

**"Research on Support for Development of In-house Dispute
Settlement Systems"**

Summary

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Dispute Settlement Systems"**

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Research Period

From April 2006 to March 2008

Research Objectives and Methods

1. Research Objectives (outline of request)

This report has compiled achievements of a fiscal 2006-2007 project titled "Research on Support for Development of In-house Dispute Settlement Systems," based on a request from the Central Labour Relations Commission Secretariat at the Ministry of Health, Labour and Welfare.

Labor disputes, particularly individual disputes, have increased markedly in Japan in recent years, as indicated by the rising number of inquiries brought to the general labor consultation corners of prefectural labor bureaus and increasing civil lawsuits related to such disputes. Apparent factors behind the remarkable increase in labor disputes include the prolonged continuation and deterioration of the economic slump following the burst of economic bubbles, intensified market competition at home and abroad, diversification of employment and working styles, and changes in lifetime employment and seniority-based treatment under the so-called Japanese-style employment system. In a sense, however, enterprises' in-house dispute settlement systems may have weakened their functions, allowing in-house grievances out of enterprises.

With this situation in mind, we investigated desirable in-house dispute settlement systems that labor and management should pursue, and measures for the diffusion and stabilization of such systems.

2. Research Method

For this research, the Research Panel on Support for Development of In-house Dispute Settlement Systems was launched and conducted bibliographic surveys, interviews with labor and management representatives in Japan, questionnaire surveys covering employers, employees and labor unions, and fact-finding surveys in foreign countries (the United States, Britain, Germany and France). The panel held discussions based on these survey findings. Research on in-house dispute settlement systems has a characteristic as an interdisciplinary study that requires viewpoints from multiple areas covering not only labor laws and personnel management theories but also dispute management theories and psychology. Therefore, the above panel has been designed to include experts in different areas. As necessary, we interviewed experts and businesspeople other than panel members.

Generally, a dispute means a situation in which a party to a conflict of interest in social life refuses to accept another party's demand for the resolution of that conflict based on dissatisfactions. Conceptually, dissatisfactions or grievances may exist before their development into disputes. In this research, we use the phrase "dispute settlement" in a broad sense, which includes handling of such dissatisfactions or grievances. In addition to the phrase "dispute settlement" that focuses on processes of settlement including dispute prevention, we may use the phrase "dispute resolution" when emphasizing objectives.

Outline of This Report

Chapter 1 Outline of In-house Dispute Settlement Systems in Japan

Japan has recently seen a fast-growing number of labor-related civil lawsuit cases (most of which appear to be individual disputes). In response to the remarkable increase in individual labor disputes, the Law on Promoting the Resolution of Individual Labor Disputes was enacted in 2001 to create a system for promoting the resolution of individual labor disputes. This system consists of three elements: comprehensive labor consultation services at prefectural labor bureaus, advice and guidance by prefectural labor bureau directors, and mediations by the Dispute Coordination Committee. The law also created an industrial court system in which court judges and labor/management experts try to quickly solve individual disputes through labor dispute judgments that can produce conciliations or flexible solutions. This system has been implemented since April 2006. Concerning collective labor disputes, the Labor Union Act was revised and enacted in January 2005 to speed up and improve labor relations commissions' investigations into unfair labor practices against employees.

However, it is basically desirable for parties involved in workplace labor disputes to resolve such disputes on their own. Even if an official dispute settlement system is developed, enterprises' in-house dispute settlement systems can still play a major role in avoiding costs for utilization of public systems and bringing about resolutions that meet workplace realities.

Chapter 2 Realities of In-house Dispute Settlement Systems in Japan -- Questionnaire Survey Findings

Regarding in-house labor-management communications, we conducted a questionnaire survey centering on how workplace dissatisfactions are detected and resolved, covering three parties of employers, employees and labor unions. Following are the realities revealed from questionnaire survey findings regarding in-house dispute settlement systems:

Enterprises have systems that are specialized or partially engaged in settlement of employees' grievances. They also have multiple systems including management and labor unions to detect and resolve employees' grievances or dissatisfactions. Employers tend to emphasize employees' consultations with managerial officers, while employees tend to give priority to consultations with seniors and colleagues. Labor unions view their daily operations as important.

Enterprises with fewer employees tend to emphasize informal communications including employees' consultations with managerial officers and with seniors or colleagues. Those with more employees tend to give priority to formal systems including "in-house consultation services" and "grievance settlement committees." (Special systems like consultation services and grievance settlement committees have been established at enterprises with more employees. Consultation services have been more widely established than grievance settlement committees.)

Regarding employees' consultations with managerial officers as emphasized by enterprises, nearly 70% of companies subject to our survey specified consultations with subordinates as a duty of managerial officers. A little more than 20% adopted such consultations as one of the points to be checked in assessing their work performances. But nearly a half of managerial officers assigned to such consultations were uncertain about whether they were positioned to settle grievances. About 60% of employees actually consulted with seniors on grievances or dissatisfactions. Of them, some 60% were satisfied with their consultation results. Labor unions also emphasized managerial officers' roles in settling grievances. But more than 60% of labor unions believed that managerial officers were failing to play such role. Regarding reasons for

such failure, nearly 40% of labor unions noted “managerial officers themselves are not so conscious of responding to grievances or dissatisfactions.”

While enterprises emphasized managerial officers’ roles in grievance settlement, more than 40% of them failed to implement training of these officers for effective grievance settlement. In the meantime, about 80% of managerial officers felt that training for enhancing communications capabilities, labor law compliance and mental health was effective.

Enterprises that have developed more mechanisms or systems to receive employees’ grievances and dissatisfactions than others are more willing to utilize outside bodies and outside systems. Development of multiple mechanisms or systems to detect employees’ grievances and dissatisfactions can increase options for employees and allow enterprises to receive a wider range of employees’ grievances and dissatisfactions. As a result, enterprises may be prompted to bring about more appropriate solutions, utilizing or choosing from both in-house and outside bodies or systems.

Chapter 3 Present Situation of In-house Grievance Settlements, Labor-Management Consultations, etc. – Interview Findings

We conducted interviews with enterprise and labor union representatives and other relevant people on 11 cases regarding workplace communications, particularly detection and resolution of employees’ workplace grievances.

One finding is that at enterprises with labor unions, the management side (ex. Using various consulting services, questionnaire surveys, etc. to detect grievances), the labor side (detecting grievances through daily activities, fact-finding surveys and other opportunities), and both management and labor in collaboration with each other (at various levels of labor-management consultations) have made their respective and cooperative efforts to detect, resolve and forestall employees’ dissatisfactions and grievances. Enterprises without labor unions have also taken relevant measures including those to collect employees’ opinions in place of labor unions.

Our interviews with representatives from enterprises and labor unions indicate that both the management and labor sides have recognized the importance of responses to workplace dissatisfactions and grievances and made diverse efforts, including consulting services, to promptly detect and resolve such dissatisfactions and grievances. These efforts, though working to some extent, are required to become more reliable and available.

Both the labor and management sides view supervisors’ role in settling workplace grievances as important and they also recognize that supervisors are too busy to play

such role. Based on such recognition, they may have to consider reforming consulting services and grievance settlement procedures.

Also important are labor-management consultations, supervisors' interviews with their subordinates to increase their understanding regarding the results of personnel assessments, and other efforts to forestall workplace grievances. In addition, labor unions' independent efforts and joint undertakings with the management side are important.

Chapter 4 Emergence of Disputes and Mechanism for Their Settlement

A dispute is a situation in which a party's claim to another party is rejected by the other party. The claimer believes that some shortages should be covered, while the rejecter believes that they are not responsible to accept it.

In order to settle a dispute, attention should be paid to interests behind the official positions of parties to the dispute. According to Ury, Brett and Goldberg, who investigated labor-management disputes at American coalmines, there are the three approaches to dispute settlements – the interest-based approach paying attention to interests, the right-based approach observing rights specified in rules or procedures, and the power-based approach for a stronger party to utilize power to forcefully settle a dispute with another party. The three researchers also applied four concepts -- trading cost, degree of satisfaction with results, impact on relationship, and prevention of recurrence of disputes -- as standards for assessment of available approaches for dispute settlements and their results.

Functionality, reliability and credibility are important aspects for designing dispute settlement systems. In particular, the confidentiality and neutrality of enterprises' in-house grievance-receiving counters are the key to dispute settlement systems. Any system that lacks credibility and reliability regarding confidentiality and neutrality may never be utilized. Ury, Brett and Goldberg listed six basic principles for designing effective dispute settlement systems and proposed that enterprises pick some procedures meeting their characteristics from the list provided in line with these principles, and use the selected procedures for preparing dispute settlement systems.

Any high-quality dispute resolution involves some key elements: a resolution should be at minimal cost in terms of time, money and psychological stress; it should not simply compromise on a middle position, but make sure that, in the various interests at stake in a dispute, priority is given to the most important; it should leave the complainant feeling that he or she has been fairly treated; and there should be a learning process, furthering understanding of the fundamental origin and development

of disputes concerned. Means required to achieve these elements are a “listening” attitude and a skill in “asking” the right questions.

The basic point of active listening is that the listener should face the complainant, remain close to the complainant and pay attention to the feelings of the complainant. This point is too natural and obvious to be reconsidered. But we would like to note the situation where people have grown more defensive and can no longer listen to others.

As for the skill in “asking” the right questions, utilization of open-ended questions (allowing the complainant to extend discussions) and closed-end questions (leading the complainant to choose “yes” or “no”) for prompting the complainant to make discussions and decisions would be effective for allowing the complainant to “awaken.” Being awakened to interests behind positions and their possible coordination, the complainant may be prompted to accept a possible solution voluntarily.

A U.S. poll of veteran mediators who have handled more than 100 labor and other disputes revealed the importance of capabilities to build rapport (a relationship based on mutual understanding, sympathy and trust) with parties to disputes and produce fresh and creative solutions to disputes.

Chapter 5 Training Personnel for Dispute Settlement

Dispute settlement training is designed to help training participants develop themselves. In this respect, priority is given to interactive communications and problem-solving education methods such as role-playing and group discussions.

Mediation training has the following three main aspects. In addition, responses to dilemmas and handling of laws and legal information are necessary.

- 1 A stage theory for strategic division of mediation process into time stages
Communications process management is deemed as the mediator’s service for parties to the dispute.
- 2 A dispute analysis framework represented by interest concepts
Interests behind claims by parties to disputes are interpreted as different from their respective positions. Only after the parties discuss their positions and interests, specific issues may be set up.
- 3 Communications skill called active listening
Major methods for active listening include open-ended questions and translation. Mediators should be aware that only parties to disputes know the right solutions and should listen to these parties with an open mind. Trainees may thus learn the attitude of active engagement with these parties rather than any skill to find out and pinpoint their feelings.

The number of participants in a training session should be limited to an adequate range of 20 to 30. They may be divided into two-member, three-member or other small groups for specific operations. Discussion-based training should be adopted with considerations given to participants' mutual feedback and communications skills. The point is that in mediation role-playing, mediators should have an open mind without any knowledge of confidential information about the parties to disputes. Even if mediators may not produce agreement between the parties to disputes, they should have critical eyes to make comments on the past mediation processes.

Trainers and materials are required for training. Sometimes it may be quite difficult to find appropriate trainers. It is desirable to develop training materials that are widely available for the labor area and make up for trainer shortages. (There exist training materials that cover mainly business transactions and are available for free utilization.)

Chapter 6 In-house Dispute Settlement, Personnel Management and Labor-Management Relationship

Employees' dissatisfactions arising from daily business operations may be resolved most effectively through their consultations with their supervisors involved directly in such operations. Such resolution is well expected. On the other hand, problems that cannot be resolved by supervisors or are not appropriate for supervisors' resolution are treated as "grievances." Disputes brought to settlement systems outside enterprises include those that are generally difficult to resolve within relevant enterprises such as those that have developed into clear confrontations within the enterprises.

In Japan, "dissatisfactions" with jobs or treatments are generally resolved through relevant employees' consultations with their supervisors. In this respect, it is important for personnel divisions of enterprises to set up in-house dissatisfaction/grievance acceptance systems that are easy to use, including those eliminating any fear that utilization of such systems could affect assessment of work performances of the employees. For labor unions, it is important to detect and respond to workplace dissatisfactions and grievances through their daily operations (sometimes to expand solutions through labor-management consultations to cover all union members) and to assess and check efforts by the management side.

It is important to respond quickly to dissatisfactions and grievances as well as to forestall them beforehand. Even if dissatisfactions emerge as grievances, it is also important for relevant parties to take them as presentation of problems and lead their appropriate resolution to bring about organizational reforms.

Dissatisfactions regarding business operations include those with operations or

content of jobs themselves and those with supervisors' instructions on such operations. Among the former dissatisfactions, those related to workload are most controversial. Basically, it is important to review overloading practices. The latter may involve sexual or power harassment problems when supervisors' instructions are vague or unclear. In this sense, it is important to enhance training of supervisors to improve their instruction method and coordination abilities of business operations. Regarding personnel assessments and decisions of treatments based on the assessments, it is important to develop fair personnel assessment mechanisms and to pay attention to how effectively interviews are working for communication to secure employees' satisfaction. Seeing that an increasing number of cases in which harassment problems develop into individual labor disputes brought outside enterprises, we must consider these problems from the viewpoint of "litigation risks."

For the future, it is desirable to develop comprehensive consulting services after reorganizing in-house systems in a manner to take advantage of their respective characteristics, since in-house dissatisfaction/grievance-resolving means may play complementary roles to each other. At the same time, it is important to take due personnel management measures, including improvement of personnel systems' clearness and transparency, with a view to forestalling problems. Then, enterprises should also enhance functions of workplace supervisors as consultants, to develop systems for forestalling and responding to in-house dissatisfactions and grievances, to reposition labor unions and to figure out some good ways for better operations of grievance settlement committees under labor-management joint control.

Chapter 7 Desirable In-house Dispute Settlement Systems and Public Support in Japan (Japan's Problems and Implications from Foreign Countries)

According to earlier surveys and our questionnaire and interview surveys, employers have a strong will to solve labor disputes within their enterprises, while generally workers do not bring their dissatisfactions or grievances outside their enterprises. In this way, although in-house dispute settlements are important for both the labor and management sides, there has not necessarily been much progress in developing in-house dispute settlement systems. Many employers and labor unions recognize the necessity to improve or develop such systems. In this sense, how to develop in-house dispute settlement systems is a key issue for consideration. Furthermore, for securing human resources to carry appropriately such systems, employers and labor unions are required to promote training of human resources for developing skills for appropriate resolution of labor disputes. They should also consider widely defined dispute responses

including their prevention.

Since information in foreign countries that have made faster progress in developing in-house dispute development systems is useful for consideration of these problems, our research included on-site surveys in four foreign countries – the United States, Britain, Germany and France.

We divided the four countries into two groups – the United States and Britain where in-house dispute settlement systems play a greater role, and Germany and France where employee representatives play a major role – and analyzed their respective characteristics. We then found that it is useful to adopt a wider concept of “dispute settlement” covering not only ex-post facto settlements but also their prevention when considering responses to in-house disputes, and that needs and incentives (including advantages of in-house dispute settlements) are key factors behind the development of in-house dispute settlement systems. These findings provide implications for consideration of desirable in-house dispute settlement systems in Japan.

(Desirable In-house Labor Dispute Settlement Systems)

It is desirable for enterprises' in-house dispute settlement systems to have the following attributes:

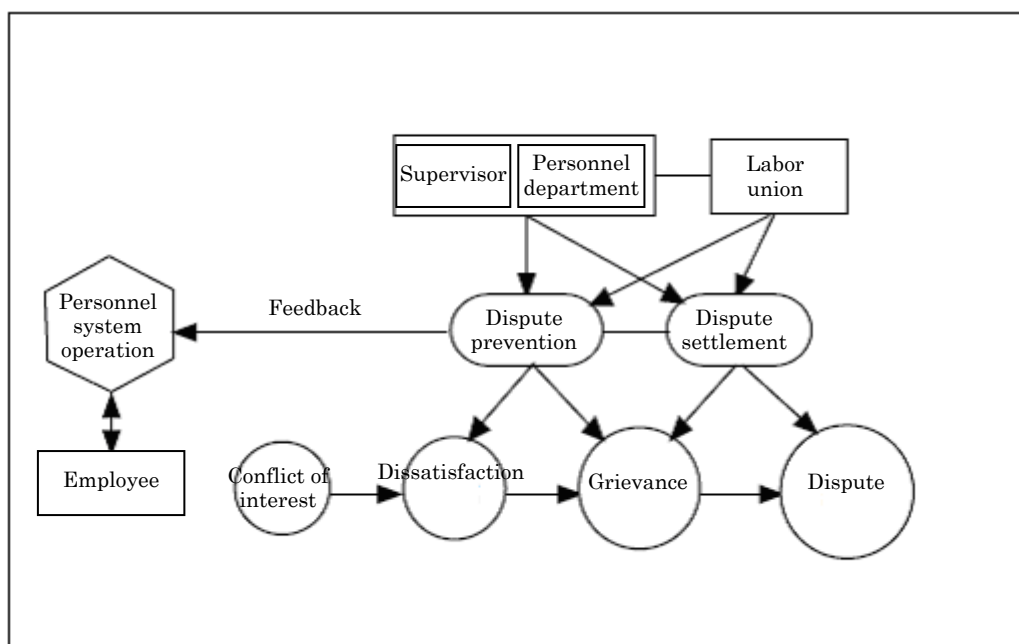
- (1) The system should be simple and quick.
- (2) The system should have a mechanism for informal procedures to produce voluntary agreements between parties to disputes and be implemented flexibly by a small number of people (but formal systems should desirably be made available as alternatives).
- (3) In order to be utilized by employees, the system should be transparent (even if the system is informal, its outline and procedures for its utilization should be specified and known well by employees) and reliable (prohibiting unfair treatment and securing confidentiality, fair procedures and fair judgements).

As for skills for settling in-house labor disputes, persons in charge of in-house dispute settlement systems should have skills (communications skills including active listening and general dispute settlement skills including investigation of interests regarding disputes and preparation of suitable solutions to specific disputes) that should meet the systems giving priority to informal solutions based on agreements and realities of relevant enterprises. In addition, they should have skills (basic knowledge and understanding about characteristics of labor disputes, capabilities for their application to dispute settlement, understanding about realities of enterprises regarding their systems and procedures, and basic knowledge about labor laws and regulations) to

implement solutions meeting characteristics of individual labor disputes. Off-the-job training is significant for developing human resources equipped with these skills.

It is considered that in-house dispute settlement skills work to some extent when supervisors respond to their subordinates' dissatisfactions during their daily business operations. Therefore, persons at personnel department should have such skills, and supervisors should be trained for demonstration of these skills. In addition, responses to grievances and dissatisfactions, and prevention of disputes should be specified as duties of managerial officers. In many cases, labor unions in Japan have workplace or branch leaders to detect and try to resolve union members' dissatisfactions and grievances through daily operations. They often take the cases that involve systematic problems to labor-management consultations. These functions of labor unions should be positioned as part of widely defined dispute settlements.

(Reference Figure) Cooperation of Dispute Settlement and Prevention



(Desirable Public Support for In-house Labor Dispute Settlements)

Basically, individual enterprises and their labor unions should undertake development of in-house labor dispute settlement systems on their own. While enterprises, employees and labor unions in Japan have all recognized needs for in-house dispute settlement and prevention amid a recent increase in the number of individual labor disputes, Japan has yet to see progress in development of systems for in-house dispute settlements. Given that labor dispute settlement and prevention have a certain

degree of social significance, the government may consider some public support for development of enterprises' in-house dispute settlement systems and for training of human resources for their operation.

In this respect, the government should refrain from having an orientation that forces enterprises to develop any uniform system. First, it should provide information to allow the relevant people to voluntarily create and operate effective in-house dispute settlement systems. For example, guidebooks, seminars and the like may be used to introduce real cases for various systems, key points for designing and operating such systems, information on standards for dispute settlement decisions and details of settlements, and skills for in-house labor dispute settlement and prevention. The government may also have to specify how best to develop in-house labor dispute settlement and prevention skills and provide support through development and introduction of model training programs.