

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

Summary

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Research Period

From April 2006 to March 2007 (1st year of the two-year project)

Research Objectives and Methods

1. Research Objectives (outline of request)

This research report is a compilation of research achievements in fiscal 2006, the first year of a two-year project titled "Research on Support for Development of In-house Dispute Settlement Systems," based on a request from the Central Labour Relations Commission Secretariat, 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 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 depression following the burst of the economic bubble, intensified market competition at home and abroad, diversification of employment and working styles, and changes in lifetime employment and seniority-based treatment, etc. under the Japanese-style employment system. In some senses, companies' in-house dispute settlement systems have weakened, allowing complaints to go out of companies.

Moreover, although collective labor disputes have declined over the long term, the number of labor disputes coordinated over the past dozen years or so has rather increased or leveled off. Disputes have grown more diverse and complicated. At some specific companies, disputes have been repeated. These changes apparently indicate that companies' in-house dispute settlement systems have failed to work well.

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 settlement of such systems.

2. Research Method

For this research, the Research Panel on Support for Development of In-house Dispute Settlement Systems was launched in fiscal 2006 and conducted bibliographic surveys, hearings with labor and management in Japan 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 is an interdisciplinary study which requires viewpoints from multiple areas covering not only labor laws, personnel management theories, but also dispute management theories and psychology. Therefore, the above panel has been designed to include members who are experts in different areas.

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 dissatisfaction. The concept of dissatisfaction or complaints emerges before developing into a dispute. In this research, we use the phrase "dispute settlement" in a broad sense, which includes handling of such dissatisfaction or complaints. In addition to using the phrase "dispute settlement" when emphasizing processes, we may also use the phrase "dispute resolution" when emphasizing objectives.

Outline of This Report

Chapter 1 Present Situation and Problems of In-house Dispute Settlement Systems in Japan

(Overview)

Japan has recently seen a fast-growing number of labor-related civil lawsuit cases (which may mostly 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 resolution of individual labor disputes. This system consists of three elements: comprehensive labor consultation services at prefectural labor bureaus, recommendations and guidance by prefectural labor bureau directors, and mediation 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 mediations or flexible solutions. This system has been implemented since April 2006. Concerning collective labor disputes, in January 2005, the Trade Union Law was also revised to speed up and improve 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, companies' in-house dispute settlement systems can play a major role in avoiding costs for utilization of public systems and bringing about resolutions that meet workplace realities.

(Problems and Challenges)

In fiscal 2006, we utilized earlier survey data and hearings to look into the realities of companies' in-house dispute settlement systems in Japan.

An analysis of workers' dissatisfaction or complaints and responses to them, based on earlier survey data, indicates the following conditions:

There are many workers who choose to consult with their superiors on workplace dissatisfaction or complaints. However, few utilize formal grievance settlement procedures. Many workers refrain from lodging complaints, believing that such action would make no sense. This indicates hidden disputes. In not a small number of cases, workers are dissatisfied with the results of their use of grievance settlement bodies. A growing number of workers feel that their superiors' understanding about subordinates' worries and dissatisfaction has weakened.

Nevertheless, both the labor and management sides are willing to settle workplace disputes within the company and have apparently recognized the need for enhancing responses to in-house complaints. But their directions are not necessarily decided. Their efforts to develop skills for responding to disputes are also insufficient.

We conducted hearings at five companies we selected, taking into account manufacturing and non-manufacturing industries and companies with and without labor unions. These companies' efforts are described in Section 2 of Chapter 1 and can be summarized in by subject the following table:

	Management's measures	Labor-management measures	Labor union measures
Company A (transportation equipment production) A little more than 34,000 employees	Company A-version box to receive complaints - Several complaints per month - Complaints on harassment, personnel assessment, etc.	Workplace labor-management forum for exchange of opinions - Meeting every two months Complaint processing committee - No achievement	Individual consultations - Consultations through inquiry counters or phone - Consultations on individual working conditions, etc.

<p>Company B (Transportation)</p> <p>A little more than 12,000 employees</p>	<p>Helpline</p> <ul style="list-style-type: none"> - Several dozen complaints per year - Complaints on harassment, labor issues in general, etc. 	<p>Joint Labor-management consultations and specialized committees at each level</p> <p>Fair complaint processing committee</p> <ul style="list-style-type: none"> - No achievement 	<p>Labor union helpline</p> <ul style="list-style-type: none"> - Some 20 complaints per year <p>Union meeting</p> <p>Individual talks</p>
<p>Company C (Electrical machinery production)</p> <p>Some 6,000 employees</p>	<p>Management hotline (Complaints on operation of the personnel assessment system)</p>	<p>Personnel system committee (complaints on operation of the personnel assessment system)</p> <ul style="list-style-type: none"> - Meeting twice per year <p>Grievance processing council</p> <ul style="list-style-type: none"> - No achievement 	<p>Grievance settlements</p> <p>accompanying fact-finding surveys</p> <ul style="list-style-type: none"> - Three annual surveys targeting all union members - Surveys on personnel assessment - Management is asked to respond to complainants <p>Questionnaire survey on operation of the personnel assessment system</p>
<p>Company D (IT-related equipment production)</p> <p>Some 18,000 employees</p>	<p>Speak-up program (Employees inform management of illegal practices, inappropriate business practices, dissatisfaction, complaints and the like while identifying themselves. Subsequent procedures are taken without relevant parties being identified, unless they approve the publication of their names.)</p> <p>Open-door policy</p> <p>Survey on degree of employee satisfaction</p>		
<p>Company E (Electrical equipment wholesale)</p> <p>Some 600 employees</p>	<p>Grievance processing through EthicsLine (Employees inform and consult management of illegal and unethical practices through U.S. Company E while remaining anonymous.)</p> <p>Grievance processing through management (open-door policy), intranet, etc.</p> <p>Utilization of EAP (Employee Assistance Program): Clinical psychotherapists or other qualified experts undertake mental care services regarding harassment and other problems</p> <p>Employee consciousness surveys</p>		

Note: Companies D and E have no labor union to cover the majority of employees.

The hearings with these companies and labor unions indicate that each company and labor union has recognized the importance of responses to workplace dissatisfaction or complaints and taken various relevant measures, although some measures have not been utilized fully. Nevertheless, they indicated the need for efforts to enhance responses. For example, they said they should develop some systematic mechanism for

detecting and processing dissatisfaction or complaints and improve skills in responding to complaints.

Based on these realities, the following challenges can be identified regarding in-house dispute settlement systems:

Although the need for in-house dispute settlements is high, both the labor and management sides have failed to develop sufficient systems for such settlement. How to develop such systems is a key challenge. In this respect, we may have to consider what contents of in-house dispute settlement system are appropriate and how such a system should be designed.

At the same time, it may be particularly important to create conditions for the appropriate operation of such systems, including personnel, and to develop skills and train personnel for appropriate settlements of labor disputes. In this respect, details of such skills and training programs may have to be considered.

Furthermore, labor and management may have to consider how to forestall disputes as well. Labor unions may have to enhance their daily activities to settle and prevent disputes.

Chapter 2 Overseas In-house Dispute Settlement Systems

(Outline of overseas systems)

In the United States, complaints are processed for organized workers under labor agreements (which usually include complaint processing and mediation procedures) and for unorganized workers under their companies' in-house systems. In-house dispute settlement systems for unorganized workers include an open-door policy system (employees may lodge complaints with their superiors or human resources managers and they may bring such complaints even to higher-ranked officers if the complaints fail to be solved through the initial step), an ombudsman (ombudsperson) system (ombudspersons have an independent in-house office to conduct investigations into complaints and help solve problems), and arbitration or mediation systems. These systems are developed through companies' voluntary efforts and vary widely.

Companies have developed these systems in an apparent bid to avoid litigation risks. However, they have acknowledged that in-house dispute settlements may help improve problems they face.

Even in the face of official complaint-lodging procedures, companies may encourage employees to solve complaints through consultations with their superiors. Managerial officers are trained to cope with disputes.

In Britain, the 2002 Employment Act prescribes grievance settlement procedures. It

provides for three standard steps: ① submission of a written complaint, ② a meeting on the complaint and ③ an appeal against a decision. An employee cannot bring a complaint to a labor court before taking the first step. Disbenefits in the form of compensation increases and cuts increases may be imposed on parties to disputes who fail to observe the procedures. For example, a disbenefit may be imposed on a company that fails to hold a meeting on a complaint.

These procedures have been welcomed by some people for specifying steps and helping the procedures spread among small enterprises. However, others have complained about their complexity and the rollback of informal approaches (informal dispute settlements through employees' discussions with their superiors are also viewed as important in Britain). The government has begun to consider such complaints.

In addition, the Advisory, Conciliation and Arbitration Service, known as Acas, has developed the Acas Code of Conduct on Disciplinary & Grievance Procedures, a practical guidance for grievance settlement procedures. Acas also conducts seminars on labor problems related to the grievance settlement procedures and provides qualified programs for the trainers for in-house dispute mediators supporting both parties of labor and management. Other than Acas, the Trade Union Confederation, or TUC, has the "Unionlearn" program, including a course for training union representatives to undertake in-house complaint processing procedures.

In Germany, a concept of "joint decision" has been devised to forestall (rather than settling) in-house labor disputes. The concept is reflected in the business establishment committee and board of auditors systems. In particular, the business establishment committee plays a key role as an in-house dispute settlement system. The business establishment law is generally viewed as designed to forestall and settle labor disputes.

The business establishment committee is given a wide range of rights to intervene in labor disputes. For example, it is authorized to monitor the implementation of laws and regulations, labor agreements and the like and make joint decisions on some matters. If no agreement is reached on joint decisions on some matters, they may be brought to an arbitration committee under the business establishment law. Some companies have created in-house arbitration systems to save the cost of convening the arbitration committee.

The business establishment law provides for a complaint-processing system, including the right of individual workers to lodge complaints. In a few cases, however, the provision has become an issue. No conflict has emerged on relevant provisions.

In France, major in-house dispute settlement measures include ① lodging complaints directly with superiors or human resources managers and ② lodging

complaints through employee representatives (and through ③ labor union representatives and ④ Consulting with labor stewards).

① This procedure is part of a company's personnel management and viewed as important as an in-house grievance settlement measure. Responding to such complaints has become the subject of part of the management education for executive officers.

② It can be said that it is one of employee representatives' tasks to perform a grievance settlement function by submitting employees' requests to employers regarding application of laws and regulations together with labor agreements. Employers are required by law to give written responses to such requests.

In France, the presence of an easily accessible industrial court is praised as supporting employees' resistance to unreasonable compromises in in-house dispute settlements.

(Analysis)

From the viewpoint of in-house dispute settlement systems' roles in solving labor disputes, we divided the four countries into two groups -- ① countries in which in-house dispute settlement systems play a major role (the United States, in which in-house dispute settlement systems have developed well, and Britain, in which in-house dispute settlement systems play a greater role even in the presence of the official dispute settlement system compared with Germany and France) and ② countries in which employee representatives play a major role (Germany and France, in which official dispute settlement systems have developed well) -- and analyzed features of the two groups. This analysis has produced the following implications for consideration of Japan's in-house dispute settlement systems:

- (i) In considering in-house responses to disputes, we should interpret dispute settlements widely as including measures to prevent dissatisfaction or complaints from developing into disputes.
- (ii) For development of in-house dispute settlement systems, specific needs and incentives (including advantages of in-house dispute settlements) are important.
- (iii) Even in cases in which in-house dispute settlement systems play a key role, informal dispute settlements by workplace managers close to the dispute sites tend to be given priority.
- (iv) In order to make in-house dispute settlement systems easy for employees to utilize, companies should develop such systems and make them known to employees to secure their transparency. These systems should also be reliable in securing the confidentiality and fairness of dispute settlements.

- (v) For promoting utilization of in-house dispute settlement systems and enhancing their effectiveness, the quality and skills of managerial officers and other operators of the systems are important. Relevant training can play a useful role.
- (vi) When considering the functions of in-house dispute settlement systems, we should take account of their relations with relevant systems (statuses of official dispute settlement systems and systems for securing an appropriate role for employee representatives).

Chapter 3 Emergence of Disputes and Mechanism for Their Settlements

(Emergence of Disputes)

A dispute is a situation in which a party's claim to another party is rejected by that other party. The claimer believes that some shortages should be covered, while the rejecter believes that the claim does not have to be accepted. The difference represents a conflict. When existing processes fail to respond to conflicts or disputes, these processes may have to be redesigned.

Employees who lodge complaints or seek consultations usually complain about unequal or unfair treatment. Equality may be divided into distributive fairness (e.g. equal distribution, equity balancing input and output, the need for providing more to needier people than to others), and procedural fairness regarding appropriateness of distribution rules and their operation. Procedural fairness may be further divided into some types. These concepts are useful for finding the parts of the official and unofficial sides that affect conflicts or disputes.

(Dispute settlement)

According to Ury, Brett and Goldberg, who investigated labor-management disputes at American coalmines, there are the following three approaches to dispute settlement:

- Interest-based approach: paying attention to interests
- Right-based approach: observing rights specified in rules or procedures
- Power-based approach: utilizing power to settle disputes

The three researchers also proposed four cost concepts -- trading cost, degree (level) of satisfaction with results, impact on relationship and prevention of the recurrence of disputes -- as standards for assessment of available approaches for dispute settlements and their results. As far as the cost is concerned, the interest-based approach may be the most desirable, followed by the right-based and power-based ones. These approaches have their respective advantages. Their suitability should be considered along with their respective circumstantial characteristics.

(Designing dispute settlement systems)

Functionality, reliability and credibility are important aspects for designing dispute settlement systems. In particular, the confidentiality and neutrality of companies' in-house complaint-receiving counters are the key to dispute settlement systems and their designs. Any system that lacks credibility and reliability regarding confidentiality and neutrality may never be utilized.

Ury, Brett and Goldberg listed six basic principles (including ① a focus on the interest-based approach and ② development of negotiation loopbacks) for designing effective dispute settlement systems. They proposed that enterprises pick some procedures meeting their characteristics from a list of procedures provided in line with these principles, and use the selected procedures for preparing dispute settlement systems.

Conflicts emerge naturally. If system construction and personnel development are based on organizations' structural problems and knowledge about the psychological mechanisms for human dissatisfaction, many conflicts may be settled in their initial phases.

Chapter 4 Desirable In-house Dispute Settlement Systems and Public Support in Japan

(Desirable in-house labor dispute settlement systems)

It is desirable for companies' 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 (which suit smaller number of personnels and workplaces better and can be used more flexibly) to settle disputes.
- ③ The system should be transparent (with procedures well known to employees) for easy utilization by employees and reliable (securing confidentiality and fairness and excluding unfair treatment for procedure utilization, etc.).

Designing of specific system having these attributes could vary depending on real labor-management relations. For example, they may specify how to position dispute settlements by employees' superiors, may create an in-house consulting staff system close to the U.S. ombudsperson system, and may set up an in-house mediation system that is smaller and more flexible than the present grievance committee.

Efforts of labor union leaders and shop stewards to grasp and solve union members' dissatisfaction or complaints should be positioned as part of widely defined dispute

settlement procedures and the significance of the function should be also specified. The transparency and reliability of these efforts should be enhanced. (Smooth progress in the responses of labor unions to dissatisfaction or complaints may help forestall collective disputes.)

(Skills for in-house labor dispute settlements and relevant personnel training)

Whether in-house dispute settlement systems can function appropriately may, in practice, depend on the quality of dispute settlement personnel. In this sense, it is important to train personnel with skills for settling labor disputes appropriately. As in-house dispute settlement systems emphasize informal agreement-based settlements based on company conditions, relevant skills (including human communications skills, knowledge about general labor matters and corporate personnel systems, and labor law knowledge) are particularly important. Relevant training is also important for persons in charge of personnel affairs, labor union leaders and others whose direct responsibilities include dispute settlement. In addition, education of workplace managers covering the enhancement of such skills may be effective.

(Desirable support policies for the development of in-house labor dispute settlement systems)

Basically, individual enterprises and their labor unions should undertake development of in-house labor dispute settlement systems on their own. Given that Japan has yet to see progress in the development of such systems and that appropriate labor dispute settlements are of social significance, the government may consider some official support for their development.

In this respect, the government should refrain from having an orientation which force enterprises to develop any uniform system. First, it should provide enterprises with information (including giving introductions on success stories and providing guidebooks on designing and operating dispute settlement systems) to allow the relevant people to voluntarily create and operate effective in-house dispute settlement systems. Given the importance of dispute settlement skills and relevant personnel training, the government may have to consider giving introductions on contents of dispute settlement skills, and the development and introduction of model training programs.