

# Judicial Reform and the Reform of the Labor Dispute Resolution System

*Kazuo Sugeno*

*Professor, Meiji University Law School*

## INTRODUCTION

Since the collapse of the bubble economy in the early 1990's, Japan's industrial society experienced a drastic increase in individual employment disputes. At the same time, union management disputes have been clearly on the decline since the 1980's. To cope with such a structural change of labor disputes, it was necessary to restructure the labor dispute resolution system, which was established after World War II. As a first step, in 2001 the Ministry of Welfare and Labor established a system to offer information, counseling and conciliation services through its local agencies. Then, the Labor Tribunal System was created in 2004 by Judicial Reform as a second major step to respond to the increase in employment disputes. In the same year, Judicial Reform also led modification of the conventional labor law system, i.e., the adjudication of union management disputes by Labor Commissions.

Thus, as a consequence of Judicial Reform, the post-war labor dispute resolution system underwent a large-scale reform in recent years. This paper describes the backgrounds, process and contents of this reform.

## 1. The Post-War Labor Dispute Resolution System

### (1) The Labor Commission system for collective disputes

The Japanese labor law system established after World War II attached the highest importance to collective bargaining disputes, the rights for which were established by the post-War Constitution and Trade Union Law. Under this Law, Labor Relations Commissions were established as expert agencies to handle collective labor disputes through their mediation, conciliation and arbitration procedures. Commissions were also endowed with the power to adjudicate complaints of unfair labor practices prohibited under the Law. The expertise of the Commissions mainly derived from the assistance of labor and management members towards neutral members, who presided over procedures and decided on the cases.

The Labor Relations Commissions actually played important roles in dispute-prone industrial relations until the mid 1970's. During the post-War

period of economic recovery and upsurge, Japan experienced major strikes and lock-outs involving wage-hike demands or economic dismissals, due to confrontation between leftist unionism imbued with class-struggle ideology and tough management with capitalist beliefs. Most of those major disputes were resolved through Commissions' mediation services.

Then, the mainstream unionism at major firms and industries was replaced by enterprise unions that were willing to cooperate with management for increasing productivity. Leftist unions turned into sheer minorities by losing support from rank and file employees, who identified their interests with the prosperity of their companies. There was also covert interference by managers with militant unions to undermine their influence. Such unions thus filed a large number of complaints of unfair labor practices to Commissions in the 1970's. In adjudicating such disputes, Commissions made intensive efforts to settle disputes by curing the antagonism and distrust entrenched in the parties.

Furthermore, the Spring Wage Offensives, which had started in the mid fifties, developed since the late sixties to be accompanied by major transportation strikes involving both national and private railway-systems. Commissions put an end to those annual strikes by making pronounced efforts to mediate the underlying wage hike disputes.

## **(2) The lack of specialized systems for individual disputes**

Individual labor disputes arising from employment relations, on the other hand, were not regarded as significant enough to require a particular system for their resolution. Thus, the post-War labor-law system did not prepare any special scheme to deal with disputes of rights in employment relations. Such disputes were entrusted to ordinary civil procedures.

Under this "conventional" system, workers can claim rights guaranteed by the labor statutes, collective agreements, work rules or employment contracts by filing lawsuits in the court. These suits are brought in an ordinary court that has jurisdiction of the first instance with regards to the case, in accordance with the Civil Procedure Law. The judges making judgments are those who have developed a career in the judiciary. Besides this regular procedure, the Civil Temporary-Relief Law sets forth a procedure by which a temporary order, called a "provisional disposition order," may be issued. To obtain such an order, the Law requires the claimant to establish prima-facie proof of the merits of the case and of the urgency for temporary relief. Workers frequently use this

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procedure when seeking relief for employment terminations.

Since 1970, the annual number of newly filed law-suits involving labor relations has numbered around 1,000, including both the regular and provisional procedures. As discussed in the next section, there has been a drastic increase in this number in the post-bubble period, but the figure is still extremely small in comparison to other industrialized countries such as the USA, Great Britain and Germany.

The relative infrequency of employment litigation in industrial relations has been one aspect of the general non-litigiousness of Japanese society, which can be attributed to the difficulties ordinary citizens face in pursuing litigation. The shortage of lawyers, the financial and mental costs of litigation, the formalities of the court and underdeveloped legal-aid programs discourage citizens from using judicial procedures. In addition, parties in industrial relations established informal mechanisms to prevent labor disputes from occurring. Supervisors absorbed employee dissatisfaction through daily communication. Joint consultation mechanisms worked to execute disciplinary measures or employment adjustment smoothly. Above all, the mechanisms of firms' internal labor markets, based upon the long-term employment system, had created a community of interests between labor and management inducing both sides to avoid overt confrontation.

## **2. The Structural Changes of Labor Disputes**

### **(1) Decreased collective labor disputes and the delay problem**

The new wave of labour movement has established the practice of resolving most of issues autonomously between the parties concerned, and the number of cases brought to the Commissions has declined drastically. The turning point was the 1977 spring wage offensive, in which the private railway unions stopped asking the Central Labor Commission to mediate their wage hike negotiations. The number of strikes decreased sharply in late seventies, and since the eighties it has stabilized at a minimum level of about one thousand a year. The establishment of cooperative union management relations was symbolized by the development of joint consultation procedures in which the parties share an abundance of managerial information and collaborate to promote their mutual interest. The strength of militant unions further diminished in the face of the prevalence of cooperative relations. Thus, the number of complaints of unfair labor practices has also decreased since the late 1970's.

Along with stabilization of industrial relations, the Commissions came to face a serious problem of the delay of the unfair practice procedures. As of the end of the 20<sup>th</sup> century, the average period the Commissions required to dispose of those cases were 44 months in the Prefecture Commissions. This meant that unions or workers needed, on average, to wait for three years and a half to obtain settlement or an order. Management then seeks a review of most of the remedial orders to the Central Commission, which required on average of 60 months for the disposition. These time periods had tripled in length since 1975, demonstrating seriously aggravated delay problem. The factors behind the delay were manifold: the increasing complexity of cases; the diminishing competency of Commissions; the time consuming process of settling disputes; the insufficient authority of Commissions in the handling of the procedures, etc.

## **(2) The increase of individual labour disputes**

Since the early 1990's, on the other hand, the number of disputes involving employment relations has increased sharply. Over the last 13 years, the number of civil litigation at district court involving labor relations tripled. The major types of civil actions involving labor relations are claims for unpaid wages and retirement benefits and claims contesting termination of employment. They are followed by claims challenging the validity of disadvantageous changes of working conditions and disadvantageous transfers.

Labor administrative agencies also received an increasing number of complaints within their jurisdiction. The offices of the Tokyo Metropolitan Government, for example, received about 45,000 complaints in 1996 through their counseling services.

The increase in grievances of individual workers can be attributed mainly to the restructuring and downsizing of enterprises and intensifying global competition during the decade long recession. The Japanese economy entered a serious slump after the collapse of the bubble economy at the beginning of the 1990's, which worsened from the middle years of that decade. Intensifying competition in the global market and, in particular, from the rising Asian economies, pressured firms to exert fierce efforts to cut costs.

Thus, firms have been executing measures to restructure their businesses by closing or cutting off unprofitable undertakings and subsidiaries, or shifting manufacturing abroad. Such pressures made firms resort to a large-scale

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adjustment of employment, including suspension of new hiring, massive relocations of workers and encouragement of early retirement.

Diversification and individualization of workers in the labor market provides a second reason behind the increasing trend of individual workers' grievances. Atypical workers (workers employed by part-time or fixed term contracts; workers dispatched from employment agencies; and workers used under self-employed contracts) increased remarkably in numbers. Such diversification has been precipitated by the needs of firms to make their workforce flexible and to cut down personnel costs. Firms also use self-employed contracts to give special salaries to professional workers with valuable talent or expertise in service and information-oriented markets. In this way, one finds a waning predominance of the internal labor market and an expansion of the external labor market within Japanese industrial society.

### **3. The Necessity for the Reform of Individual Dispute Resolution System**

In light of the problems of post-war dispute resolution systems caused by the structural changes of labor disputes, it became obvious that the systems were in need of a major reform.

The greatest demand was for the construction of specialized services to deal with individual labor conflicts comprehensively and expeditiously. In the first place, lacking was a nation-wide counseling for the varying kinds of complaints brought in by individual workers. The agency in charge of this service would also offer expeditious conciliation service if the party so requests.

Based on such an idea, the Ministry of Welfare and Labor drafted the Law to Promote Resolution of Individual Labor Relations Disputes, and obtained Parliamentary endorsement in 2001. The Law set forth a statutory scheme to provide counseling and mediation services at the local offices of the Ministry placed in each of 49 prefectures.

Since the Ministry of Welfare and Labor began such services in October 2001, the number of cases received by the Offices have been rapidly increasing. In the fiscal year 2003, these offices gave counseling in about 730,000 cases, out of which about 170,000 involved disputes of rights in employment relations. They mediated about 5,000 cases in the same year. The cases handled by these mediation services involved dismissals and terminations of employment, inducement of resignation, transfers, alteration of the wage system, sexual and

power harassment, and so on.

In this way, the special administrative service began to successfully respond to more frequent employment disputes. Such a progress in the dispute resolution system, however, highlighted the lack of any expeditious special procedure within the court system to deal with cases left unresolved through such administrative schemes. Thus, the next agenda item in the reform of labor dispute resolution systems became the development of efficient judicial procedures, with expertise on employment relations.

#### **4. The Tide of Judicial Reform**

The great difficulties facing Japanese industry after the collapse of the bubble economy drew public attention to the importance of transforming their post-World-War-II systems to regain strength in the global market. These years were accordingly marked with large-scale legislative reforms in the conventional political, administrative, and economic systems.

Legislative reforms carried out encompassed a wide range of fields. First, one can find various legislative acts restructuring administrative organizations, strengthening the authority of the Prime Minister to lead off his major policies, and making the administrative process more responsive and transparent to the people. Second, a whole-scale reform of the economic system resulted in a variety of legislation dismantling or relaxing regulation of new entrants to the market, while strengthening legal rules to secure fair competition therein. The Anti-Monopoly Law has been strengthened and consumer rights were established. Government of corporations has also been a focus of economic reform, resulting in revisions to the corporate laws. Legal schemes to rehabilitate enterprises in heavy debt have been diversified and modernized.

Such reforms were combined and integrated at the highest levels of government, as part of a movement to bring about fundamental structural changes in Japanese society. The lead concept was “Structural Reform,” which was introduced in the 1995 Economic Plan and further elaborated thereafter as “from administrative paternalism to rule of law and self responsibility” and “from pre-entry regulation to rule-based governance, of the market.”

As reforms of administrative and economic systems proceeded in the 1990’s, it became clear that they should be accompanied by a large-scale reform of the justice system. It was thought that the shift from “pre-entry regulation” to “rule-based governance” of market activities required a more effective

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justice system with a larger legal profession. In other words, the basic philosophy of the “Structural Reform” was to transfer many of regulatory responsibilities from the bureaucracy to the judiciary.

With this in mind, the Judicial Reform Council was formed in the Cabinet in July 1999. The Council produced an intermediate report in November 2000 and a final report in June 2001. Then, in November 2001, the Judicial Reform Promotion Headquarters, led by the Prime Minister himself, were set up that same year in the Cabinet. Ten study groups were organized in the Headquarters to transform the proposals into more concrete legislative plans. In 2003 and 2004, the Headquarters brought the products of the study groups one by one into Parliament for its legislative endorsement.

The measures attained by Judicial Reform can be classified into three groups: First were the measures to strengthen the legal profession in size and quality. The second group of reforms aimed to make judicial procedures more expeditious, effective and accessible. The third set of reforms became the most controversial element of Judicial Reform—the participation of citizens in criminal trials.

## **5. The Introduction of Labor Tribunal System**

The second above-mentioned group of Judicial Reform comprised measures to reform court procedures on employment disputes. The study group for renovating court procedures for employment disputes came into existence in December 2001, and included members from every relevant institution. As deliberation started, the labor side advocated a prompt and labor-supportive procedure with participation of lay judges from labor and management. Meanwhile, the management side were strongly opposed to such an idea, proposing instead the idea of instituting a specialized mediation procedure with both labor and management experts as mediators. The deliberation reached a deadlock, but the members wanted to take advantage of the tide of Judicial Reform. Both sides agreed to an intermediate proposal to institute a prompt mediation-arbitration procedure with the participation of labor relations experts. The new system, named “the labor tribunal system,” was thus unanimously endorsed by the study group in December 2003. The Labor Tribunal Law embodying this proposal gained support from all the political parties and was passed by the Diet in April 2004. The Law will be come into full force from April 2006.

According to the Law, either party in an employment relationship can bring a dispute of rights arising from employment relations under this procedure in the district court. A tribunal, composed of one career judge and two part-time experts in labor relations, first makes mediation efforts. If such efforts fail, then the tribunal renders a decision clarifying the merits of the case and specifying measures to resolve the case. The decision is not binding, and if either party objects, the case is automatically transferred to an ordinary civil procedure. The Law requires the tribunal to dispose of the case within three sessions, and is premised upon the cases lasting a few months.

## **6. Reform of the Unfair Labor Practice Procedure**

As discussed above, the unfair labor dispute adjudication-system administered by Labor Commissions faced a serious problem of delayed procedures. This problem was also addressed by the study group in the Judicial Reform Promotion Headquarters. Sensing the sweeping trends towards Judicial Reform, the Ministry of Labor and Welfare in charge of administering Commissions undertook the reformative task by working out legislative plans, which were endorsed by the above-mentioned study group. Thus, the Bill to reform Labor Commissions and their adjudicative procedures was sent to the Diet and obtained its approval. The relevant sections of the Trade Union Law were thus amended in October 2004.

The amendment purported to expedite the unfair labor practice adjudicative-procedures by strengthening the authority and responsibility of Labor Commissions. The new Law endowed Commissions the authority to order the parties and witnesses to appear in the procedures, to submit documents and other evidences essential for the judgement, and to take oath of witnesses. If the parties defy the order, he or she will be subject to administrative fines and will be enjoined from presenting the evidence they were ordered to submit in the litigation challenging the Commission judgment. The Law also authorized larger Commissions with heavy caseloads to entrust decisions to smaller panels. The Law obligated Commissions to set up and publicize a goal for their efforts to reduce the duration of the procedures. The Law also required Commissions to set forth the schedule and plan of adjudication to the parties.

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## CONCLUSION

As described above, the dispute resolution system constructed during the post-World War II period was restructured to cope with the structural changes in labor disputes. The new system is centered on the new Labor Tribunal system in the judiciary, to be complimented by the Ministry of Labor and Welfare counseling and mediation services. These new procedures and services are to deal with individual employment disputes, which have been on drastic upsurge in the recent decade. Such a reform was attained only by the great wave of Judicial Reform in the post Bubble years. The conventional Labor Commissions' system to deal with collective labor disputes was also amended to overcome its delay problem.

For the new dispute resolution system to function successfully, it is vital to have a basic legislation clarifying rules governing employment relations. Thus, the next major agenda of the reform of post-war labor law systems has become clear—the enactment of “Employment Contract Law” the contents of which have been governed by complex case law. Thus, the structural reform of post-war labor law is a continuous process, with one reform leading to another.