

Employee Representation System in South Korea

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1. Introduction

Recently, the decentralization of industrial relations appears to be a common issue around the world. The main concerns are individualization and flexibility, and decentralized industrial relations are often demanded as a sign of a global standard. But things are not that simple in South Korea, where currently there is a need for centralized bargaining systems to decide working conditions.

In South Korea, the traditional social-economic influence of a trade union has not been decisive, with cooperative enterprise level unions being the typical type of labor organization. But since the democratization years of the 1980s, labor unions have obviously played significant roles, and have become more active in not only improving working conditions but also making their voice heard when it comes to devising labor laws and policies. There are opinions (mainly from the employers' side) that they are sometimes too competitively aggressive.

Since 1998, there have been two major union federations, whose guaranteed legal status has given them influential power in the creation of social policies by participating in the Tripartite Commission. The Tripartite Commission was established to cope with the foreign currency crisis in South Korea, and is a rare example of a social deliberation committee in which representatives from the workers, employers and government discuss and make social contracts. Though the optimism is not as strong as when first founded — particularly after one of the two employee representatives (the South Korean Confederation of Trade Unions, KCTU) disaffiliated from the Commission in February 1999 — the body is still one of the most important mechanisms in labor relations. However, in general, industrial level unions tend to be supported due to expectations that these lead to strong bargaining power, and other employee representation systems appear to stand at the crossroads.

Another significant change in labor relations is that multiple unions in a single workplace will be possible from 2007. In addenda amended by Act No. 6456 on March 28, 2001, Article 5 (1) states that when a trade union exists in a business or workplace, a new trade union which has the same organizational jurisdiction as existing the trade unions shall not be formed before December 31, 2006. This transitional measure was severely criticized by scholars, because it ignored the provision of Article 5 of the Trade Union and Labor Relations Adjustment Act (TULRA) which allowed for the freedom of establishment and union recognition.¹ Anyway, the multiple union system is still somewhat unusual in South Korea, having never been actively practiced, and many problems are expected, particularly during the bargaining process. And because representation systems mainly have been matters at the

¹ Basically, it can be a violation of the constitutional right to organize, stipulated by the Constitution of South Korea, Art. 33.

enterprise level, multiple representatives insisting their own goods can surely suggest the problems of effectiveness during bargaining process.

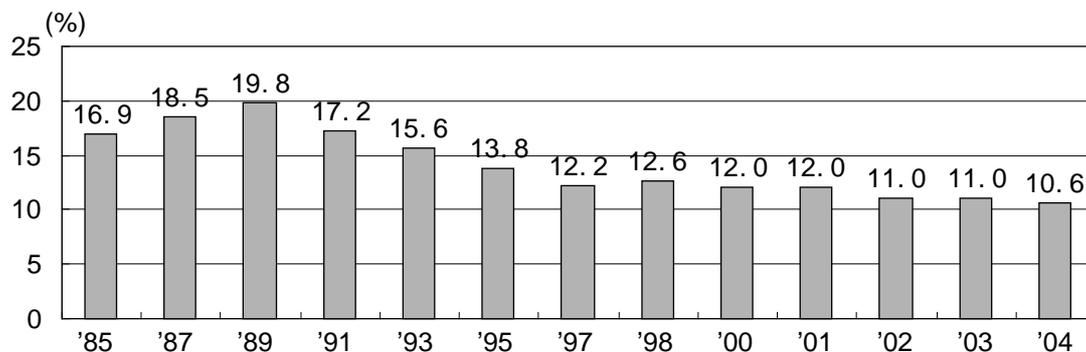
This article aims to introduce the employee representation system in South Korea. There are two different systems in addition to trade unions, but the bargaining structure and role of these systems are more or less ambiguous and controversial. In South Korea, the bad effects of decentralized, enterprise level decision making has resulted in opposition to the current tendency to decentralize collective bargaining in favor of strengthening industrial level bargaining and agreement. In this article we will examine the present situation and the major changes that are taking place in South Korean industrial relation systems and rules, and compare two employee representative systems with trade unions. Later, we will discuss some suggestions to reform and improve industrial relations, as well as labor laws.

2. General Background

2.1 Present Situation

Union density has been declining for 15 years after hitting a peak in 1989 at 19.8 percent. For example, the average for the years 1997 to 2001 was 12 percent, and for 2002 to 2003 it recorded 11 percent. The number of salaried workers is increasing, but the number of union members has not changed significantly. Comparing the year 2004 with 2003, union density as a whole is declining. The organization rate in South Korea was 10.6 percent² at the end of 2004, a drop from the 11 percent in 2003. The number of unions was 6,017, a 3.8 percent decline from the 6,257 registered in 2003, with the number of union members totaling 1,537,000, a decrease of 13,106.

Fig. 1. Union Organization Rate (Ministry of Labor, 2005a)



The low organization rate is more serious among temporary and part-time workers. While 22.5 percent of regular workers are union members, only 1.5 percent of temporary and 0.4 percent of part-time workers are organized.³ The bylaws of many unions do not allow atypical workers to join, resulting in a remarkable gap in salaries among workers doing same job, and leaving atypical workers suffering from instability at work and no collective bargaining protection. The low collective bargaining coverage ratio, like the organization rate, is a unique feature of South Korean labor relations. The collective bargaining coverage in South Korea was about 12 percent, the lowest among OECD countries.⁴ It has been argued that these phenomena in part originate from the enterprise level union system in South Korea.

² Organization rate = the total member of union members (1,537,000)/ total number of salaried workers (15,109,000) – number of officials prohibited from joining a union (571,000) x 100.

³ Hur Chan Young (2000), pp.78-79.

⁴ OECD (2004).

Enterprise level unions are still the main type of union in South Korea. Various surveys⁵ show that fewer than 25 percent of organized workers are members of industrial level unions, and collective bargaining on that level is very low. But mainstream opinion in South Korean labor relations can be summarized by the fact that industrial level unions are in demand, and the KCTU states that the formation of industrial unions is one of its main goals.⁶

One survey⁷ shows that company branches of industrial unions carry out additional bargaining with employers, and in many cases industrial level collective agreements act only as a reference point due to the deep-rooted traditions of enterprise level collective bargaining. In addition, branches can also bargain independently as their constitutional right.

With enterprise level agreements commonplace, and industrial level unions still immature, social contracts can serve as an alternative for national-level, policy making and legal revisions, a concept that is not familiar in South Korea, and difficult to get everyone to agree on. The absence of information disclosure, adhesion to vested rights, and cultural tradition make it difficult to reach agreement to draw up a social agreement.⁸

2.2 Regulations

The right to organize, bargain and act collectively is regulated by the constitution, and because these are basic rights that have the strongest and most direct effect, they make the status of other non-union organizations vague, a reason why there is conflict between collective agreements and other resolutions made between employers and employees.

The 1980 amendment to the Trade Union Act contained a new clause, later abolished in 1987, setting out the requirements for enterprise level unions. But even before 1980, industrial level unions were not common, and after the clause was abolished in 1987, the main type of union remained the enterprise level union. Another important legal change concerns multiple unions in one company. Art.3 (5) of the Trade Union Act (changed to TUTRA) banned multiple unions in one company from having the same organizational jurisdiction as an existing trade union until 1996. This ban was abolished, but it still remains as the addenda. (This means that there can be plural unions in one company which do not have the same organizational jurisdiction, so branches of an industrial level union and an enterprise level union can coexist in one company now.) Therefore, 2007 will be first time that plural unions which have the same organizational jurisdiction at an enterprise level will be allowed to exist, and together with a social atmosphere of desiring the formation of industrial level unions, the age of plural unions with plural representatives is about to begin. Originally, enterprise level unions were not the will of the workers, but a situation forced on them out of political considerations and legislation that ran counter to the constitution. This has resulted in a tendency to favor Labor Management Councils or any other enterprise level organization, push competitive struggle for hegemony among the unions, enforce workers' preference for industrial level unions, and build distrust in enterprise level organizations.

In general, industrial level collective bargaining is often connected with collective agreements as a minimum standard; naturally better terms and conditions through individual contracts do not matter. But in South Korea, enterprise level agreements are not concerned with minimum standards but with the standards of the labor force as a whole. In many cases, companies without unions are relatively small and have inferior conditions, so the collective agreements at large companies can in a sense be regarded as having higher labor standards. Case law does not hesitate to recognize branches of industrial level unions as independent unions that have their own right to bargain collectively and make collective agreements which means even with the introduction of industrial

⁵ Ministry of Labor (2005a).

⁶ Accessible at <http://www.nodong.org/>

⁷ Lee Joo Hee, Lee Seung Hyup (2005).

⁸ Lim Sang Hoon (2005), p. 48.

level unions, bargaining and collective agreements still take place at the enterprise level.

3. Non-union Employee Representative System

Basically, trade unions are the most powerful organization endowed with the constitutional rights mentioned above. Non-union organizations do not have special protection under the constitution, so they are empowered by separate legislation, which are likely to contain ambiguous wording. So, when the concrete scope or power of employee representing bodies is argued, often there is a conflict with constitutional rights.

We can roughly classify the main legal sources in South Korean labor law roughly as:

Fig. 2. Main legal sources of South Korean labor law, reconstructed from Park Je Song (2003a)

	Individual	Collective
Regulation	Employment rules	Compulsory laws
Autonomy	Employment contract	Collective bargaining

3.1 Workers' Representatives

3.1.1 Basic Structure

Looking at Fig. 2, we can say that there are some provisions regulating terms of employment, and naturally concerns are moving to the priority of application of various legal sources. An employment contract which establishes conditions of employment which do not meet the standards provided for in the Labor Standards Act (LSA) shall be null and void to that extent (LSA Art.22 (1)), and the sections of employment contracts containing working conditions not meeting the standards regulated in employment rules are void (LSA Art.100). For collective agreements, the sections of employment contracts or employment rules that violate working conditions regulated by collective agreements are void (Trade Union and Labor Relations Adjustment Act (TULRA), Art. 33(1)).

Written agreements between an employer and a “workers’ representative” can first be seen in Art. 31(3) of the LSA. Technically, words of provisions are not actually the same ones, but three provisions that regulate workers’ representative are similar as a whole. First, when employees agree to lower originally regulated standards set by the LSA, mainly regarding extension of working hours⁹, a written agreement with the workers’ representative is required. Second, the concept of a workers’ representative can be seen during consultations regarding dismissals for managerial reasons.¹⁰ Finally, a similar structure can be found regarding unfavorable modifications of employment rules.¹¹

Written agreements with a workers’ representative is a new concept in South Korea. It serves two roles simultaneously: 1) deviating from the minimum standards, and 2) placing

⁹ LSA Art. 50 (2) When an employer reaches an agreement with a workers’ representative, in writing ... an employer may have a worker work for a specific week in excess of working hours pursuant to Art. 49 (1), or for a specific day in excess of working hours pursuant to Art. 49 (2), on condition that average working hours per week in a certain unit period of not more than three months do not exceed working hours under Art. 49 (1).

¹⁰ LSA ART. 31 (3) With regard to the possible methods for avoiding dismissal and the criteria for dismissal..., an employer shall give notice 60 days prior to the day of dismissal to a trade union which is formed by the consent of the majority of all workers in the business or workplace concerned (or to a person representing the majority of all workers if such trade union does not exist, hereinafter referred to as a “workers’ representative”) and undertake sincere consultation.

¹¹ LSA Art. 97 (1) Provided...that the rules of employment are modified unfavorably to workers, the employer shall obtain the consent of a trade union, if there is a trade union composed of the majority of the workers in the workplace concerned, or that of the majority of workers if there is no trade union composed of the majority of the workers.

employees under an agreement made by consent. These two features were somewhat controversial in terms of the traditional functions of collective bargaining, because collective bargaining did not expect any deviation from the law, and in principle, it is applied to union members.

Here we should examine some examples of the legal effects of agreements made by a workers' representative, dividing the cases according to the union situation.

1) Can a written agreement with a workers' representative be made prior to collective bargaining? Majority unions substantially perform the same role as collective agreements and at companies with majority unions they are often confirmed as collective agreements. However, what about the possibility of deciding conditions through collective agreements instead of written agreements, as stipulated by law? The essence of collective agreements may confuse collective autonomy and disharmony by allowing minimum standards to deviate from the LSA, but in reality, the result will be same.

2) In cases where there is no majority union, a union member can be faced with a situation in which there is a conflict between written agreements and collective agreements. If an employer insists on the written agreement, it can disturb the right to organize.

3) In cases where there is no union in the enterprise, written agreements can be directly applied to the employees. (Some insist¹² that for these agreements to be directly applied to individual employees there needs to be an additional clause inserted in the employment rules or collective agreements. In this context, written agreements are regarded as having no more power other than exemption of penal provision. But this seems to overlook the legislative intention of a written agreement.)

Therefore, written agreements with a workers' representative cannot take precedence over collective bargaining in situations where a union and a collective agreement exist. In these cases, written agreements usually tend to later become collective agreements. Written agreements are more meaningful in companies without a union¹³ and not covered by collective bargaining. In these cases written agreements are more dangerous, and can be used in a crooked way.

3.1.2 Problems with Employment Rules

Employment rules in South Korea labor relations are used as an important way to regulate working conditions, and contain many questionable sections. Employment rules deal with a wide range of working conditions: daily start and finish time, breaks, holidays, leaves and shifts; determination of wages, calculation of wages, means of payment, closing of payment, time of payment and wage increases; calculation of family allowances and means of payment; retirement; retirement allowances, bonuses and minimum wage; meal allowances and expenses of operational tools or necessities and other expenses; educational facilities for workers; safety and health; support for occupational or non-occupational accidents.¹⁴

All these matters, which are actually almost the whole working conditions, have to be prepared and submitted by an employer ordinarily employing more than 10 workers. These rules are set by the employer, and the LSA stipulates that unfavorable modifications must be consented to by the workers. But the provisions do not regulate election of representatives, which is entrusted to case law. The Supreme Court notes that in instances where there is no majority union, a "conference type" of collective consent is needed by "the majority of workers."¹⁵ At this point, representing system about employment rules slightly differs from

¹² Lee Seung Wook (1998), pp.108-110.

¹³ Also properly mentioned in Park Je Song (2003b).

¹⁴ LSA Art. 96.

¹⁵ Supreme Court 1992. 2. 25. 91da25005.

that of the other two representing systems of LSA. That is, for the working hours and managerial dismissal, when there is no majority union, the consent of the person who represents the majority of all workers is enough.

The problem is that most union bylaws include a description of union members, and the present system necessarily results in nonunion workers who are represented by a majority union receiving unfavorable modifications to their terms of employment. In principle these are workers who have not agreed to the union representing them, and it seems unreasonable that they should be put at a disadvantage.

Technically, there can be a way to ensure that nonunion members concerned with proper matters are allowed to participate in the decision making process,¹⁶ and some cases appear to be considering this. But unfavorable modifications to employment rules seem to be in the area of individual regulations, and these rules set only by employers. So, collective agreements can have prior effects to employment rules, and securing any chances for them to participate in the bargaining process can be more fundamental solution.

3.1.3. Conclusion

A workers representative as stipulated in the LSA does not have much significance in places where there is a majority union. The majority union is always at the center of this representation system, and the voice of the individual worker cannot be heard. It appears that a workers' representative can play an independent role in the absence of a union, and the Labor-Management Council exists for that reason. But the relationship between these two representing systems is not clear, so situations develop in different ways.

3.2 Labor-Management Councils

3.2.1 Background

Labor-Management Councils (LMC) were first introduced as an amendment in 1963 to the Labor Union Act. Later they were independently legislated under the Act of Labor Management Councils (ALMC) in 1980, and in 1996 were covered under the Act on the Promotion of Workers' Participation and Cooperation (APWPC). Originally LMC representatives were authorized to have the right to represent at collective bargaining sessions, but this was abolished in 1973 with the Act of LMC restricting their role within the collective agreement and employment rules. This short history is intended to show that LMCs were first intended as an instrument to suppress union activities,¹⁷ trying to co-opt organizations which do not have constitutional rights in place of unions.

LMCs are supposed to perform the roles of workers' participation along with the role of decision of working conditions. In South Korea, where enterprise level unions are widely accepted, it is very often the case that the representatives for collective bargaining and LMC representatives are the same, both in subject and object. Terms directly-indirectly impacting working conditions should be discussed by the LMC, so particularly in companies without unions, quasi bargaining is performed by LMC.

Through almost the entire process, it is not always clear what effect and power the LMC system has — including the election of workers' members, consultation and resolution. And many times they collide with union and workers representatives.

¹⁶ Park Jong Hee (2003).

¹⁷ APWPC Art. 5 says, "Collective bargaining of a trade union and all the other activities thereof shall not be affected by this Act." This provision suggests the main role of LMCs now.

3.2.2 Act on Promotion of Workers' Participation and Cooperation

According to law, each workplace with more than 30 employees must have an LMC. They are composed of an equal number of members representing employers and workers, and there shall be no less than three and not more than 10 members. Members representing employees are elected by employees, but in cases where a trade union is formed by a majority of the workers, the trade union representatives or those recommended by a trade union shall be the council's members representing the employees. The Presidential Decree, which stipulates secret vote of employees, determines the election and designation of members representing both employees and employers. Meetings must be held once every three months and open to a majority of representatives of the workers and employers. A resolution shall be passed by a vote of more than two-thirds of all members present.

Below are the types of matters which the LMCs take up.

- Matters Subject to Consultation (Art. 19)
 - productivity improvement and profit sharing, hiring, deploying, and training of workers, improvement of working environment (safety, health, etc.) and promotion of workers' health, improvement in personnel and labor management systems, general guidelines regarding employment adjustment, such as dismissals, management of working hours and breaks, improvement in wage payment method, system, and structure, introduction of new machines and technologies and improvement of work processes, establishment and revision of employment rules, support for employee stock ownership plans and workers' other wealth accumulation, workers' welfare improvement
- Matters Subject to Resolution (Art. 20)
 - establishment of a basic plan to train workers and for competency development, establishment and management of welfare facilities, establishment of an in-house labor welfare fund, matters not resolved by the Grievance Handling Committee, establishment of various labor-management committees
- Matters Subject to Report (Art. 21)
 - matters regarding overall management plans and performance, matters concerning quarterly production plans and performance, matters concerning personnel plans, the company's economic and financial situation

Fig 3. Ratio of LMCs Established (as of Dec. 31. 2004), Ministry of Labor (2005a)

	Total	30~49	50~99	100~199	200~499	500~999	1000~
Total Workplaces	41,133	19,249	12,339	5,733	2,708	899	405
Workplaces with 30 or more employees (a)	35,601	16,295	10,788	5,071	2,400	667	380
Workplaces with LMC (b)	34,867	15,668	10,735	5,030	2,388	666	380
Percentage (b/a)	97.9	96.2	99.5	99.28	99.5	99.9	100

Fig 4. Number of LMCs (as of Dec. 31. 2004), Ministry of Labor (2005a)

Number of employees	Total	30~49	50~99	100~199	200~499	500~999	1000~
Number of LMC	34,867	15,668	10,735	5,030	2,388	666	380
Percentage	100	45.1	30.6	14.4	6.9	4.2	1.1

3.2.3 Promoting the Role of LMCs?

Because the establishment of LMCs was stipulated by law requiring that they met regularly, it would seem that these bodies would meet frequently when the organization rate is low and a small ratio of workers is covered by collective agreements. However, reality shows that this is not the case.

Here the problems are:

- 1) Mandating that workplaces with 30 or more employees must have an LMC is a failure to understand that small scale companies — where the organization rate is extremely low and the need for an LMC is relatively higher — need LMCs.¹⁸ At the same time, small scale workplaces do not have the ability to deal with matters that should be discussed by the LMC, consequently, they cannot be covered with the legal source that LMC can make.¹⁹
- 2) The right of a majority union obviously diminishes the significance of an LMC.²⁰ For an employee to be elected to this body, (when there isn't a majority union), he/she must be recommended by more than 10 workers and the vote is a secret ballot. In many cases, non-organized employees and members of minority unions cannot be represented by an LMC, and proper consideration toward other groups — such as atypical workers, disabled workers, and female workers — should not be overlooked. A way needs to be found for this later group of workers to express their will in the decision making process.

A recent research report from KLI (“Reform Measures for Advanced Industrial Relations Laws and Systems”) proposed that a majority union’s right to entrust worker members to LMC should be abolished and workers themselves should be able to elect their members in all workplaces. The report also emphasized that dispatched workers and workers from subcontracting companies should be given an opportunity to voice their opinions at a LMC. When there is no majority union, which will happen more and more with the introduction of multiple unions on the enterprise level, the employee representative on an LMC should be considered such under the Labor Standards Act. Other alternatives are using a proportional representation or quota system.²¹

- 3) In fact, the big issues concerning working conditions are included in consultation matters, and most of these overlap with Article 96 of the LSA (compulsory matters for employment rules). When consultations are not successful, there is no alternative. This brings about waste in the consultation process, and it become more difficult to reflect the will of the workers.
- 4) Unlike consultation matters, LMC-derived resolutions need agreements, but what if the employer proceeds without agreement? An employer has the responsibility to carry out his/her duties in good faith (Art. 23), and can be fined (Art. 30(2)), but the absence of agreement doesn't make the resolution (made by employer only) void.

Expanding the number of issues requiring resolution by an LMC inevitably brings about conflict with a union’s right to bargain, particularly the terms of employment. Actually, the APWPC doesn't contain provisions for enforcing resolutions, which means that a resolution handed down by an LMC does not affect collective bargaining. If the body fails to reach a resolution, voluntary arbitration can be suggested. But they cannot deal with the problem through the mediation system in TURLA. Regarding

¹⁸ Kim Hyung Bae (2001), p. 814.

¹⁹ Park Jong Hee (supra note 16), p. 128.

²⁰ Kim Hoon, Lee Seung Wook (2000), p. 20; Ministry of Labor (2005b) pp. 35-36.

²¹ Ministry of Labor (2005b) pp. 37-38.

decisions related to working conditions, problems arise over how to prioritize enforcement of decisions resulting from collective bargaining, employment rules and LMC deliberations, since such decisions have no provisions about validity or effectiveness.

Consultation matters can proceed to resolution, and the effectiveness of the resolution calls into question: does it have legal binding force on an individual employee, despite his/her contract? The answer is “No,” because an employee does not have the choice of joining or withdrawing from an LMC, unlike a union, and there are no legal grounds upon which the employee’s representative can be endowed with personal rights from individual employee. This also means that the resolution does not have preferential power over employment rules and collective bargaining. It is expected to be observed indirectly by fine-provision (APWPC Art.30 (2)), so even if the terms of employment were settled at the LMC level, neither an individual employee nor an employee representative can insist on any legal rights, and it thus remains a gentlemen’s agreement.

But it is strange that LMC resolutions have are not backed up with legal power, as they are agreed to by both labor and management. It seems that these resolutions fall somewhere between employment rules regulated only by the employer and collective agreements.²²

Because of this, workers argue that the scope of matters subject to decision be expanded and that LMC decisions take priority over employment rules or employment contracts, whereas management insists that the scope of matters subject to decision be greatly reduced.

- 5) Workers’ representatives can request relevant documents and employers shall respond in good faith to such requests. Data inspection rights are becoming more important, especially with the tendency toward contract-based annual salary systems. Fairness in evaluating accomplishments requires fairness at the procedural level as well as the substantive level, and this presupposes participation by the employee side will be better dealt with at LMCs than during a collective bargaining procedure²³ because of its co-operational character. But actually this rarely happens because employers understand that when cooperation breaks down, matters always lead to collective bargaining. Employers are not motivated to share their information due to fear of being placed at a disadvantage during collective bargaining by the information they have already revealed.

3.3 Recent Approaches

The biggest problem with LMCs at the present time is that cooperative labor relations (LMC) / struggling labor relations (collective bargaining) are carried out by the same bodies at the same level.²⁴ There have been noticeable suggestions recently to reconstruct South Korean labor law in line with changing industrial relations.²⁵ These suggestions emphasize the need to centralize labor relations, suggesting a dualistic system of labor relations. Specifically, collective bargaining should be separate from LMCs, carried out outside the company, while cooperation and consultation should be made inside the company. As a result, labor unions must become nonenterprise level unions. This is to insist that the dual system can strengthen

²² Kim Hoon, Lee Seung Wook (supra note 20), pp. 16-17.

²³ Supra, pp. 19-21.

²⁴ Uh Soo Bong (1995), p. 78-82.

²⁵ supra, p. 67.

solidarity and uphold equality among employees as well as strengthen the organization; it can guarantee the professionalism of labor relations which will aid smooth co-operation at the enterprise level; the government will respect enterprise level autonomy, and at the same time macro-level participation and agreement from both sides as partners in policy making will be secured; and the role-sharing between workplace and society can be accomplished economically. For this to happen, a strongly centralized union is essential to dualize labor relations, separating matters handled through co-operation from those dealt with through bargaining.

4. New Challenges

4.1 Changes in bargaining process

Collective bargaining and collective agreements mainly take place at the *chaebol* level, so collective agreements and social contracts have many gaps. The recent report, “Reform Measures for Advanced Industrial Relations Laws and Systems,” notes that the position of the majority union will be difficult with the legalization of multiple unions on the enterprise level from 2007. The shift to industrial unions is expected to overcome the vulnerable points of enterprise level agreements. With industrial level bargaining in place, branches at the enterprise level in principle usually will not have power to bargain independently, except when there is delegation. Currently, branches have been more active in collective bargaining whether or not there is a delegation²⁶, and this brings workers in the same industry into conflict with one another.

Both major union federations (the KCTU and FKTU) try to organize industrial unions. Considering the present situation of employer-biased labor relations, the employers’ refusal to recognize industrial unions is unreasonable. Enterprise level unions are criticized for only paying attention to their own self interests, lacking an ability to cope with changes in the labor environment and not being interested in social roles.²⁷ What is worse, conflicts among workers are becoming more serious, with stable, large firms offering high salaries and unstable (atypical), small firms paying low salaries, a vicious circle which it appears will not disappear soon. These two extremities are serious problems, and it is becoming worse. Consequently, there is a fear that labor unions cannot play any role as a social partner. Actually, job instability and an increase in atypical workers will shrink the territory of enterprise level unions, relatively broadening that of centralized unions.

4.2 Review of the Employee Representation System

The framework of employment rules that enable employer to make unilateral decisions, including even to lower the terms of employment seems unfair, compared with the workers’ representative system. Both have been playing more or less negative roles with employee not having a chance to reflect their opinions, rather than positive roles. This happens more clearly when considering the unique situation of enterprise level unions. To regard workers’ representatives on the LMC as worker’s representative under the LSA, and to guarantee a democratic basis to this structure, could be an alternative, and maybe a decent one. Originally such decentralization does not presuppose a social basis for agreement, but is aimed at making use of the weak bargaining power at the enterprise level, so this may be a bottom line

²⁶ The subcommittee on Industrial Relations, South Korea Tripartite Commission (2004) shows good examples of these tendencies from almost all industry fields. Still centralization is not mature, and branches have many complaints about the policies of the central organization.

²⁷ Supra.

to change the environment in bargaining as compensational efforts.

As for the role of LMCs, union activities shall not be affected by AWP, and it is not clear whether this provision means labor union cannot interfere with areas usually under the jurisdiction of LMCs. Excluding matters requiring resolution (Art. 20), most of the matters discussed at LMCs end up with reports or consultations, so it does not appear that the two bodies collide with each other. But if collective bargaining by labor unions can deal with matters usually taken up by LMCs, the legal status of the LMC will become unstable, often useless. This is part of the reason why the LMC system does not work very well even though it is a legally established body.

Courts also confuse the status of different employee representative. In one case the judgment was that the LMC representative was recognized as having the power to make collective agreements²⁸. In another case, LMC representatives can play the role of a worker's representative under the LSA²⁹, while the LMC resolution was denied when it involved unfavorable modification of employment rules³⁰. Even taking into consideration special factors, these cases appear to show that a unified understanding of these systems does not exist.

Usually enterprise level unions consist of the majority, so LMCs cannot play an independent role, but only are concerned with prior consultations. In places where an enterprise union is not established, the LMC in reality plays the role of a union.³¹ Therefore the roles of labor unions, LMCs and employee representatives (under the LSA) are not organized, often resulting in weakening the power of the union. At least a proper distribution of rights and power should be arrived at, and of course an institutional reexamination about the process of LMC resolutions and the effects of such resolutions must be included.

5. Conclusion

In South Korea, workers' representatives and Labor Management Councils are the main types of employee representing systems that have replaced trade unions.

Regarding the former, the absence of apparent power and, to some extent, even vagueness in its definition, makes the system hollow. As far as the latter is concerned, despite new legislation of APWPC, the system itself is not considered to have made substantial progress, and only remains as an employer biased organization. Actually, this is just to share the functions of a trade union with a workers' representative under the enterprise-level union system, and relations between the two are not clear due to vagueness in provisions and interpretation. What is more, the right of workers' representatives to extend statutory working hours is just within the range of the standards set by the LSA. But considering the status of LMC representatives with that of workers' representatives, they have some features in common, while also having differences.

The 1980 amendment to the South Korean labor law forced the formation of unions as enterprise level union. In 1987 this was abolished and unions were free to organize at any level. But enterprise level unions occupied a dominant percentage prior to 1987, with almost all unions cooperating with the employers, inexperienced and accustomed to dealing with and struggling with them. In such a situation, employees wanted to have unions that had strong bargaining power, and was one initiative to organize industrial level unions. With this, the Tripartite Commission agreed to allow the unemployed to join non-enterprise level trade

²⁸ Supreme Court 2002. 11. 8, 2001 da 15729.

²⁹ Supreme Court 2005. 3. 11, 2003 da 27429.

³⁰ Seoul Administrative Court, 2002.12.13, 2002 guhap12519.

³¹ Hur (supra note 3) pp. 65-66.

unions in 1998. But the legislation has been postponed. The International Labour Organisation has recommended amending the regulations restricting the qualifications for union membership. As is properly indicated by the recent report of “Reform Measures for Advanced Industrial Relations Laws and Systems” issued by the Ministry of Labor, allowing the unemployed to join unions raises an important issue, consequently guaranteeing the basic constitutional rights of workers. Industrial level unions can be expected to be a solution to this.

Aggressive union struggle after 1987 made workers indifferent/hostile to LMCs, which functioned more or less on the employers’ side. Unions were considered to be the only way to promote working conditions in enterprise union based labor relations. Now things are going to change with industry-level bargaining and multiple unions allowed in one company, weakening the highly concentrated and monopolized powers of enterprise level unions. Various types of bargaining will be held at various levels by various units, and the characters involved in collective bargaining will not be same, nor will workers’ representative or LMCs. Shall these three representing bodies be indifferent to each other or cooperate with one another?

The recent trends toward individualization and decentralization in industrial relations in Western countries can be an alternative to overcome the rigid structure of industry level decision making, but this process is not expected to proceed in the same way in South Korea. Despite the decline of union density, unions still appear to be in the tradition of centralized industrial relations, which makes it possible to rely on collective bargaining as a social resolution and minimum standard. In South Korea, trials to make industrial level labor relations regular and general still faces the hurdle of overcoming the reality of enterprise level bargaining.

Different directions does not always mean different destinations, especially with different starting points and backgrounds. We can expect to reach common good results in the end, even though we are chasing different ways.³² In South Korea, an employee representation system at the enterprise level does not look optimistic without the success of a centralized union. The focal point seems to be located at the level of centralization, which can guarantee fair standards of working conditions in South Korea. Reasonable and fair rules, autonomy and responsibility can be implemented by placing at the right place what has to be there, making clear and fully guaranteeing what is stipulated by law.

³² Lim Sang Hoon (2006), pp.148-153. He says the direction between South Korea and Western countries seems reverse, but they are similar in pursuing flexible control between industrial/ enterprise level bargaining. He also insists that the tasks of South Korea labor relations should be 1) weakening the role of enterprise-level organizations and bargaining, and 2) clarifying the roles of labor unions and LMCs.

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