Union. Then she joined F Union, and the dispute arose.

In the last case of M.N. (a sales person of second hand clothing store, 32 years old, female), an order of transfer was suddenly sent by facsimile from headquarters. She was a single parent looking after a six-year-old child. If she were transferred, the cost of transportation would take up nearly half of her wages and it would be hard for her to live. Therefore, the transfer was not acceptable. She joined F Union to resolve this issue, and thus the dispute arose.

2. In these five cases of part-time workers as well, a dispute would have been prevented if close communication had been maintained between the worker and management. A dispute would not have occurred: if the company had known that Mr. SM was barely making a living; if the company had confirmed Mr. SK’s intention; if the company had taken into consideration that Mr. KG was looking after disabled parents and understood that he was a man of quick action and if the company’s grievance processing system had functioned; if Ms. SS’s manager had talked to her politely; and if the company had accepted Ms. MN’s request for discussion.

2) Resolution process and suggestions for early resolution and prevention of disputes

The process of how these five part-time workers resolved their disputes is summarized below.

1. In the case of Mr. SM, the dispute resolution process was as follows: recognition of the union through the Internet → entry into F union and collective bargaining → the company’s full entrustment of developing the resolution plan to the union → choice of

retirement and voluntary resolution by the union.

In the case of Ms. SK, the dispute was resolved in the following process: continued working based on the advice of the Labor Standards Inspection Office → forceful demand for retirement by the company → retirement → second visit to the Labor Standard Inspection Office (impossible to change from voluntary retirement to involuntary retirement) → recognition of the existence of the union in a talk with her daughter → entry into K Union and voluntary resolution through collective bargaining.

The case of Mr. KG went through the following process to resolution: refusal of unacceptable transfer to a remote place and forceful demand for retirement → consultation with colleagues and their advice that he did not have to retire → consultation with and entry into the already-known K Union → voluntary resolution through collective bargaining (with a guarantee by the secretary general of the union as his “guardian”).

In the case of Ms. SS, the dispute was resolved through the following process: visit to the Labor Standards Inspection Office and introduction to F Union → entry into F Union, two rounds of failed collective bargaining → dispute resolution through three hearings before the industrial tribunal.

The case of Ms. MN went through the following process: visit to the Labor Standards Inspection Office and its advice to maintain her attendance record → application for mediation by the dispute coordinating committee of the prefectural Labor Bureau and refusal by the company → introduction to F Union by a lawyer → entry into the union, two rounds of collective bargaining and failure → settlement after two hearings before the industrial tribunal.

The time taken for resolution after the dispute arose was the longest in the case of Ms. MN. It took about eight months mainly because the company did not sincerely engage in collective bargaining. Prevention of unfair labor practices and imposition of severe penalties would lead to early resolution of disputes. Among these part-time workers, Ms. SK, Ms. SS and Ms. MN used the service of labor administrative bodies. Ms. SS was introduced to the union and the dispute was resolved soon, while it took a long time for Ms. SK and Ms. MN to reach the union. In order to promote early resolution of disputes, it would be effective for administrative bodies to introduce the workers involved in disputes to community unions. In the case of Ms. MN, the dispute resolution process was prolonged because the company refused mediation by the prefectural Labor Bureau. Successful mediation by the prefectural Labor Bureau is effective for early dispute resolution and measures should be taken to improve the success rate of mediation. Mr. KG managed to resolve the dispute without using the

services of administrative bodies. One of the reasons is that the secretary general of the union became his “guardian.” The significance of the existence of community unions lies in the early and amicable resolution of disputes.

2. Let us reexamine the significance of community unions. In the case of Mr. SM, the union was so good at negotiation that the company fully entrusted development of the settlement plan to the union. Ms. SK expressed her gratitude to the union, saying, “They listened to me so earnestly and, only by that, I was satisfied. It was impressive that (the secretary general of the union) actually took action on my behalf. I was really pleased. Somehow I felt a sense of relief.” In the case of Mr. KG, the secretary general of the union became his “guardian.” Ms. SS also expressed her thanks, saying, “I am grateful to the union for taking my problem into their heart and treating me kindly.” Ms. MN said, “I am deeply grateful to the staff of the union. I really thank them.” She was glad that the dispute, which had not been solved by an administrative approach, was resolved before the industrial tribunal thanks to the support of the union.

3) Classification of patterns of occurrence and resolution of disputes

Mr. SM joined the union in order to eliminate employment uncertainty and worry about his life to be caused by his transfer, and the issue developed into a dispute. He thought that if he accepted a transfer, he would not be able to make a living by himself. It was a dispute for economic subsistence.

Ms. SK was “annoyed” and “felt so frustrated” with the attitude of the company, which was trying to force her to retire in spite of the fact that she did not say she would retire at once, and particularly that of the female president, who acted as if she knew nothing about the matter and said so to others even though she induced Ms. SK to retire. Ms. SK said the president was “a rude person who disdains others,” and these remarks reflect her helpless vengeful feeling.

Mr. KG had no choice but to refuse a transfer to a remote place in order to look after his disabled parents. When he refused, his employer demanded his retirement and actually excluded him from work shifts. He turned to the union for help to win reinstatement by returning to work.

Although Ms. SS admitted that she had made trivial mistakes, she was frustrated by the impolite attitude of the manager who forcefully handed her a dismissal notice due to those mistakes and by the inconsiderate nature of the dismissal notice. She said, “Couldn’t he talk in a different way?” Her accumulated grievance against his disregard for her humanity gave rise to the dispute. Her remarks show her vengeful thoughts, though they are not very strong.

Ms. MN refused an unacceptable transfer, and as a result she was prevented from working. She joined the union with a view to returning to work at her former shop, which she was prevented from going to, and the issue developed into a dispute. She wanted to return to the former shop in order to protect her hand-to-mouth existence as a single parent.

By pattern of dispute resolution, the cases of Mr. SM, Ms. SK and Mr. KG terminated through voluntary resolutions brought about by the union and the cases of Ms. SS and Ms. MN were resolved by settlements before the industrial tribunal. The resolution resulted in reinstatement in his former job only in the case of Mr. KG, and retirement for the four other part-time workers.

[Table 2] Patterns of Occurrence and Resolution of Labor Disputes of Part-time Workers

Type	Case 10 Mr. SM	Case 11 Ms. SK	Case 12 Mr. KG	Case 13 Ms. SS	Case 14 Ms. MN
Dispute Occurrence					
Status-improvement					
Status-reinstatement	○	○	◎		◎
Subsistence					
Economic	◎		○		○
Physical/Mental					
Retaliation		◎		◎	
Dispute Resolution					
Voluntary Resolution	○	○	○		
Regional Labor Relations Commission					
Lawsuit				○	○

Note: 1) Dispute occurrence ◎: most strongly applicable; ○: strongly applicable;
Blank box: not applicable
2) Dispute resolution ○: utilized; Blank box: not utilized

3. Non-regular employees: Dispatched workers

In this section, I will examine the dispute occurrence mechanism and resolution process of two cases concerning dispatched workers, which have attracted a major social concern in recent years.

1) Dispute occurrence mechanism and suggestions for dispute prevention

1. Let us examine the dispute occurrence mechanism. In the case of M.I. (a worker in the system section of a mineral trading company, 28 years old, female), she was notified of her dismissal when she was working at a client company. She said, “The dispatching agency abruptly called me during the lunch break and said, ‘Let’s make today the day of termination.’” As Ms. MI signed an employment contract after undergoing a “preliminary interview” by the client company, she could not accept such a sudden dismissal. After consulting with her mother, she visited F Union and became a member, and thus the dispute arose.

T.K. (54 years old, female) was told by the dispatching agency prior to being dispatched to the client company that the working conditions were the same for the two divisions of the client company. When she heard that the hourly wage of the staff working for the packaging division was to increase by 50 yen, she tried to confirm with the dispatching agency that her wage would be raised by the same amount. Subsequently, her employment contract was not renewed and she was virtually dismissed. Ms. TK could not accept the situation and consulted with the Labor Standards Inspection Office, the prefectural Labor Bureau, and F Union. As a result, the dispute arose.

2. The problem of labor-management communication derived from the nature of employment style of worker dispatching underlies the occurrence of disputes. Ms. MI and Ms. TK repeatedly pointed out the unsatisfactory response they received from the dispatching agency. Ms. MI said, “I would like the dispatching agency to have said, ‘for such and such reason.’” She also said, “I wish that the client company had directly told me if there was something wrong, not through the dispatching agency.” Thus she pointed out the problem of communication among three parties: the dispatched worker, the dispatching agency and the client company. Ms. TK pointed out the lack of communication with the dispatching agency, saying, “I have never been satisfied with their response. They never explained anything to me.” How to establish a system for good communication would seem to be the key to the prevention of disputes involving dispatched workers.

2) Resolution process and suggestions for early resolution and prevention of disputes

1. Looking at the dispute resolution process in the case of Ms. MI, the dispute terminated through the following process: consultation with her mother and recognition of the union on TV → entry into the union and voluntary resolution through collective bargaining.

The case of Ms. TK went through the following process: advice of the Labor

Standards Inspection Office → application for mediation by the dispute coordinating committee of the prefectural Labor Bureau and failure due to the refusal by the company → introduction to F Union by the lawyer she consulted using the free legal counseling service provided by the city → entry into the union and voluntary resolution through collective bargaining.

2. In both the cases of Ms. MI and Ms. TK, the dispute was terminated by voluntary resolution. In the case of Ms. MI, it took a relatively long time for collective bargaining because the dispatching agency did not admit directly the actual state of affairs that gave rise to the dispute. Dispute resolution would be facilitated if the dispatching agency responds in line with the actual state of affairs in the negotiation with the union.

3) Classification of patterns of occurrence and resolution of disputes

When Ms. MI received a telephone call from the dispatching agency during the lunch break at the client company and was told, “Your contract terminates today,” she fell in a state of confusion and almost “could not understand what happened.” After she went home, she talked to her mother and visited F Union, which they had seen on TV, for a consultation. Then she joined the union and the dispute arose. She seems to have demanded to return to work, though this has not been clearly shown. She also felt distrust toward the dispatching agency because of the way they treated her.

In the case of Ms. TK, the dispute triggered when she tried to confirm with the dispatching agency about a 50-yen wage hike. She thought that the wage hike in another division would also apply to her. In this sense, there was a rather passive aspect in her behavior than an active demand for improvement of status. She was offended by the dispatching agency insisting that “she said what she didn’t actually say” and started the dispute partly as a means to appease her anger.

The case of Ms. MI was resolved in the form of a voluntary resolution by the union without using other dispute resolution bodies. In the case of Ms. TK, too, the dispute was terminated through a voluntary resolution negotiated by the union, but she visited the Labor Standards Inspection Office, the prefectural Labor Bureau, and the free legal counseling service of the city before she reached the union (see Table 3).

4. Non-regular employees: (Disguised) outsourced workers

Disguised outsourcing, along with worker dispatch, constitutes a serious social issue. It is one of the aspects of disguised outsourcing that the outsourcer manages the personnel and human resource affairs of the outsourced workers, such as their arrival

and departure from work, command and control of work, etc. In this research, we covered three cases of workers who were employed under disguised outsourcing.

1) Dispute occurrence mechanism and suggestions for dispute prevention

1. Looking at the dispute occurrence mechanism, K.R. (a call-center staff member, 62 years old, female) called the president of the company on a Saturday with good intent and on the same call her colleague spoke ill of the manager of her office. On the following Monday when she went to the office, the manager said to her, “You don’t need to work. Go home” and she was dismissed instantly. Dissatisfied with the situation, she demanded payment in lieu of dismissal notice from the company, but the demand was refused. Then she turned to dispute resolution bodies outside the company and the dispute arose.

I.U. (a carpenter, 59 years old, male) was seriously injured and was hospitalized when he fell down while working at the construction site of a parking lot. Worried about the huge cost of hospitalization, he requested that the company recognize his accident as an industrial accident, but the request was refused. He consulted with K Union seeking recognition of the accident as an industrial accident and the issue developed into a dispute.

H.N. (a worker engaged in maintenance operation of industrial refrigerators, 58 years old, male) was suddenly told, “Go home today, anyway” and was encouraged to retire. This was shortly after he had chosen to work as a dispatched worker from among three options presented by the company, in response to the company’s intention to change his contract from an illegal business trust agreement to a legal one. Three days later he was ordered to agree to retire in exchange for a payment of one million yen. Mr. HN refused, so he was forced to retire. He joined F Union in order to resolve this issue, which developed into a dispute.

2. If the company’s side had admitted it was engaged in disguised outsourcing, these disputes would have been prevented. In the case of Ms. KR, apart from the reason for dismissal, she demanded payment in lieu of dismissal notice. However, the company refused her demand, insisting that she was an outsourced worker. Therefore, Ms. KR turned to labor administrative bodies, the union and finally an industrial tribunal in an attempt to resolve the issue of payment in lieu of dismissal notice. In this way the dispute developed. In the case of Mr. IU, if the company had recognized him as its employee based on his actual way of working and cooperated with him in claiming workers’ accident compensation, the dispute would not have occurred. If the company’s side admitted its illegal disguising of outsourced workers in dealing with problems, it

would lead to dispute prevention.

2) Resolution process and suggestions for early resolution and prevention of disputes

1. In terms of the dispute resolution process, the case of Ms. KR terminated through the following process: demand for payment in lieu of dismissal notice and refusal by the company → conclusion by the Labor Standards Inspection Office that it was not outsourcing and discontinuation of investigation due to the difference in claims concerning dismissal between labor and management → application for mediation by the dispute coordinating committee of the prefectural Labor Bureau and refusal by the company → request for collective bargaining by the union and refusal by the company → settlement before the industrial tribunal.

In the case of Mr. IU, the dispute was resolved through consultation with the family about workers' accident compensation and recognition of K Union → entry into the union and voluntary resolution through collective bargaining. In addition, he obtained the right to receive a workers' accident compensation pension with the union's support.

In the case of Mr. HN, the dispute was resolved through consultation with a licensed social insurance consultant who was his classmate at high school and introduction to the union → entry into the union and voluntary resolution through collective bargaining.

2. As was stated above in connection with the dispute occurrence mechanism, once a dispute arises, if the company admits the illegality of disguising outsourced workers and addresses the issue in accordance with all laws and regulations, the dispute would have been resolved earlier.

3) Classification of patterns of occurrence and resolution of disputes

In the case of Ms. KR, her actions, based on good intent, generated the opposite results and she was suddenly dismissed. She demanded payment for one month in lieu of dismissal notice probably because she had a strong feeling to fight the company due to the manager's abrupt notice of dismissal and the president's approval of it. In addition, there was an economic reason for her to raise the dispute, because she had to support her mother, who was living alone.

In the case of Mr. IU who was seriously injured and hospitalized when he fell down while working, the company refused to recognize his accident as an industrial accident. He joined the union in order to receive treatment of his serious injury and secure the payment of medical expenses, and as a result a labor dispute occurred.

In the case of Mr. HN, as the company committed a "criminal act" of "forcing him to

pack up his belongings and go home at once,” he took action for “all-out resistance.” Then he came to join the union and the dispute arose. He had a strong vengeful attitude towards the company for its inhumane treatment, saying, “I thought I would resist them to the end.” Also, the payment of one million yen offered in exchange for his retirement was far short of what he expected, and he could not accept retiring in that way.

The dispute was resolved before the industrial tribunal with the support of the union in the case of Ms. KR, and by voluntary resolution through collective bargaining between the company and the union in the cases of Mr. IU and Mr. HN.

[Table 3] Non-Regular Employees: Patterns of Occurrence and Resolution of Labor Disputes of Dispatched Workers and (Disguised) Outsourced Workers

Type	Case 15 Ms. MI	Case 16 Ms. TK	Case 17 Ms. KR	Case 18 Mr. IU	Case 19 Mr. HN
Dispute Occurrence					
Status-improvement		◎			
Status-reinstatement	◎				
Subsistence					
Economic			○	○	
Physical/Mental				◎	
Retaliation	○	○	◎		◎
Dispute Resolution					
Voluntary Resolution	○	○		○	○
Regional Labor Relations Commission					
Lawsuit			○		

Note: 1) Dispute occurrence ◎: most strongly applicable; ○: strongly applicable; Blank box: not applicable
 2) Dispute resolution ○: utilized; Blank box: not utilized

○Significance of Existence of Community Unions in Prevention and Resolution of Disputes

First, community unions have a role of comforting workers who are involved in disputes. Workers who are in disputes do not know what to do. They feel irritated and despondent about their claims not being accepted. At such times, community unions listen to them sympathetically and provide consultation. Many workers express their gratitude for the existence of community unions, saying, “I am thankful” or “I was relieved.” It is difficult to find other organizations that assume a similar function.

Thanks to community unions, workers can turn to resolve their disputes with a clam manner.

Second, community unions help workers regain their dignity and provide them with a revitalizing power that enables them to go back to work and keep up their courage. If their claims are accepted by the union and the dispute is resolved to their satisfaction, workers can move on to the next job with enthusiasm, as in the case of Ms. MI and Ms. TK, in particular, who were dispatched workers.

Third, community unions point out during collective bargaining the problems the company has with human resource management or communication that led to the dispute. If the company's side listens to what is pointed out in a positive manner, they will improve their personnel management, labor management and communication, which will result not only in preventing disputes but also in increasing workers' willingness to work. Whether the company can make use of this depends on the attitude and decision of each company.

Fourth, every company and organization contains not a few seeds of future labor disputes. It would be advisable for them to take in-house labor disputes as a good opportunity to create a better working environment which is worth working in, instead of regarding disputes as something that must be suppressed and avoided. It may well be said that community unions provide companies with such an opportunity from outside.

Finally, I would like to make a brief suggestion regarding the necessity of public support for community unions. Community unions resolve labor disputes, which are social problems that cannot be resolved within a company. In some cases, they deal with kinds of labor disputes that cannot be resolved by administrative bodies. It is not too much to say that community unions function as an administrative body or a judicial body in terms of dispute resolution and play a different role than most company-based unions. I suggest that some form of public support should be provided to community unions for their public function of dispute resolution.