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Statistical Indicators

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Editorial Office
The Japan Institute for Labour Policy and Training
International Research Exchange Section
8-23, Kamishakujii 4-chome, Nerima-ku, Tokyo 177-8502, Japan
TEL: +81-3-5903-6274 FAX: +81-3-3594-1113
For inquiries and feedback: j-emm@jil.go.jp

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Special Feature on Research Papers (III)

Japan Labor Issues is pleased to present its annual special feature on research papers. The papers in this special feature are selected by the Editorial Office of the journal from various relevant ones published within a year or two, from the viewpoint of communicating the current state of labor research in Japan to the rest of the world.

This year, seven significant papers are presented for three parts (I-III). These papers address the latest subjects as well as conventional themes on labor and surely will offer useful information and deeper insights into the state of labor in Japan. Each author arranged the original papers written in Japanese, for the benefit of overseas readers. We sincerely thank authors for their kind effort.

Part III includes three papers selected from a special feature “Current Developments in Public Institutions for Worker Protection” in JILPT’s journal *Nihon Rodo Kenkyu Zasshi* (*The Japanese Journal of Labour Studies*). Our society guarantees special rights to workers by law. There are various public institutions involved with lateral functions to realize those rights. The papers take up three institutions, namely, the Labor Policy Council as a group consultation involved in the formation of labor policy, the Labor Standards Inspection Office as a supervisory and enforcement organization, and the Labor Tribunal Committee as a dispute resolution body, and analyze their roles and challenges toward future. Visit our website to see the original papers at https://www.jil.go.jp/institute/zassi/backnumber/2021/06/index.html.

Editorial Office, *Japan Labor Issues*

The Labor Policy Council: Functions of the Group Consultation in the Process of Forming Labor Policy in Japan

SUWA Yasuo

The Labor Policy Council (LPC) is a group consultation that enables members representing labor (unions, or worker leaders), management (employers), and the public-interests to equally participate in investigating and deliberating labor laws and regulations and various labor policies. Its investigations and deliberations consider not only existing problems, but also issues that may arise in the near future, and the contents of its proposals and reports are reflected in policies, thereby affecting future labor and industrial relations. It precisely contributes to establishing and developing the very foundations of worker protection. However, the market economy system is the framework that constitutes the basic premise of deliberations, and under this framework, the LPC responds to issues from macro to micro dimensions of labor, such as the improvement of market systems and functions, and deals with various issues that by their nature cannot be adequately addressed by the market alone. Furthermore, the government has the authority and responsibility to make final decisions on policy issues, and the Diet is responsible for investigations, deliberations, and decision-making on bills submitted by the Cabinet, so even agreements reached as a result of painstaking coordination within the LPC may not become the substance of laws and policies without alteration. Recently, there has been a conspicuous trend of both labor and management respectively trying to amend through the Diet discussions that could not be incorporated in a deliberation in the Council. Due to the hierarchical nature of administrative organizations, if the government (Prime Minister's Office) tries to deal with labor policy issues on its own, the political framework and policies would be set in advance at such higher levels. The council as a lower-level body would conduct specialized and technical investigations and deliberations on that basis; this makes difficult for the opinions of labor and management members, which should typically be deliberated and coordinated at a council through consultation between public-interest, labor, and management members, to be reflected in bills or policies. Also, even after the fact, the government can make selections from and amendments to the results of a council's investigations and deliberations, the Diet can make further amendments to the Cabinet's bills, and Diet members can also introduce legislation on their own initiative. These are trends that have been seen in recent years. This tripartite council seems to be at a turning point.

I. Introduction
II. Structure and roles of the Labor Policy Council
III. Characteristics and operation of the Labor Policy Council
IV. Recent developments

I. Introduction

The "council"—*shingikai*; more literally, "deliberative council"—format is frequently drawn on by Japan's administrative bodies. It is prescribed that "an administrative organ of the State may, within the scope of the affairs under jurisdiction as prescribed by law, establish an organ having a consultation system for taking charge of the study and deliberation of important matters, administrative review or other affairs that are considered appropriate to be processed through consultation among persons with relevant expertise, as provided by law or Cabinet Order" (National Government Organization Act, Article 8).

Bureaucrats alone may struggle to sufficiently provide the specialist knowledge and perspective essential for forming policy. Even those engaged in highly specialist occupations such as technical officials from the field of medicine or other such fields, are not constantly fully versed in all aspects of their specialist field—especially when it comes to current affairs, overseas developments, and specific topics. The variety of specialist cases that may see drastic change or involve particularly marked specialization is almost impossible for bureaucrats to handle independently. And that is to say nothing of those bureaucrats responsible for planning and drafting, who develop their careers by engaging as a generalist in various fields in relatively short periods. Regardless of how talented they may be, their knowledge, skills, and experience alone will be insufficient to successfully formulate ideas and make decisions on specific policy fields.

It is therefore necessary to draw on the wealth of theories, technical skills, and knowledge possessed by external specialists and experts, when the circumstances require. If experts with extensive knowledge of the topic in question—covering aspects such as the relevant systems, practices, and developments in the field—are included in the council members, it is possible to gather such knowledge and information in the process of consultation, exchange of opinion, deliberation, and other such approaches, and thereby decrease the risk that the laws and policies that are produced could be simply armchair theories or self-complacence.

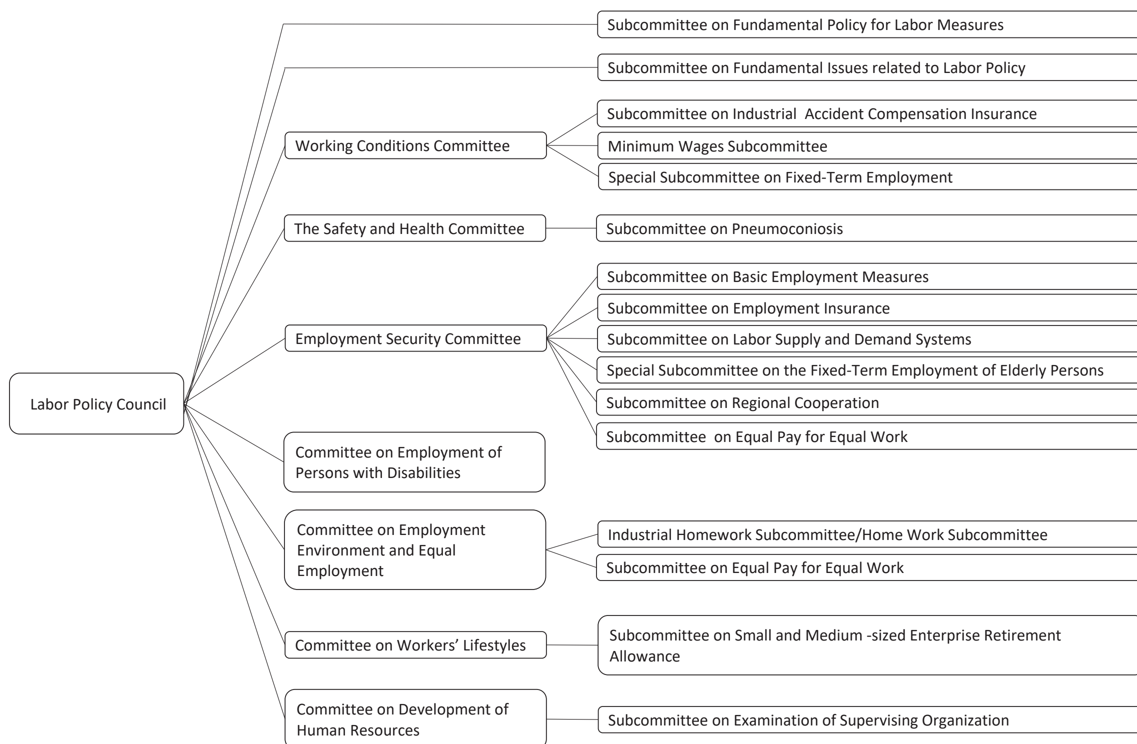
Obviously, there are other methods, aside from deliberative councils, of obtaining external knowledge, information, and opinions. The wide range of such possible sources includes data from various survey types, books and papers, news stories and programs, the internet, audiences with experts and stakeholders, interviews, round-table conferences, review meetings, research study groups and public comments. As one of the particularly institutionalized approaches, the councils are largely permanent administrative bodies, and thereby also have a significant impact on the development and implementation of policy. In some respects, they are comparable with the roles of third-party committees, outside directors, outside auditors and other such independent bodies and figures of corporate organizations.

This paper examines the *Rodo seisaku shingikai* (Labor Policy Council, LPC),[1] which is one of the councils established under the Ministry of Health, Labour and Welfare (MHLW) in accordance with the Act for Establishment of the MHLW (Article 6, Paragraph 1). It plays a significant role in developing policies largely related to labor and employment. However, relatively little is publicly known about its structure, how it is operated, and the role it seeks to fulfill. It also remains relatively unclear what distinctive characteristics it possesses in comparison with other such councils and similar bodies. This paper seeks to broadly explore such aspects.[2]

II. Structure and roles of the Labor Policy Council

The LPC was first established in 2001 when, following the merger of Japan's Ministry of Labour and the Ministry of Health and Welfare to form the MHLW, the existing councils for determining labor-related policy, excluding *Chuo saitei chingin shingikai* (Central Minimum Wages Council), were consolidated. The councils that had been established under the bureaus of the Ministry of Labour (former MHLW) were inherited by the

bureaus of the MHLW and each became a committee of the LPC. Namely, the former *Chuo rodo kijun shingikai* (Central Labor Standards Council) became *Rodo joken bunka-kai* (Working Conditions Committee), *Chuo shokugyo antei shingikai* (Central Employment Security Council) became *Shokugyo antei bunka-kai* (Employment Security Committee), and *Chuo shokugyo noryoku kaihatsu shingikai* (Central Vocational Abilities Development Council) became *Shokugyo noryoku kaihatsu bunka-kai* (Committee on Development of Vocational Abilities), and it currently became *Jinzai kaihatsu bunka-kai* (Committee on Development of Human Resources). The *senmon bukai* (expert working groups) and *iinkai* (commissions) that had served under the former councils became subcommittees affiliated with the respective committees (for instance, the former Subcommission for Private Sector Labor Supply and Demand Systems became affiliated with the Employment Security Committee as the Subcommittee on Labor Supply and Demand Systems). Subcommittees may also be temporarily established and committees and subcommittees titles may be revised as required for addressing specific issues, such as the Subcommittees on Expediting Examinations by Labor Relations Commissions. The Subcommittee on Fundamental Policy for Labor Measures and the Subcommittee on Fundamental Issues relating to Labor Policy do not belong to any committee. Following subsequent changes of name and other such developments, the LPC currently consists of seven committees and 16 subcommittees (See Figure 1).



Source: MHLW website: https://www.mhlw.go.jp/content/12600000/000485258.pdf (in Japanese, accessed on May 7, 2021).
Note: The MHLW website provides the organizational chart in English including the bureaus and councils at https://www.mhlw.go.jp/english/org/detail/dl/organigram.pdf (as of October 1, 2017).

Figure 1. The structure of the Labor Policy Council

The purpose of the LPC is to investigate and deliberate "important matters concerning labor policy pursuant to consultation from the Minister of Health, Labour and Welfare" and "important matters concerning the prevention of pneumoconiosis, health management and other such areas pursuant to consultation from the Minister of Health, Labour and Welfare and the Minister of Economy, Trade and Industry" as well as to "deliver its opinions concerning important matters to the Minister of Health, Labour and Welfare and related administrative bodies" (Act for Establishment of the MHLW, Article 9 Paragraph 1, Items 1-3). It is also to "handle matters under the scope of its authority granted pursuant to provisions" of legislation such as the Labor Standards Act (LSA) and the Act on Comprehensively Advancing Labor Measures, and Stabilizing the Employment of Workers, and Enriching Workers' Vocational Lives (Labor Measures Comprehensive Advancement Act) (Act for Establishment of the MHLW, Item 4). These correspond with the MHLW's "duties to secure working conditions, otherwise maintain the working environments, and secure jobs of workers" (Act for Establishment of the MHLW, Article 3, Paragraph 1. Paragraph 3 of the same article also prescribes "assisting the affairs of the Cabinet with regard to specific important Cabinet policies concerning these duties" as one of the MHLW's duties).

In responding to a consultation from a Minister on an important matter, the LPC may deliberate on the matter, submit *tōshin* (a report), and offer *kengi* (a proposal) following deliberation by members. The LPC is also entitled to provide its opinion concerning certain matters in accordance with provisions (such as LSA Article 38-4, Paragraph 3, and the Labor Measures Comprehensive Advancement Act Article 30-2, Paragraph 4, etc.) prescribing that the Minister of Health, Labor and Welfare to "hear the opinion of the LPC" when establishing guidelines. In other words, the LPC possesses the qualities of both (i) a "council for basic policy" which deliberates matters concerning fundamental policies such as labor administration-related planning, the drafting of bills, and matters related to the drafting of bills in the process of legislation; and (ii) a "council for the enforcement of the law," which deliberates matters regarding the development of plans and criteria in the process of implementing administration, administrative review, and administrative disposition if laws or the government ordinances prescribed that a council or other such body decide or provide consent or that the matter must be referred to a council or other such body for discussion. It could be argued that it is a council with an extremely significant role and authority.[3]

Incidentally, the Cabinet's "Basic Plan concerning the Realignment and Rationalization of the Policy Councils, and other Meetings" (approved by the Cabinet on April 27, 1999) states criticism suggesting that councils were merely a "front" for the administration and were exacerbating *tatewari gyosei* (literally, "vertically compartmentalized administration") which is one of the bureaucratic jurisdiction problems in administrative bodies in Japan); the Basic Plan in accordance with Article 30 of the Basic Act on Reforming Government Ministries enacted in 1998, also states that the "functions for deliberating policy and formulating criteria" would be "abolished in principle" as a means of realigning and rationalizing the councils and other such bodies to clarify administrative responsibility. Provided, however, that (a) "with regard to the development of plans and criteria in the process of implementing administration, if laws or the government ordinances prescribe that a council or other such bodies decide or provide consent, or if the matter must be referred to a council or other such bodies for discussion, upon the basis of a review of the necessity, the council would work with the minimum necessary function, and be maintained." Also, (b) "a limited number of councils for deliberating fundamental policy" would be retained. The LPC is one of the councils to which this proviso applies.

Honshin iin (regular members) appointed by the Minister of Health, Labour and Welfare to the main body of the LPC consist of a total of 30 persons, with an equal number of each of the three different types of members: 10 public-interest (government academic experts) members, 10 worker leader members, and 10 employer members (the term of appointment is two years, with the possibility of reappointment). In addition to the regular members, a considerable number of *rinji iin* (temporary members) and *senmon iin* (expert members) can be selected as necessary.[4] The council chairperson or committee chairperson, who is selected from the public-

interest members, assigns the members to their subcommittees. The main body (the LPC), committees, and subcommittees are each made up of an equal number of members from each of the three types, and require the attendance of at least two-thirds of the members and at least one-third of each type of members in order to conference, with resolutions requiring the support of the majority of the members in attendance to be passed (when votes are equally divided, the chairperson has the casting vote). The council sessions are open to the public in principle. The minutes and various reference materials of the council sessions are also generally published on the MHLW website. (The above information is drawn from the "Order on the Labor Policy Council" enacted by the Cabinet in accordance with the provisions of Article 9, Paragraph 2, of the Act for Establishment of the MHLW (Act No. 97 of 1999) and the "Provisions on the Operation of the Labor Policy Council" prescribed by the MHLW.)

III. Characteristics and operation of the Labor Policy Council

The distinguishing characteristic of the LPC is the "tripartite principle," by which members consist of an equal number of each of the three different types of representatives: public-interest representatives, worker leader representatives, and employer representatives. The underlying concept for this is the International Labour Organization (ILO)'s concept of tripartite representation by government, employers, and worker leaders, which is one of its fundamental principles.[5]

Both the worker leader and employer members—the stakeholders in labor relations—are generally appointed on the basis of selection on the independent judgment of their respective sides, and state opinions on behalf of an organization. For worker leaders, the Japanese Trade Union Confederation (JTUC-Rengo), and for employers, the Keidanren (Japan Business Federation) coordinate the respective interested parties and compile a list of candidates for members for their sides. Based on said lists, the members are then appointed by the Minister of Health, Labour and Welfare. Meanwhile, the public-interest members— as neutral experts—are appointed by the Minister of Health, Labour and Welfare following selection by the secretariat through.[6]

There are also a number of cases among the councils of other ministries and agencies where members of labor unions and employer associations as experts or stakeholders in the matters to be deliberated serve as the respective worker leader and employer members. However, the LPC is distinctive in three respects: (i) it investigates and deliberates laws, regulations, and measures concerning the broad field of labor policy, (ii) it consists of an equal number of members representing labor and management respectively, and (iii) in addition to the labor and management members, neutral experts are selected as public-interest members (of which there are the same number as the respective number of labor or management members). In all parts of the LPC—that is, in the main body (the LPC), committees, and subcommittees—it is the labor and management members who are most active in making statements. In light of their respective roles, both labor and management offer statements that reflect the intention of the organization they represent. While opinions may differ from organization to organization or from industry to industry, it is common for labor and management to clash swords as they exchange their understandings and opinions, from broad perspectives to workplace-relevant issues.[7]

However, while they are stakeholders, both the labor and management members do not merely argue the standpoint of the labor union or enterprise to which they belong. They appear to be seeking to speak from the broad perspective of workers or business managers as a whole. Deliberations on topics that provoke fierce labor-management confrontation could often therefore be likened to labor and management on either side of a wide river, each attempting to throw stones at the opposing camp, but missing their targets and allowing the stones to fall into the water. This is the case in the initial gatherings at the early stages of discussing critical topics. Typically, as is usual with general negotiations, a number of meetings gradually cover the various aspects of issues over the course; they start handling minimal conflicting issues that could be easy to resolve problematic

issues. In some cases, however, both labor and management refuse to make any concessions and simply repeat the basic principles, preventing any progress to specific deliberations, or questioning at every turn why a point is being proposed in the first place, such that merely more and more meetings are held and more and more time is fruitlessly spent. In order to avoid councils on issues concerning labor encountering such difficulty, an approach has been devised to shift both labor and management opinions on track by ensuring that gatherings consisting exclusively of public-interest members or public-interest members and others with specialist knowledge and experience come together in advance for study groups or review sessions aimed at identifying the points of discussion and putting together proposals that will serve as a springboard for discussion, and that only then, once such proposals are formed, the relevant issue is placed on the council meeting agenda.[8]

Public-interest members make relatively few statements at council sessions. This is thought to be generally because (i) they are to adopt a neutral standpoint as an expert not representative of an organization (they have no need to make a statement for a particular organization, since there is no organization behind them from which they were selected), (ii) public-interest members rarely negotiate, adjust roles, or otherwise discuss the handling of statements between themselves in advance of meetings (there are no such preparatory meetings, and, perhaps for the respect for such a member's individual expert opinion, no substitute is arranged as is the case when labor or management members are unable to attend a meeting and a substitute is provided from their organization), and (iii) as the council sessions serve as the "peak of negotiations" between labor and management, public-interest members are expected to coordinate and arbitrate to a certain extent when discussion approaches a difficult stage, and therefore tend to carefully ascertain the distribution and conflicting areas of labor-management opinions (chairperson and other members are conscious of their responsibility to ensure that the relevant council project smoothly progresses toward the appropriate conclusion by the suitable timing). It is also likely that (iv) in the case of issues that are deliberated in light of the report of a study groups, those who serve as public-interest members at both the study groups and the council have already had their opinion recorded in the report and therefore, they might seek to avoid repeat statements by entrusting the secretariat to present said opinions and the related practical issues.

The role played by the secretariat in the operation of the LPC is important—as important, if not more important than that played by secretariats in other councils. It has for some time been noted that within the MHLW, the former Ministry of Labour bureaucrats are more strongly aware of the influence of employers' organizations and workers' organizations than the officials of other ministries officials; and the council is frequently named as a counterparty with which it is difficult to coordinate with when formulating and implementing policy.[9] It can be surmised that this also applies to the MHLW officials in charge of labor policy.[10]

The LPC has no full-time members. It consists entirely of part-time members. As each member has a regular occupation outside of the council, when the secretariat is deciding on the itinerary for the council sessions they have a complex balancing act to negotiate, as they seek to ensure a quorum, as well as securing the attendance of members who are especially well versed in the relevant topic or members with a strong interest in the topic. Particularly when deliberations reach their most crucial stage, and meetings must be held in close succession, members face considerably challenging demands, such as reorganizing the schedule for their regular occupation. In contrast, when there is considerable time until the next meeting, (it usually occurs when the deliberations do not call for a tight council meeting schedule), in some cases meetings are delayed because the secretariat has been taking a long time in the various preparations.

In reality, the bureaucrats in charge of the secretariat engage in countless efforts to coordinate opinions up and down the hierarchy and across the various organizations of the interested parties. They negotiate with JTUC-Rengo and the Keidanren within council meetings and at private sessions. They not only coordinate opinions within the ministry, bureaus, and divisions, but also with the Prime Minister's Office, other ministries and agencies, among other bodies, and coordinate opinions with the Cabinet Legislation Bureau regarding draft bills

and provide explanations to ruling and opposition party Diet members. These are all handled by the secretariat since part-time members (particularly public-interest members) who are not specialists in the administration would struggle in terms of the authority and time required, and in terms of the specific specialist and practical knowledge, skills and experience needed to coordinate such matters.[11]

The secretariat plays a significant role in running the council sessions. This entails handling an extremely great variety of administrative tasks, including preparations such as selecting the public-interest members for the council, exchange of opinions between the different types of members, coordinating the policy issues to be addressed, running the study groups meetings prior to the council sessions, preparing reference materials for the study groups and council sessions, coordinating with the chairperson regarding the proposed order of proceedings for the deliberations, organizing the schedule and adjusting the intervals at which sessions are held as necessary, publishing the council session details and materials, as well as putting together the minutes, sharing information and coordinating opinions in and outside of the ministry, responding to public comments, drafting proposals and reports, and drawing up outlines of draft bills and other such documents and consulting on them with the Cabinet Legislation Bureau.[12]

As the LPC has no full-time members and thereby consists entirely of part-time members, it could not be expected to operate smoothly or achieve results as a council without the secretariat and the behind-the-scenes roles that it plays. The secretariat also has a front-of-house presence, as it carries out the varied tasks to prepare and coordinate meetings and draft proposals as described above. This is why the councils have been described as a "front" for activities by the administration. The councils are also sometimes used when a problem is raised in the Diet, as the government is able to buy time by responding that the problem is under deliberation by the councils.

While the ILO's tripartite structure consists of government, employers, and worker leaders, Japan's LPC is distinctive because its "government" component includes two presences: the public-interest members and the administration (secretariat). The public-interest members and the secretariat need to operate together as if they are a team in a three-legged race—if they are unable to keep in step with each other consistently, the council deliberations may become unnecessarily complicated. There is no wonder that the administration (the secretariat), which is accountable for responding to the immediate circumstances and ensuring the progress of discussions of the policy at an issue, will do its utmost to secure a conclusion that has significant potential to be achieved in practice. However, if the three-legged race team appears to have only *two* legs—that is, if the public-interest members present nothing but opinions that coincide with those of the administration—labor and management will become distrustful. Particularly those opposed to the opinion in question will no longer consent. In contrast, if the public-interest members and administration team develop *four* legs, because the public-interest members persist with their own specialist opinions and ignore the secretariat's intentions and explanations of the state of affairs, the administration may be uncooperative, and both the labor and management members who seek concrete results will feel uneasy about the potential outcome of the policy development process. Given the subtle balance of such a distinctive tripartite structure, both the public-interest members and the secretariat must determine their respective places.

The secretariat is responsible for drafting the reports, proposals and other such accounts of the LPC's activities based on the members' statements, the agreements or objections and demands at the council sessions. The administration's perspective and thoughts naturally become reflected in such reports. And yet it would be rash to brand this as the council being led only by the intentions of the administration. This is because the drafts are constantly checked by each of the three types of members and are only finalized by the secretariat with holding several meetings to deliberate the members' revisions and making corrections based on exchanges with the members even outside of the meetings. Particularly cases in which a unanimous conclusion is reached at a council session can be seen as the fruits of the advance coordination between the three types of members and the

administration (the secretariat) as a four-person *five*-legged race team. On the other hand, cases of outstanding disagreement between the members may in extreme circumstances result in the arguments of each of the three types of members (public-interest, worker leader, and employer members) simply being recorded side by side. Alternatively, in the event that circumstances require that a conclusion is reached to some extent, while revisions may be made to reflect the differences in opinion between the members, ultimately a decision is made by majority, in the form of consent between the combination of public-interest and worker leader members or the combination of public-interest members and employer members. Such cases naturally leave an unpleasant aftertaste in the operation of a council.

IV. Recent developments

The structure of Japan's councils—following a tripartite principle in which each type of stakeholder is equally represented—makes it difficult to introduce drastic major reforms or entirely new policies, because if either labor or management pushes the accelerator to head in their desired direction, the other party may hit the breaks in opposition. Major reform may in any case be beyond the capabilities of a council of a single ministry, and it is not known for the LPC to hold joint meetings with the councils or other similar bodies of other ministries.

This means that developments tend to be limited to following the existing course and maintaining the status quo, introducing policies where the respective interests of labor and management coincide, or, at the very most, introducing partial, specialist or technical improvements. The secretariat, which coordinates within and outside the council, must be considerably well prepared and resolved on the course of action in order to embark on a bold course. At the same time, even tripartite group consultation bodies may undergo significant movements when there is a surge of significant changes in the major social, economic, or political trends.

One such peak occurred in the 1980s. This consisted of developments such as the introduction of the Equal Employment Opportunity Act, Worker Dispatching Act, and other such legislation in new fields, and the significant amendment to the LSA's scheduled weekly working hours from 48 hours to 40 hours per week. The shift to the 40-hour work week became a positive example for the operation of the council. The distinguishing aspect of this success was the perseverance of the public-interest members and the secretariat in coordinating opinions in the council based on the report of the study group on the LSA. The council successfully pursued its autonomy as a setting for stakeholders to push their negotiations to the very limit, and its decision was respected in determining the development in legal policy.[13]

However, the operation of the councils on labor has been vastly affected by the succession of events such as the collapse of the bubble economy in the 1990s and the prolonged economic stagnation, the progress of globalization, as well as the changes in the political regime (establishment of the Morihiro Hosokawa Cabinet in 1993 and the Liberal Democratic Party (LDP)'s loss of power which spelled the breakdown of the 1955 system (the LDP remaining continuously in power since 1955), the introduction of the single-seat constituency system in 1996, the series of administrative reforms and central government restructuring, the 2001 establishment of the Junichiro Koizumi Cabinet and regulatory reform, the establishment of the Democratic Party of Japan government in 2009 and the formation of the LDP and Komeito coalition government in 2012). This is due to the fact that as the government seeks to feel out its support, the basis of election, as well as securing the support of the political independents, there is an increasing tendency for the Prime Minister's Office to determine its centerpiece policies by a top-down approach, and this has prompted an increasingly marked trend toward expecting the lower levels of the administration to organize the concrete measures based on those fundamental policies. This results in the various councils of the different ministries and agencies being restrained by the fundamental policies spearheaded by the Prime Minister's Office and the policies of the upper group consultation bodies (such as the Council for Regulatory Reform and the Council on Economic and Fiscal Policy) and developing a prominent tendency to

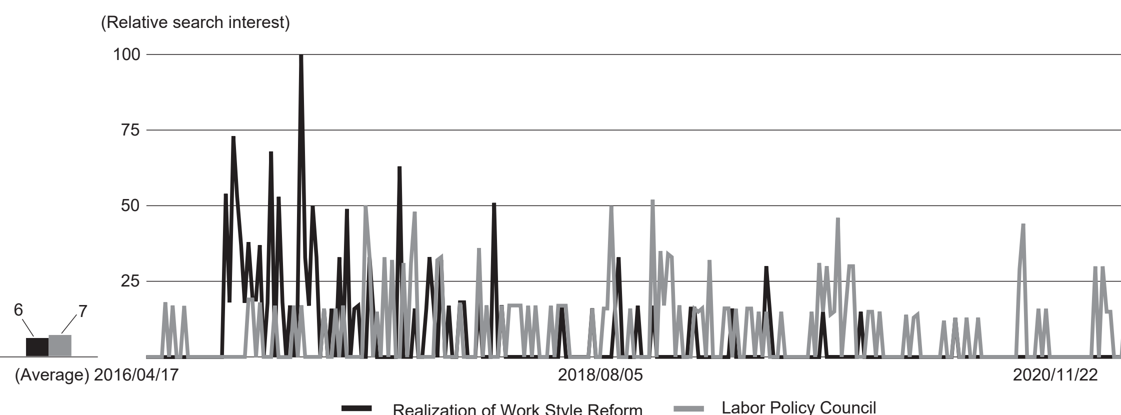
coordinate the process of creating specialist and technical systems within those boundaries.

In the parliamentary cabinet system, the government's responsibility and authority, and the administrative organization's hierarchy are the fundamental principle and rules. Therefore, if the government of the time decides that rather than entrusting labor policy to the MHLW and its council, it will establish labor policy as its own main goal and attempt to change the framework and direction of the conventional bureaucrat-led process by which policy is determined, it can address a considerable amount. The aftereffects of the changes to the policymaking process create ripples that immediately affect the operation of the lower-level organizations. The position of bureaucrats is such that they are unable to oppose the government instructions even in the case of regime changes that entail a shift in the core principles and strategies of labor policy. The directions pursued by the council secretariats, which are made up of bureaucrats, are forced to change. Changes in the policies of the upper level of the government and the mood of the secretariat change could in turn affect the operation of the councils in the lower levels. And if there is another change of the government, there should be a backlash or further changes in policy direction.[14]

If a change of the government that prompts a shift in policy direction is accompanied by a change in the staff who compose the secretariat and the public-interest members of the councils, it is inevitable that the council deliberations may need to return to square one. But what is the case when there is no change in the staff or council members? We must assume that, given their position, bureaucrats could accommodate the policies of the government. On the other hand, what about the public-interest members, whose standpoint is based on their own specialist opinion? If the same person continues to be a public-interest member, the consistency and credibility of the person would immediately be called into question. As there is still scope for such members to provide a specialist or technical approach within the predetermined forum set out by the higher powers, if, when taking into account the stability and continuity of policy, such members are respected for their particular fundamental line of thinking, specialist knowledge, sense of balance, and ability to coordinate, there may be a certain amount of understanding from both labor and management and the public as a whole. Nonetheless, if the two-party system or other such factors lead to frequent changes of the government, there is likely to be turnover among public-interest members—whose appointments tend to be strongly political—except in those subcommittees that rely on the expertise and technical capability in a considerably narrow field. If this is the case, there may be a decline in the public-interest members' capacity to coordinate within the tripartite system of the councils to guide decision-making.[15]

Within the Work Style Reform process, which was the government focus in the late 2010s, the general framework of the tasks was set out before they were assigned to the LPC, such that the LPC became somewhat of a specialist "subcontractor" responsible for giving concrete shape to those predetermined outlines.[16] For instance, looking at the correlation between the online searches in Japanese for the topics, *Hataraki kata kaikaku jitsugen kaigi* ("Council for the Realization of Work Style Reform") and the *Rodo seisaku shingikai* ("Labor Policy Council"), there was first a wave of searches for the former, after which public-interest shifted toward the latter (see Figure 2; The first meeting of the Council for the Realization of Work Style Reform was held on September 27, 2016. It should be noted, however, that the number of searches for the LPC has remained relatively constant).

Looking at such developments over the recent years, the notable trends include: that (i) the government (Prime Minister's Office) has been taking a notable initiative in the labor policy decision-making process, (ii) the intentions of the bureaucrats who serve as close advisors to the Prime Minister's Office and have been entrusted with the will of the government (for instance, in the case of the Work Style Reform, the Cabinet Office Director General for Policy Planning) and the decisions of upper-level consultation bodies like the Council for the Realization of Work Style Reform tend to take precedence, (iii) there were movements within the Prime Minister's Office to coordinate the government, labor and management consensus from the top, and, as a result, (iv) to a



Source: Google Trends (Search conducted on April 12, 2021).
Note: The average for the term "Council for the Realization of Work Style Reform" is 6 (with the peak, 100, occurring in the week from January 29-February 4, 2017) and the average for the term "Labor Policy Council" is 7 (with the peak, 52, occurring in the week from November 11-17, 2018).

Figure 2. Interest over time for the Council for the Realization of Work Style Reform and the LPC (wave of interest in the former, followed by increased interest in the latter)

certain extent solutions were unprecedentedly developed for addressing long-standing issues such as equal pay for equal work and upper limitations on overtime work, and (v) a series of processes appears to have led to the development of a standard formula for the division of roles by which the government and the Diet strive to ensure what can be described as overall optimization and the LPC and relevant divisions of the administration seek to ensure the optimization of particular areas. These phenomena could also be seen as the reflection of political tendencies in periods of change, as opposed to periods of political stability.

In any case, if the position of the councils addressing labor issues in the political and policy processes has shifted in such a way over the years along with the transition from the Showa to the Heisei period (in the late 1980s), and from the Heisei to the Reiwa period (2019–), there will be an increasing demand for the capability of a small number of close administrative advisors who assist the government in the Prime Minister's Office to propose policies and make decisions.[17] Under the Suga administration, there were five Prime Minister's secretaries, from the Ministry of Foreign Affairs, the Ministry of Finance, the Ministry of Defense, the National Police Agency and the Ministry of Economy, Trade and Industry respectively (as of March 7, 2021). The question of whether there is the capability for establishing appropriate outlines for labor policy has become the focus of public given the vast amount of people to whom labor policies apply.

If the frameworks and fundamental policies that form the premise for the LPC's deliberations are inappropriate, it could be difficult to rectify them at council level, as there is little scope for maneuver regardless of how much effort is made. A backlash from workers on the ground and from the public would surely be developed. This also leads to concerns in the effectiveness of policies. Furthermore, if in the future regime changes become a frequent occurrence, problems will arise with the continuity and consistency of labor policy. If the LPC's nature as a "subcontractor" becomes more prominent, or, if only the revision to labor policy by the government or the Diet is at the forefront, concerns could naturally arise that the council's former character—defined by the clashing of swords in the form of fierce labor-management exchanges, and pushing negotiations to the limit—would fade, prompting the council's involvement—the consultation it receives and reports it issues—to become a matter of formality within the policy decision-making process.

Developing the labor policies is crucial for society and the economy. As we discussed above, it appears to be seeing the development of unprecedented new circumstances and challenges in policy making in the field of

labor.[18]

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Notes

1. For the LPC's overview including the organizational chart and operation rules, see https://www.mhlw.go.jp/stf/seisakunitsuite/bunya/koyou_roudou/roudouzenpan/roudouseisaku/index.html (in Japanese).

2. For an overview of the developments in the LPC, it is worth referring to Hamaguchi (2018), which compiles the developments of labor law policy and the various councils and other such bodies over the years. Nishikawa (2007) also outlines the state of the councils as a whole. Adopting a slightly different perspective, this paper records the author's individual and general impressions of the author based on his experience accumulated as a member of several councils and other such bodies (it does not, as a general rule, touch on the cases in which the author was directly involved. The responsibility for possible errors in content lies with the author.)

3. A search of the MHLW's "Database service for laws and regulations, etc." produces 42 hits for texts of laws and regulations, etc. that include the term "Labor Policy Council" in Japanese (including three MHLW public notices), and a search of the Ministry of Internal Affairs and Communications' "e-GOV laws and regulations search" reveals 40 hits (including no public notices). This indicates, the LPC is connected with a number of labor laws and regulations, etc. The URLs used were: https://www.mhlw.go.jp/hourei/html/hourei/search1.html for the former (accessed on April 6, 2021) and https://elaws.e-gov.go.jp/ for the latter (accessed on April 6, 2021).

4. While Kambayashi and Ouchi (2008) quote the total number of members as over 300 people, if we calculate the current (as of May 8, 2020) number of members including the *rinji iin* (temporary members) and *senmon iin* (expert members) of the *bunka kai* (committees) and *bukai* (subcommittees), and overlapping membership by the same person, in addition to the 30 *honshin iin* (regular members of the LPC), there are a total of 418 members of the committees and subcommittees, such that a total of 448 people participate in the various deliberations (one session is typically scheduled to last two hours). https://www.mhlw.go.jp/content/12600000/000770650.pdf (Accessed on April 22, 2021).

5. See JILPT (2010). The materials address conventions such as the ILO's Minimum Wage-Fixing Machinery Convention (No. 26), Employment Services Convention (No. 88), and Convention Concerning Tripartite Consultation to Promote the Implementation of International Labour Standards (No. 144), which prescribe the obligation to establish consultative bodies with tripartite structures and to hear opinions from labor and management. It ascertains the state of ratification of these conventions, and the current extent to which the consultative bodies have been established and labor and management opinions are being heard in the countries that have ratified them, and notes that consultative bodies have been established and opinions are being heard from labor and management in some form. Japan's consultative system is unique in the sense that the government side adopts a behind-the-scenes role as the secretariat and organizes separate representatives in the form of "public-interest members" to engage in the deliberations. There were in the past cases of former vice-ministers, former bureau director generals, or other such former administrative officials becoming public-interest members or being appointed chairperson, but this no longer occurs as a general rule (there is an exception by which a person who was temporarily a public servant but switched to an academic career as a university professor became a member). Moreover, the regional labor councils established under the prefectural labor bureaus are also tripartite structures, and there are bodies in which bureau director generals and vice-ministers from the administration participate as expert members and local assembly members who have participated in the prefectural councils regarding labor (such as the Tokyo Regional Labor Council, and the Tokyo Metropolitan Employment and Employment Measures Council, etc.).

6. Article 30, Paragraph 4, of the Basic Act on Central Government Reform set forth that "the composition of the committee members and their qualification requirements shall be properly determined in light of the purpose and objectives of the establishment of the relevant council or other such body." The process of selecting public-interest members through comprehensive judgment by the secretariat is unclear in details. Oki (2008), a former Cabinet Office Director General for Policy Planning, explains the suitable characteristics of members given the nature of the councils as project teams, stating that: "People who insist on their own opinion are not suited to be council members. If, as is sometime seen among university professors, members decide to quit because they are unable to push through their own opinion, no conclusion would be reached. People who have no opinion and accept any kind of proposal are also not suited, because this is not making the optimum use of the members' expertise and insights expected of such members." It can be assumed that when public-interest members are appointed as part of the tripartite structure, aside from the consideration of the aforementioned factors, public-interest members candidate who provoke strong opposition from all types of members in the process of the secretariat's (MHLW bureaucrats') repeated negotiations and coordination with both labor and management will ultimately not be appointed. This is because the LPC frequently sees clashes of opinions between labor and management, and in some cases, when the opinion of the public-interest members coincides with either labor or management but the other side opposes, and issues an objection, proposals or reports may be made (those who oppose or are dissatisfied not only state their opinion at the council meeting, but demand for a supplementary opinion to be recorded in the report or other such documentation, and there are also cases of both labor and management declaring each of the respective points regarding which they are dissatisfied). Both labor and management naturally have great interest in who becomes a public-interest member.

7. Looking, for instance, at the minutes of the 20th Committee on Employment Environments and Equal Employment (October 21, 2019) on topics such as "Guidelines on the Necessary Employment Management Measures regarding Bulling and Harassment in the Workplace," the worker leader members made statements 26 times, and the employer members, 24 times, while, in contrast, the public-interest members 13 times in the meeting. The minutes of a meeting of the same Committee on topics such as the enforcement of laws to partially amend legislation including the Act on Promotion of Women's Participation and Advancement in the Workplace (23rd meeting, December 10, 2019) show that worker leader members made statements 8 times and employer members, 7 times, while public-interest members, just once (all numbers exclude statements by the Committee chairperson). It appears that in Japan—where, with negotiation almost always at an individual enterprise level, negotiation at an industry level is the exception and industry-level negotiation of nationwide top-level agreements have needless to say failed to take root—allowing labor and management to engage in the form of "central negotiation," with public-interest members between the two, has prompted the development of a system by which the administration accepts the opinion coordinated between the public-interest, worker leader, and employer members, composes policies or draft bills for proposal to the government to create something which has the typical regulatory power. This is symbolized by the LPC's seating layout. At non-remote meetings of the LPC where members sit at a square table, the public-interest members have the employer members sitting to their right, the worker leader members sitting to their left, and the secretariat facing them. Even when the chairperson is left speechless by the developments in a fierce debate, the secretariat members are not sitting beside or behind the chairperson, and therefore unable to quickly whisper or pass them a note. In contrast, in my experience of Council meetings of other ministries and agencies, in most cases the principal secretariat members sit directly to the right and left of the chairperson on the same side of the table and the other members sit at the other places. This seems to indicate that the secretariat (the administration)'s relationship with the members, in particular the chairperson, is subtly different from what is seen in the LPC.
8. For instance, the 1987 LSA amendments that gradually shortened the scheduled weekly working hours from 48 to 40 hours, which are covered in sources such as Shirai (1987), Kume (2000), and Umezaki (2008). The enactment of the Labor Contracts Act, which is addressed by Kambayashi and Ouchi (2008) and Nakamura (2008), among others. It is said that for the former (the shortening of working hours), the study group members were lodged together to focus on the deliberations. The approach of a study group conducting initial discussions and preparing a springboard for further deliberations has been frequently used lately, for instance, when addressing employment security measures for workers up to 65 years of age under the amended Act on Stabilization of Employment of Elderly Persons which became effective on April 1, 2021. The attitude of the bureaucrats involved in planning and running the management of these processes are presented in Umezaki (2008).
9. See Kume (2000).
10. Drawing on his experience as an MHLW fast-track bureaucrat into his early forties, Sensho (2020) gives showcases of the parties to whom management provides explanations in the order of expert members of a council, the Diet members, and the various divisions of the government (Sensho 2020, 33–34). Sensho (2020) also indicates that young bureaucrats invest a considerable amount of time in preparing council meeting materials, as opposed to focusing exclusively on handling replies to the Diet deliberations.
11. The public-interest members, particularly the chairperson, may be requested to provide explanations to the Minister of Health, Labour and Welfare and other ministers, and state their opinions as advisors to the Diet, among other tasks, but this is fairly uncommon. They may have adopted such roles in the past because members included former bureaucrats. It is thought that bureaucrats of the secretariat provide various responses as the circumstances require.
12. Sensho notes that bureaucrats invest even more effort in "coordinating with those involved in the process running up to the decision making," than in creating policy proposals (Sensho 2020, 94). When it is considered that bureaucrats are responsible for the substantial effort of the work to coordinate the large variety of opinions, which may at times be unexpected, it is possible that bureaucrats perceive the operation of the councils as part of that coordination process.
13. See the various sources listed in Note 7. The August 1984 Study group on the Labor Standards Act published its interim report on the review of legislation regarding working hours , and the October 1985 Study group on the Coordination of Economic Structure for International Cooperation, responding to various deliberation requests from former prime minister Yasuhiro Nakasone, issued a report stating that "shortening working hours will increase free time as well as promoting the concentrated use of paid days off…Efforts should be made to ensure that the total number of annual working hours is at the same level as those in the advanced countries of Europe and the US and to promptly ensure the complete implementation of the five-day working week" (April 1986). See also Inagami et al. (1994) for an examination of the connection between labor-management relations and policy from the perspective of neo-corporatism.
14. This may also prompt situations like the instability of legal policy concerning the Worker Dispatching Act. See Hamaguchi (2018).
15. See Miura (2007) and Yamada (2019).
16. See, Ebisuno (2019) and Yamada (2019). Moreover, Sawaji, Chiba, and Niekawa (2019), which draws on careful newspaper journalistic research, dedicates the majority of its pages to the trends in the Prime Minister's Office and the developments at the top levels of worker leader representatives. Concerning the LPC it says very little, except to note that "with the key framework already agreed upon by the top labor and management members at the Council for the Realization of Work Style Reform, the opposition is unlikely to be voiced at the LPC, which is attended by those [labor-management members] responsible for practical aspects" (Sawaji, Chiba, and Niekawa 2019, 152). See Kozu (2018), Okazaki (2018) and Mizumachi (2019) for sources by those involved in policies on Work Style Reform.
17. At the implementation stage of the reform, the Office for Promotion of the Realization of Work Style Reform was established under

the Cabinet Secretariat, with the Cabinet Office Director General for Policy Planning and MHLW officials of the rank of deputy director-general serving as deputies and assistants to the office director, such that 15 of the around 40 staff members were from the MHLW. Sawaji, Chiba, and Niekawa (2019) note that it was in practicality led by the Cabinet Office Director General for Policy Planning.

18. Along with factors such as the decline in unionization rates of labor unions in Japan (the arithmetic average annual unionization rate for 2015–2019 was 17.1%, merely a third of that for 1947–49 (51.4%). Moreover, this arithmetic average annual unionization rate was 30.2% in the first half of the 1980s and 27.5% in the latter half of the 1980s), and the receding importance of economic organizations' responding role to workers, the representativeness and legitimacy of interim groups and organizations for both workers and employers are currently being called into question. Potential future developments involve a number of questions to investigate, such as (i) whether the politically-led nature will be strengthened (in the case of labor policy, how does the government make judgments, given that discussions may lack specificity or practical nature unless more labor-related experts and key players participate in meetings or other such bodies at the level of the Prime Minister's Office. And other issues may arise if there are too many investigative meetings across the upper levels of the Prime Minister's Office.), (ii) whether it will be led by the Diet (as it is essential to strengthen the stance of the Diet, the Diet will require councils and other such organizations for research and deliberation), and (iii) whether it will return to its former corporatism-based approach (this will not be entirely unthinkable, should the social changes and turbulence give way to a stable period in which people's attitudes are again shifted in line with such an approach). In recent years, it has become necessary to address employment-like work, or new forms of employment such as those of freelancers and gig workers. Moreover, regardless of the form that political and policy processes take, it is essential to debate the state of policy-formulation skills development for part-time council members and those members' relationship with the secretariat. While it is sincerely hoped that the tripartite structure's significance and specialist expertise will continue to be utilized, this is a topic for discussion at another opportunity.

References

Ebisuno, Sumiko. 2019. "Hatarakikata kaikaku kanren-ho no shingi to roshi kankei: Rodo jikan hosei ni tsuite" [Deliberation of the Work Style Reform Laws (Act on Arrangement of Relevant Act on Promoting the Work Style Reform) and labor management relations: The legal system for working hours]. *Japanese Journal of Labour Studies* 61, no.1 (January): 63–74.

Hamaguchi, Keiichiro. 2018. *Nihon no rodo ho seisaku* [Japan's labor law policy]. Tokyo: JILPT.

Inagami, Takeshi, David Hugh Whittaker, Naoto Ohmi, Toru Shinoda, Yoshihiro Shimodaira, and Yutaka Tsujinaka. 1994. *Neo-corporatism no kokusai hikaku: Atarashii seiji Keizai moderu no tansaku* [International comparative research on neo-corporatism: Exploring a new political economy model]. Tokyo: The Japan Institute of Labour.

JILPT (Japan Institute for Labour Policy and Training). 2010. *Sei ro shi sansha kosei no seisaku kento ni kakawaru seido/kanko ni kansuru chosa: ILO, furansu, doitsu, oranda, eikoku, to EU chosa* [Survey on the systems and practices pertaining to policy deliberation by the government-labor-management tripartite structure: ILO, France, Germany, Netherlands, UK, and EU Surveys]. JILPT Research Material series no.67. Tokyo:JILPT.

Kambayashi, Ryo, and Shinya Ouchi. 2008. "Rodo seisaku no kettei katei wa douarubekika: Shingikai hoshiki no seito-sei ni tsuite no ichi shiron" [How should we determine labor policy: An essay on the orthodoxy of the labour policy council]. *Japanese Journal of Labour Studies* 50, no.10: 66–76.

Kozu, Rikio. 2018. *Kozu-shiki rodo mondai no ressun* [Lessons on labor issues from Rikio Kozu]. Tokyo: Mainichi Shimbun Publishing.

Kume, Ikuo. 2000. "Rodo seisaku katei no seijuku to henyo" [Japanese labor policy making in transition]. *Japanese Journal of Labour Studies* 42, no. 1: 2–13.

Miura, Mari. 2007. "Koizumi Seiken to rodo seiji no henyo: 'Tasu-ha shihai gata' no seisaku katei no shutsugen" [The Koizumi Administration and the transformation of labor politics: The emergence of a "Majority Rule" policy process]. *Annals of the Japanese Society for Public Administration*, no.42: 100–12.

Mizumachi, Yuichiro. 2019. Shin pan *"Doitsu rodo doitsu chingin" no subete* [All about "equal pay for equal work," new edition]. Tokyo: Yuhikaku.

Nakamura, Keisuke. 2008. "Itsudatsu? Soretomo henyo?: Rodo seisaku sakutei katei o megutte"[Deviation? or transformation?: The process of labor policy formation]. *Japanese Journal of Labour Studies* 50: 17–24.

Nishikawa, Akiko. 2007. "Shingi kai to / shiteki shimon kikan no genjo to ronten" [Current Status and Issues of advisory bodies of the central government]. *Reference* 57, no.5: 59–73.

Okazaki, Jun'ichi. 2018. *Hataraki-kata kaikaku no subete* [All about Work Style Reform]. Tokyo: Nikkei, Inc.

Oki, Naotaka. 2008. "Rippa na gyoseki toshite takaku hyoka shitai." [I would like to evaluate it highly as an admirable achievement]. In *2009 university ranking*. Tokyo: Asahi Shimbun Publications.

Sawaji, Takehiko, Takuro Chiba, and Shun Niekawa. 2019. Dokyumento "Hatarakikata kaikaku." [Documentary "Work Style Reform"]. Tokyo: Junposha.

Sensho, Yasuhiro. 2020. *Burakku Kasumigaseki* [The harsh working environment of Kasumigaseki bureaucracy]. Tokyo: Shinchosha Shinsho.

Shirai, Taishiro. 1987. "Rodo jikan ho kaisei o megutte" [On the revision of the law concerning working hours]. The monthly journal of the Japan Institute of Labour 29, no. 10: 2–11.

Umezaki, Osamu. 2008. “Rodo kijun ho no 1987 nen kaisei o meguru seisaku katei: Oraru histori mesoddo ni yoru kensho no kokoromi” [Policy process in the 1987 revision of the Labour Standards Act: Attempt to analyze by the oral history method]. *Japanese Journal of Labour Studies* 50, no. 10 (October): 53–65.

Yamada Hisashi. 2019. “Rodo seisaku katei no henyo to rodo-kumiai” [Changes of processes in labor market policy formation and labor unions’ roles]. *Japanese Journal of Labour Studies* 61, no.9 (September): 16–27.

SUWA Yasuo

Professor Emeritus, Hosei University.

Examining Japan's Labor Standards Inspection Administration and Its Challenge from the Perspective of the Inspection Offices

IKEYAMA Kiyoko

Labor standards inspection offices are at the forefront of labor standards administration in Japan. This paper focuses on those organizations, shedding light on the current state of affairs and the challenges that are faced, as well as examining the potential directions for the labor standards inspection administration in the future. The operational policy of Japan's postwar labor standards inspection administration has changed with the times. The administration now follows a proactive and systematic approach directed at securing appropriate working conditions. However, Japan has for some time suffered from a shortage of labor standards inspectors, and in recent years inspectors have struggled with being unable to devote themselves to their roles as inspectors because of the diversified tasks and the impact of the public servant personnel reductions. As a means of supplementing the lack of labor standards inspectors, outsourcing to private sector providers has been pursued; but this entails unresolved issues regarding the nature of the work entrusted and the status and authority of the personnel selected to conduct it. The labor standards administration also faces the challenge of the dealing with small and medium-sized enterprises. With the approach in recent years tending toward trusting such enterprises to improve their working conditions on their own accord, it is important for the administration to ensure that an appropriate balance is being achieved with the protection of workers.

I. Introductions
II. Changes in the labor standards inspection administration over time
III. The tasks of labor standards inspection offices
IV. Current developments and issues in the labor standards inspection administration
V. Concluding remarks

I. Introduction

The Labor Standards Act (LSA) was enacted in 1947 with the objective of modernizing labor in Japan and establishing international-level labor standards. Following the LSA's enactment, the protection of workers in postwar Japan progressed along with the efforts to address the challenges particular to each period in time. In

recent years, the number of industrial accident compensation claims for brain and heart diseases due to overwork has been rising, and calls from both within and outside Japan to address the issue of long working hours, including a recommendation from the United Nations Economic and Social Council for Japan (May 17, 2013) to "strengthen measures to prevent long working hours and ensure that deterrent sanctions are applied for non-compliance with limits on extensions to working hours" (MOFA 2013),[1] were made. The amendments to the LSA that accompany the Work Style Reform Act (Act on Arrangement of Relevant Act on Promoting the Work Style Reform), which has been incrementally implemented since April 2019, seek to rectify long working hours through the introduction of an upper limit on and penalties on employers for overtime work. This is anticipated to contribute to protecting workers' health as well as facilitating the development of working environments that allow workers with the desire to work to harness their full potential and contribute to Japanese society's declining working-age population. This indicates that even today, over 70 years after the enactment of the LSA, the essential role of labor standards administration—preserving the efficacy of the protection of workers—remains unchanged. However, Japan has suffered from a shortage of *rodo kijun kantokukan* (labor standards inspectors) for some time, and in recent years they have struggled with being unable to devote themselves to their roles as inspectors because of the diversified tasks and the impact of the reduction in the numbers of public servants.

This paper therefore focuses on *rodo kijun kantokusho* (labor standards inspection offices)—the forefront agencies of the labor standards inspection administration—with the aim of shedding light on Japan's labor standards administration in terms of identifying the current state of affairs and challenges that are faced, and considering the roles that need to be played by labor standards inspectors. The structure of this paper is as follows. In Section II, we start with establishing an overview of the legal positioning of labor standards administration agencies and the historical shifts in labor standards inspection administration to identify the changes in and recent characteristics of the principles upon which the labor standards administration is operated. Section III explores the content of the work of labor standards inspection offices, to highlight the distinctive features of and issues involved in those tasks and to present the factors behind the burdens of inspection work. Section IV then draws on data on the opinions of labor standards inspectors to investigate the challenges inspectors are currently facing from four dimensions and to examine what approaches need to be taken in the future to ensure a labor standards inspection administration that could protect workers. Finally, Section V summarizes the current status and challenges of labor inspection systems for further discussion.

II. Changes in the labor standards inspection administration over time[2]

In the 19th century, systems for inspecting labor standards to ensure the legal effect for protecting workers were pioneered in the UK in 1833 and spread to France in 1874 and Germany in 1878. In Japan, the Factory Act was promulgated in 1911 as labor legislation aimed at those classed as "protected workers" (workers under 15 years of age and women), and, after having taken five years for implementation due to opposition from employers and fiscal reasons, the factory inspection system was established in 1916. At the time, factory inspection was affairs under the jurisdiction of the personnel and training bureau of local authorities (under prefectural governors), and the work of a factory inspector was not a standalone role but conducted by police officers, administrative officials and other such public servants alongside their primary roles. As inspection work could often be influenced by political forces or local figures of authority, the protection of workers could vary from region to region. Moreover, while factory inspectors had the authority to conduct inspections, inquire staff, and issue warnings, they had no authority to impose administrative disposition. Administrative guidance therefore largely took the form of issuing warnings and requesting formal letters of apology, and cases were not referred to a public prosecutor (Matsumoto 1981).[3]

The LSA was enacted in 1947, following the end of the Second World War. This raised Japan's labor standards

to the level required for ratification of the International Labour Organization (ILO) Conventions[4] and established the labor standards inspection system. The Labor standards inspection administration at the time of the LSA's enactment primarily focused on the elimination of forced labor, intermediary exploitation, and late-night work or long working hours of women workers and workers under the age of 15, and a strict approach was taken to conducting inspections and providing guidance with the aim of preventing and rectifying legal violations such as non-payment of wages and dismissals in times of severe financial difficulty.

In the postwar period of rapid economic growth, the Policy for the Operation of Labor Standards Administration of 1956 emphasized that "inspection in accordance with the LSA should entail… ascertaining the actual state and causes of violations by implementing inspections to provide guidance with the consent and cooperation of labor and management" (Tatsuoka 1997, 183–134). In the late 1950s, the focus was on the prevention of industrial accidents in the construction of infrastructure for projects such as facilities related to the Tokyo Olympics in 1964. Measures regarding working hours shifted to a soft law policy, such as the promotion of the universal application of the six-day working week system and other such aspects, as opposed to exposing violations.

However, as Japan's economy flourished with the beginning of the 1960s, the fundamental perception of labor standards inspection administration changed. The approach up until then, which had focused on step-by-step inspection and guidance that sought the *nattoku to kyoryoku (consent and cooperation)* (see the quotation above) of employers, shifted to the stance that securing the legally prescribed working conditions, through careful perseverance to ensure implementation, "should now be accepted as a natural premise for running an enterprise" (Tatsuoka 1997, 190). Furthermore, as industrial accidents increased in number and variety with the high-speed economic growth of the late 1960s, the approach shifted to firmly securing the national fairness and uniformity that is the very basic precept of the labor standards inspection administration and ensuring the strict enforcement of the law. The labor standards inspection administration was strengthened to uphold legal standards, and in addition to inspection and guidance being correctly implemented, cases of serious or malicious legal violations or repeated legal violations were strictly dealt with, through means such as referral for judicial punishment (Hamaguchi 2019).

In the period of stable economic growth from the late 1970s onward, working conditions visibly deteriorated, and the demand for administrative services in the form of labor standards inspection administration rose. The government's 1980 guiding principles for economic management, "*Shin keizai shakai 7kanen keikaku* (New seven-year socioeconomic plan)" set the goal of bringing the five-day workweek system close to the standards of the US and European advanced nations by 1985; measures regarding working hours were identified as a key issue for administration (Tatsuoka 1997). These developments came to fruition in the 1987 amended Labor Standards Act and the enactment of the 40-hour working week system. In order to successfully improve the quality of people's lifestyles to a level befitting an advanced nation, the labor standards inspection administration also placed emphasis on securing working conditions, adopted the systems to provide inspections and guidance proactively and deliberately. As indicated by the subsequent issue of the *Rodo jikan no tekiseina haaku no tame ni shiyosha ga kozubeki sochi ni kansuru kijun* (Criteria on Necessary Measures for Employers to Accurately Ascertain Working Hours) in 2001 and the formulation of the *Chingin fubarai zangyo sogo taisaku yoko* (Guidelines for Comprehensive Measures on Unpaid Overtime) in 2003, the shortening of working hours and the inspection and guidance of such measures remained a significant challenge (Hamaguchi 2018).

As described above, from the enactment of the LSA onward, the labor standards inspection administration in postwar Japan has been consistently responsible for the protection of workers. The administration's operating principle largely shifted from a soft line of seeking the *consent and cooperation* of employers, to a hard line of implementing *strict inspection and guidance*. Thus, the current labor standards inspection administration can be seen as the pursuit of a proactive and deliberate approach to securing labor standards.

III. The tasks of labor standards inspection offices

Let us now explore the current tasks of the labor standards inspection offices, the forefront agencies of the current labor standards inspection administration (See Figures 1 and 2). These local agencies of the Ministry of Health, Labour and Welfare (MHLW) consist of 47 prefectural labor offices and 321 labor standards inspection offices across the country. Each labor standards inspection office is comprised of following four departments. The Inspection Department (known in Japanese as *Hōmen*) is responsible for handling applications, consultations, inspections and guidance, and judicial police administration concerning the LSA and other related laws and regulations[5]; Health and Safety Department is responsible for screening applications regarding the installment of machinery and other such equipment, and for providing the necessary guidance on industrial accident prevention and maintaining workers' health; Industrial Accident Department is in charge of processing claims for industrial accident insurance benefits for occupational injuries or illnesses and related tasks; and General Affairs Department is responsible for accounting.[6] This section covers an overview of the first three departments' tasks.

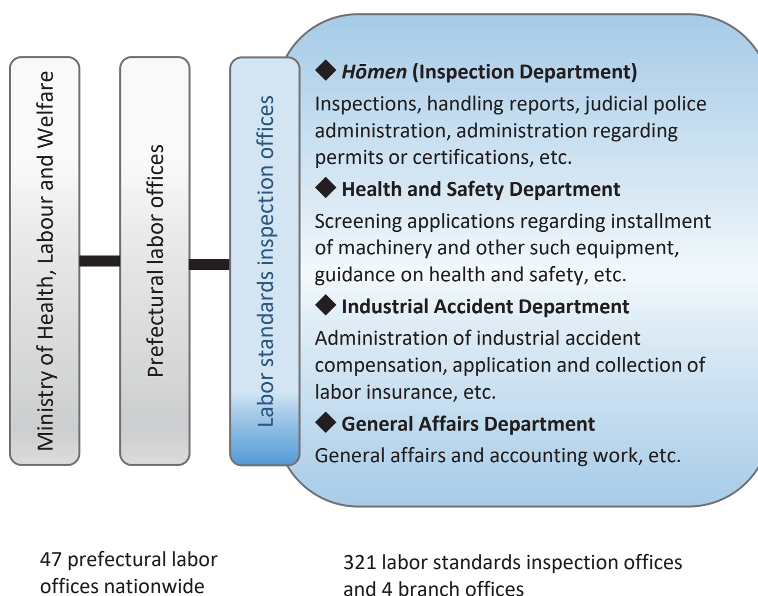
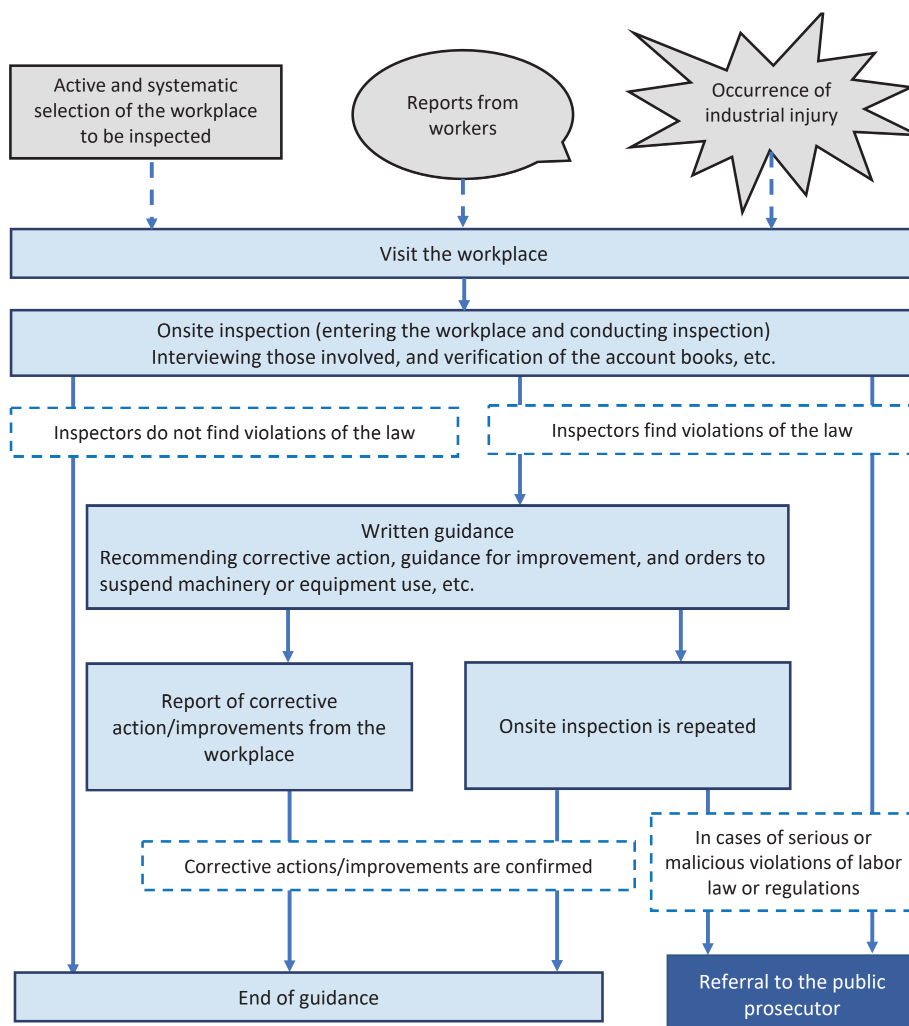


Figure 1. Structure of the labor standards administration



Notes: 1. The above diagram shows the typical steps of the inspection process, these may vary depending on the case in question.
2. In principle, the inspection of and provision of guidance to workplaces are conducted without prior notice.

Figure 2. Typical steps of the inspection process

1. Inspection work

The objective of inspection work is to visit all manner of workplaces in accordance with labor standards-related laws and regulations and ensure the compliance of employers with the legally prescribed standards, thereby securing and improving working conditions, and ensuring the safety and health of the people who work there (MHLW 2022). This is the work of specialist personnel of the MHLW known as labor standards inspectors. Labor standards inspectors are granted the authority of "labor inspectors" to freely enter workplaces, and carry out any examination, test or enquiry necessary, as prescribed under ILO Convention 81, Article 12-1 (ILO 2006), and the authority of a labor standards inspector to enter a workplace to conduct investigations, questioning or other such measures under Article 101 Paragraph 1 of LSA.

Labor standards inspectors conduct four types of inspections: regular inspections, report-based inspections, inspections in response to industrial accidents, and follow-up inspections. The regular inspections entail visiting workplaces based on the annual plan of the relevant labor standards office to conduct an inspection and provide guidance. If inspectors find violations of the law, they recommend corrective actions. If inspectors find violations

involving highly hazardous machinery or equipment, they take administrative disposition on behalf of the director of the inspection office to suspend use. However, inspectors have exclusive authority to take administrative disposition and may take administrative disposition immediately upon inspection without the approval of the director. Report-based inspections are conducted to ascertain the facts in response to a report from a worker. These are mainly cases of requests for assisting in securing individual rights, such as those involving unpaid wages or dismissal.

At the same time, Article 102 of LSA prescribes the labor standards inspector's authority as a "judicial police officer." In cases of serious or malicious violations of the LSA and other laws and regulations that are not rectified despite guidance having been given, labor standards inspectors may warrant non-compulsory investigations such as searches, seizures, or arrests, and referral to the public prosecutor's office. This is known as judicial police administration.

As noted above, labor standards inspectors have the authority to visit workplaces and conduct inspections and other measures. In the case of violations such as non-payment of wages, the inspector has the authority to issue a warning to rectify the violation, and, if the employer does not comply with the guidance, the inspector may practice their judicial policing right and refer the employer to the public prosecutor: but the inspector does not have the authority to collect unpaid wages. The worker in question must therefore file a civil suit or pursue other proceedings.

Regardless of how tenaciously labor standards inspection offices may provide enterprises with guidance, a significant number of cases of legal violations remain unrectified, because of financial difficulties or various other circumstances of employers. Cases of serious or malicious violations are referred for criminal investigation under which the employer's criminal liability is examined. And yet, according to the analysis by the labor union of full-time and part-time employees in labor administration, the *Zen rodo-sho rodo-kumiai* ("Zenrodo"; the largest trade union in the labor administration with membership of 16,000 persons), of the current status of the framework for inspection work (2020b), the system is far from being equipped with the sufficient personnel for all unrectified violations to be individually investigated.

As described in detail below, the labor standards inspection offices are also equipped with departments for specialist tasks—namely, the Health and Safety Department and the Industrial Accident Department—the personnel quotas of such departments have also been on the decrease due to the trend toward personnel cutbacks under the reforms to the public servant system. This has prompted the issue that labor standards inspectors may be assigned health and safety or industrial accident-related tasks, rendering them unable to devote themselves to their primary role of conducting inspections.

2. Health and safety services

Health and safety services involve providing guidance to equip workplaces to take the necessary measures to prevent industrial accidents and occupational illnesses and secure workers' health in accordance with the Industrial Safety and Health Act. In addition to inspecting cranes and other such machinery, and examining applications of planned construction work, labor standards inspectors in charge of health and safety services visit workplaces to provide guidance for more proactive measures regarding health and safety, as opposed to merely for the purpose of identifying potential legal violations. Health and safety services were formerly conducted by *kōsei rōdō gikan* (MHLW labor technical officials), who possessed specialist knowledge and experience. There were only a few cases in which labor standards inspectors were assigned to the Health and Safety Department, such as for the purpose of career development. However, with the trend toward personnel reduction in light of developments such as the policy on "*Kuni no gyosei kikan no teiin no jungen ni tsuite* (Net Reduction in Personnel of National Administrative Agencies)," approved by the Cabinet in 2006, MHLW labor technical officials were no longer hired. Currently, in or after 2008, labor standards inspectors are assigned to health and safety services.

3. Industrial accident-related services

Industrial accident-related services entail providing fair protection with regard to injury while at work or commuting, in accordance with the Industrial Accident Compensation Insurance Act. Once the necessary investigation, such as interviews and other such onsite information gathering or consultation of medical experts, has been conducted, the director of the relevant labor standards inspection office certifies a case as an occupational or non-occupational accident and authorize payment of insurance proceeds (insurance benefits).

The economic growth and technological advances of the postwar period saw not only a rise in the number of industrial accidents but also led to the emergence of new occupational diseases. The MHLW has over the years amended the list of occupational diseases, as prescribed under Article 35 of the Ordinance for Enforcement of the LSA, in accordance with the results of deliberations by a review committee composed of expert physicians. It is, however, difficult to anticipate the occurrence of new industrial accidents from shifts in social circumstances and promptly certify accidents as occupational or non-occupational. Given that occupational diseases involve a number of factors—such as differences in understanding and changes in sense of entitlements between labor and management, advances in medical science, and the diversity of labor relations—certification of diseases as occupational or non-occupational continues to pose difficulties.

Providing such industrial accident-related services demands not only administrative interpretation but also specialist knowledge and experience regarding the decisions and precedents of the Labor Insurance Appeal Committee and insights from the medical field. Investigation and other such work were therefore typically conducted by *kōsei rōdō jimukan* (MHLW labor administration officials) who had acquired the necessary skills in industrial accident services through training courses and practical experience. However, with the trend toward personnel cutbacks of public servants, the hiring of MHLW labor administration officials ceased in 2008, and while it was relaunched in 2017, labor standards inspectors are still being assigned to industrial accident services at present. This also contributes to the aforementioned issue of labor standards inspectors being unable to concentrate fully on inspection work.

IV. Current developments and issues in the labor standards inspection administration

Now that we have covered the historical background to and challenges involved in the practical work of the labor standards inspection administration, let us explore the current developments and issues. We will focus on four particular areas: (i) the problem of the shortage of labor standards inspectors; (ii) the challenges of outsourcing inspection work to private sector providers as a means of supplementing the shortage of inspectors; (iii) the increasing complexity of inspection work along with the changes in the environment and the fairness and uniformity with which it is handled, and (iv) the issue of the protection of workers in small and medium-sized enterprises (SMEs), which has been a topic of concern since the enactment of the LSA.

For this analysis, we draw on the results of the "Twenty-fourth Labor Administration Research Activity Questionnaire" (Inspector Questionnaire) conducted by the Zenrodo in July, 2019, to survey labor standards inspectors across Japan (for non-managers) on the topic of effective administration approaches and legislation to alleviate overwork at labor standards inspection offices (1,053 responses received).

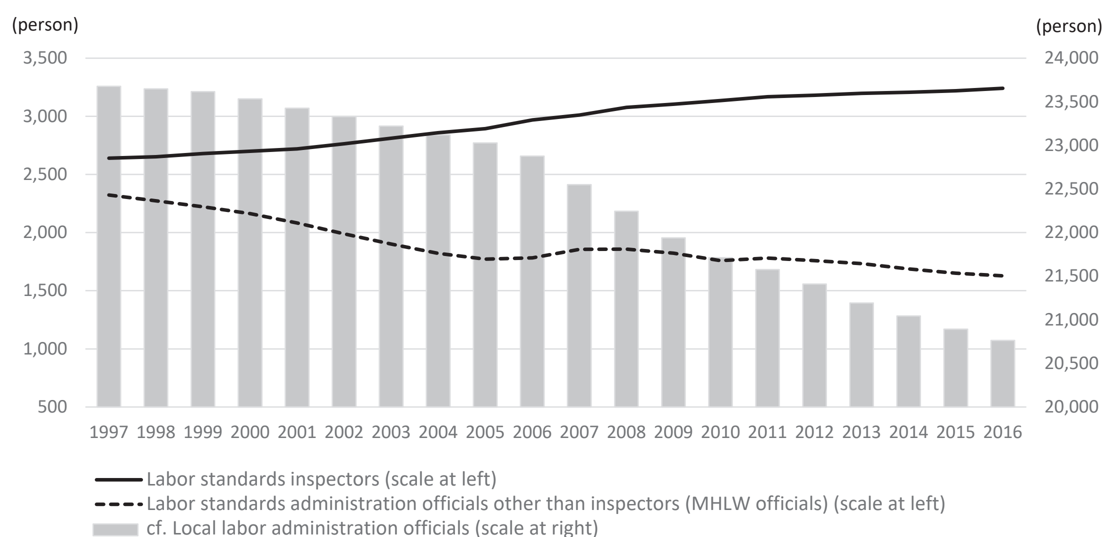
1. Shortage and increases in the numbers of labor standards inspectors

The ILO sets the appropriate ratio for labor standards inspectors in advanced countries as one inspector for a maximum of 10,000 workers (ILO 2006). However, as various statistics indicate, not only does the current situation in Japan fall far short of this standard: but there are also insufficient number of labor standards inspectors to carry out inspection work.

According to data used by the 1st meeting of the "Taskforce on Outsourcing of Labor Standards Inspections to Private Sector Providers" ("the Taskforce on Private Sector Outsourcing"), hosted by the Cabinet Office on March 16, 2017, indicates that Japan had a personnel quota of 3,241 labor standards inspectors in FY 2016, which amounts to 0.62 inspectors for every 10,000 employed people. Looking at the equivalent values for other countries, Germany had 1.89 inspectors for every 10,000 employed people, the UK had 0.93 inspectors, France had 0.74 inspectors, and the US had 0.28 inspectors—namely, aside from the US, Japan had the lowest number of inspectors per 10,000 employed people after the US (Cabinet Office 2017a).[7] In the materials for the Taskforce on Private Sector Outsourcing, the MHLW explains that "3,241 people is the number of labor standards inspectors engaged in inspection work at labor standards inspection offices" (Cabinet Office 2017a). On the other hand, the MHLW's "*Heisei 29 nen rodo kijun kantoku nenpo* (Annual Report on Labor Standards Inspection 2017)" quotes the number of labor standards inspectors at labor standards inspection offices across Japan for the same year, FY 2016, as 2,923 people (MHLW, Labour Standards Bureau 2019). Based on the number of employed people (66.0252 million people according to the ILO LABORSTA Database (2023)), this is a total of 0.44 officers per 10,000 employed people. This figure is lower than that of the Taskforce on Private Sector Outsourcing materials. In relation to this, the MHLW has noted that "the Annual Report on Labor Standards Inspection began including the number of labor standards inspectors engaged in inspection work at labor standards inspection offices from 2016 onward,"[8] but makes no clear statement on the discrepancy with the number of labor standards inspectors in the 1st Taskforce on Private Sector Outsourcing materials. Moreover, the figure for the "personnel quota" includes positions that are vacant, and staff who are on leave or holding multiple roles concurrently, or similar. Therefore, taking into account that there may be positions that are vacant or otherwise not being filled, the number of labor standards inspectors actually engaging in inspection work may in fact be even lower. "Excluding those employees in training, the number of employees engaging in inspection visits may be around 1500 people nationwide (Morisaki 2015a)." If we tentatively subtract the number of labor standards inspection office directors and deputy directors (467 persons) as recorded in the 2nd Taskforce on Private Sector Outsourcing materials from the number of labor standards inspectors as noted in the Annual Report on Labor Standards Inspection (2,923 persons), the number of labor standards inspectors actually conducting inspections is estimated to be about 2,500 people. With the current personnel, the average number of inspections per year is no more than 170,198 (MHLW, ed. 2019). This means that attempting to inspect every single workplace across Japan—approximately 5.32 million locations (MIC, Statistics Bureau 2019)—even just once, would take around 30 years.

However, the problem does not stay at the number of labor standards inspectors. As shown in Figure 3, while the number of labor standards inspectors has been on the rise in the last 20 years, there has been a decrease of as much as around 30% in MHLW labor administration officials and MHLW labor technical officials working at labor standards inspection offices. Furthermore, the local labor administration personnel quota, which includes the staff of the prefectural labor offices and *kokyo shokugyo anteisho* (public employment security offices that provide job consultation and placement services commonly known as *Hello Work*) has been reduced by around 3,000 people in 20 years.

In contrast, the scope of the role that society demands for labor standards inspection offices and labor offices has expanded in recent years. In addition to the task of ensuring the fulfillment of labor-related laws and regulations, the labor offices were also given the task of handling civil individual labor disputes in 2001 following the enforcement of the Act on Promoting the Resolution of Individual Labor-Related Disputes. On the enforcement of the Act, it was prescribed that labor standards inspectors were not to handle civil labor-management disputes. However, looking at the *Rodo kankei shokuin roku* (Directory of labor administration officials) (Rodo Shimbun-sha 2008–2019), labor standards inspectors were in fact taking on the roles of MHLW labor administration officials and handling such disputes as *rōdō funsō chōseikan* (labor dispute coordinators). As seen in Figure 3,



Source: Compiled by the author using data from the MHLW's explanatory materials from the 2nd Taskforce on Outsourcing of Labor Standards Inspections to Private Sector Providers (Cabinet Office 2017b) and *Current Developments in Labor Administration* (Zenrodo 2020a).

Notes: 1. "Labor standards inspectors" are public servants assigned to perform labor standards inspection.

2. "Labor standards administration officials other than inspectors" refers to the MHLW officials (labor administration officials and labor technical officials) who are public servants performing the labor standards administration duties at labor inspection offices.

3. "Local labor administration officials" are public servants assigned to work in the prefectural labor offices, labor standards inspection offices and public employment security offices (including notes 1 and 2 above).

Figure 3. Trends in numbers of labor standards inspectors and MHLW officials working at Labor Standards Inspection Office

although the personnel quota for labor standards inspectors has increased, the number of labor administration officials other than inspectors has declined. The Directory indicates that the labor standards inspectors have been assigned to departments other than inspections and are not necessarily engaged in inspection work. Occasionally, newly hired labor standards inspectors still in practical training are assigned to Inspection Department, yet experienced labor standards inspectors are assigned to other fields.

As noted in Section III, the exact number of labor standards inspectors working in health and safety services or other such areas other than the task they were primarily intended to engage in, that is, inspection work, is not clear. Nevertheless, the increase in the personnel quota of labor standards inspectors may not be assisting to solve the issue of the quantity and the quality of inspection work being conducted. Regarding such circumstances, in its 2nd Taskforce on Private Sector Outsourcing materials, the MHLW mentions about the reduction of the personnel in Industrial Accident Department and Health and Safety Department, that they are "focusing on streamlining in industrial accident services" and "managing to deal with health and safety issues by solving problems more creatively" (Cabinet Office 2017b).

The increase in the personnel quota of labor standards inspectors has, on the other hand, raised concerns regarding whether it is possible to secure capable personnel suitable for the role. While from 2000–2008 the number of newly hired labor standards inspectors was around 70–90 persons per year, from 2009–2012 there were no more than around 50 new hires, because inspection work became the subject of budget screening by the *Gyōsei sasshin kaigi* (Government Revitalization Unit) founded under the Democratic Party of Japan government. However, it rose again in 2013 to around 230 persons, and new hiring has since then continued to rise, albeit not to the extent of supplementing the decline in the labor administration officials other than labor standards inspectors. While such increased hiring of labor standards inspectors is welcomed amid the shortage of inspectors

and the cutbacks in the personnel quotas of other employees, it has led to falling in the scores to pass the examination for labor standards inspectors. More specifically, in the case of hiring for labor standards inspector type A (humanities background), in 2012, when 57 persons (NPA 2014, 102) were hired, the scores to pass the first stage examination (written examination) was 468 points, in contrast to 379 points in 2013 when the number hired was increased to 236 persons (NPA 2015, 84) and 204 points in 2019, when 231 persons (NPA 2021, 74) were hired.[9] Labor standards inspectors must have the ability to flexibly adapt to an ever-changing society and deal with employers they are working with politely and in a compelling manner. It is therefore possible that hiring is based not only on the written examination but to some extent on the persons themselves, on the basis of their performance in the second stage interview examination. It is necessary to hire persons with the suitable aptitude and disposition and ensure that they develop their skills through training and practical experience after they are hired.

2. Utilization of the private sector in inspection and guidance

The aforementioned Taskforce on Private Sector Outsourcing was established on March 9, 2017 with the objective of addressing that "personnel shortage is rendering it difficult for labor standards inspectors to conduct inspections sufficiently," by "seeking to expand the use of the private sector to supplement inspection work in light of the Action Plan for the Realization of Work Style Reform, and allow labor standards inspectors to tackle cases that may involve more serious violations" (Cabinet Office 2017a). The Taskforce Private Sector Outsourcing sought to develop specialist analysis of this issue in preparation for deliberations by the Regulatory Reform Promotion Council, which had been created by the Cabinet in September 2016.

Drawing on another example of outsourcing to the private sector—the outsourcing of the regulation of abandoned vehicles to private sector businesses under the 2006 amendment to the Road Traffic Act—the Taskforce on Private Sector Outsourcing explored a proposal to outsource regular inspections to private sector businesses that employ *sharōshi* (labor and social security attorneys) and other such personnel. In response, the MHLW argued that "regular inspections entail labor standards inspectors visiting workplaces without advance notice to confirm the existence of violations of the LSA and other such regulations and provide administrative guidance or, where necessary, pursue duties of judicial police officers. If entrusted private sector businesses conducted voluntary inspections and referred any problems noted to an inspector, time would be lost in the process, making it possible for documentary evidence to be destroyed, or other such inappropriate behavior to be committed. The prompt protection of workers would become highly unlikely." Nevertheless, the Taskforce on Private Sector Outsourcing concluded that "private sector providers selected through a public tender process may take on the tasks of sending self-inspection forms and other such documentation to workplaces that are yet to file an Article 36 Agreement (*saburoku kyotei*; a labor-management agreement regarding overtime work as prescribed under LSA Article 36) and processing the responses, and, if consent has been obtained, checking on labor-related documentation and providing consultation and guidance to those workplaces that are considered to require guidance or have failed to respond, and referring any problematic workplaces to a labor standards inspector" (Hamaguchi 2019).

There are two issues involved in allowing the employees of the private sector providers that are selected ("the private sector providers") to carry out the work of labor standards inspectors. Firstly, one issue is that there are specifications for the status and authority of the labor standards inspectors who conduct inspections and provide guidance. ILO Convention 81 (ILO 1947) specifies that "the inspection staff shall be composed of public officials whose status and conditions of service are such that they are assured of stability of employment and are independent of changes of government and of improper external influences" (Article 6) and that "labor inspectors shall be recruited with sole regard to their qualifications for the performance of their duties" and "adequately trained for the performance of their duties" (Article 7). The LSA prescribes that the central and regional inspection

agencies fall under the direct jurisdiction of the national government (Article 99 LSA) and determines the process for qualification and change of status of a labor standards inspector to ensure the fair exercising of authority (Article 97 LSA). The Taskforce on Private Sector Outsourcing determined that the labor and social security attorneys employed by private sector providers should be granted the same authority as a public servant. It is not, however, clear from the minutes of the taskforce meeting what consideration was given to the issue of the interpretation of the ILO Convention and the LSA in the case of outsourcing inspection work to a private sector provider. The Labour Lawyers Association of Japan (2017) submitted a "Statement of Opinion on the Outsourcing of Labor Standards Inspection Work to Private Sector Providers" in June 2017, asserting that it could not be claimed "essential" to expand the utilization of private sector services (private sector outsourcing) without considering the possibility of providing more personnel for labor standards inspection offices in order to meet ILO criteria, and also spotted a flaw involved in outsourcing work to labor and social security attorneys.

The other issue is the nature of the work outsourced to private sector providers. Labor standards inspection offices typically deal with workplaces that are yet to submit an Article 36 Agreement to the office director[10] (MHLW, Prefectural Labour Bureaus, and Labour Standards Inspection Offices 2022, 6) by sending self-inspection forms and other such documents to confirm that there are no issues in accordance with legal regulations. The labor standards inspectors carefully review the self-inspection forms that are submitted by the workplaces and enter any workplaces that are determined to require administrative guidance to carry out inspections and provide guidance. These tasks have been outsourced to private sector providers. It is, however, challenging for private sector provider employees to determine whether violations have occurred and determine the necessity of administrative guidance and inspections and guidance solely on the basis of the self-inspection forms submitted by workplaces. For instance, a workplace may seek to avoid suspicion of a legal violation by providing inaccurate information on its self-inspection form. This form is the sole basis on which the private sector provider determines whether legal issues exist and the need for the administrative guidance and inspections and guidance; there is therefore a risk that cases where administrative guidance and inspections and guidance are necessary might go undetected. The MHLW must address the issue of outsourcing inspection work to private sector providers by compiling information such as the status of inspection offices and opinions of labor standards inspectors; and it must comprehensively review the trends in the provision of inspections and guidance and the developments after guidance to ascertain what impact has occurred since outsourcing was introduced in terms of deterrence from or rectification of violations of the LSA. It is also necessary for continued efforts to be made to explore the issues of private sector outsourcing and the scope of the work that is outsourced.

3. Ensuring fairness and uniformity and tackling increasing complexity and difficulty in practice

As society and the economy change, the work of labor standards inspectors has become more complex, and inspections and guidance likewise have become more difficult. The criteria and definitions set out in the LSA and other regulations are ambiguous, with a considerable number of exemptions and special measures that are complex themselves. Thus, there arises doubt and criticism in the interpretation and the uniformity of handling of the LSA for some cases. Let us address this issue by reviewing responses from the "Inspector Questionnaire" that touch on the problems faced by labor standards inspectors.

Starting with the issue of the interpretation and handling of legal regulations, responses from the Inspector Questionnaire reveal that there are many areas where inspectors feel the need for criteria and definitions to be explicitly indicated. More specifically, these include: "the status and scope of managerial and supervisory personnel" (68%), "the scope of working hours" (54%), "the definitions of "*jōji* (literally, "regularly")" and "*chitai naku* (literally, "without delay")" (the expressions often used in the application submitting rules)" (44%), "the definition of statutory days off" (38%), and "the status and scope of workers" (35%). These issues include

areas of a combination of various factors which must be taken into consideration in order for judgment to be made; and other areas which formerly applied but may no longer be fitting depending on changes in society and the growing diversity of working styles. Once there is doubt regarding such interpretations and handling, an institutional response has been adopted according to criteria that are consistent nationwide. It is necessary, therefore, for definite and updated judgment criteria to publicize so that the system is operated on the basis of the understanding not only of the administration but also enterprises and the workers themselves.

When inspectors carry out inspections and provide guidance, "there are detailed provisions specifying the format of any documentation issued, such as written recommendations for rectification, or guidance forms, and even prescribing the kind of language to be used on those documents." It is suggested that the "guidelines and manuals have become elaborately detailed to an extent that make conducting the inspections and guidance needed really difficult," and, while the fairness and uniformity of administrative guidance is ensured, it has been noted that there is a "tendency for even slight deviation from the manual to lead to negative appraisal within the administration," as well as problems with regard to "balancing the quality and quantity–amount of the work" (Zenrodo 2020b).

A further aspect of inspection work that causes concern among labor standards inspectors at the inspection work is the potential for troubles with business operators and other such managers ("employers") at the time of inspections. Responses from the Inspector Questionnaire show that 38% of respondents feel that there are "almost no safety measures for protecting oneself from trouble or other such issues." Labor standards inspectors typically conduct inspections and guidance by visiting workplaces for surprise inspections—namely, without advance notice. While many labor standards inspectors recognize the necessity of such unannounced visits, it is not uncommon for surprise inspections to lead to troubles with employers. Looking at the responses to the Inspectors Questionnaire, the percentage of respondents who had "sensed possible physical danger or felt uneasy as a result of how an employer spoke or behaved" (45%) and the percentage who had been "physically assaulted or threatened by an employer" (17%) together constitute as much as 62% of respondents; this is a far higher percentage than those who responded that they "had never been verbally or physically assaulted or threatened" (38%). Addressing this issue, Morisaki (2015b) notes: "Inspectors generally visit workplaces alone. This is due to the simple reason of the lack of personnel. They are often the targets of violence against administrative officials. Conducting inspections alone also makes it difficult for more experienced staff to pass on their skills to younger personnel. Inspections and guidance could be conducted more intensively if inspectors were to visit in pairs."

Given the issues set out in this section, there appears to be a need to increase the number of labor standards inspectors and ensure a system by which inspectors typically conduct visits in groups of two or more, as a means of guaranteeing the quality of the inspections and securing the safety of labor standards inspectors. This would also be preferable for developing an environment in which labor standards inspectors are able to concentrate fully on their fundamental role and fulfill their potential.

4. Inspection and guidance on SMEs

As described in Section II, the operational policy of the labor standards inspection administration in postwar Japan has shifted over time from a soft line of seeking *consent and cooperation* to a hard line of *strict inspections and guidance*, and currently the labor standards inspection administration follows a proactive and deliberate approach to securing working conditions. However, it has been questioned whether such an operational policy should be uniformly applied to all enterprises.

More specifically, there have, since the enactment of the LSA, been strong opinions among business operators for recognition that the application of the law to SMEs is an "excessive burden" or that SMEs are not "equipped with the capability for incorporating the law" (Hiromasa 1997a). The issue was addressed by the *Rodo kijun ho*

chosa kai (Labor Standards Act Review Committee), which was formed in 1955 following the 1952 and 1954 amendments of the LSA with the aim of responding to the Minister of Labor's request for deliberation of the necessity of amendments of the LSA, investigation, and debate of the related issues. The Labor Standards Act Review Committee's report indicates that consideration was given to the fact that due to the "extremely significant differences in capability among enterprises depending on their size and in turn considerable discrepancies in working conditions," "expecting all SMEs, with vulnerable business foundations, to provide the same working conditions as large enterprises exceeds the capacity of SMEs." On the other hand, the opinions noted also suggested that "contemplating the relaxation of requirements for SMEs is contrary to the fundamental objective of measures for protecting labor policy" and that "the notion of seeking to improve conditions in SMEs by allowing lower standards of working conditions is a logical fallacy, in which priorities are mistaken" (Hiromasa 1997b).

In April 2018, around 60 years after such deliberations, *Rodo jikan kaizen shidou/enjo team* (Guidance and Support Teams for Improving Working Hours) were launched at labor standards inspection offices nationwide (MHLW 2018a). These teams are made up of two groups— "Working Hours Review and Guidance Group" and "Working Hours Consultation and Support Group"—and both are the work of labor standards inspectors. The Working Hours Review and Guidance Groups conduct inspections and guidance for rectifying long working hours, while the Working Hours Consultation and Support Groups respond to requests for advice and provided assistance regarding information on legal regulations and labor management frameworks, mainly for the employers of SMEs. In other words, the role of the Working Hours Consultation and Support Groups is to provide assistance, and they refrain from seeking employers to rectify legal violations.

This approach was prompted by factors such as discussions in and outside of the Diet regarding the Work Style Reform Bill, which had seen strong calls for "consideration on SMEs and micro business owners" (Zenrodo 2020b). Securing approval of the bill's submission required incorporating provisions that gave special consideration to SMEs because organizations or bodies composed of SMEs had consistently criticized the government for the upper limits on overtime and work on holidays (Hamaguchi 2019).

However, only the large-scale labor standards inspection offices are well equipped with labor standards inspectors to form two groups: a considerable number of labor standards inspection offices lack enough inspectors. Thus, individual labor standards inspectors are therefore required to fulfill two different roles, working under two different business titles. Responses to the Inspector Questionnaire show that some inspectors feel that they should not engage in the work of the Working Hours Consultation and Support Group, which involves providing only consultation and support, and not issuing recommendations to rectify violations.

The Working Hours Consultation and Support Groups were not the only form of special consideration given to SMEs. On December 28, 2018, the "Basic Policies on Labor" (hereafter "the Basic Policies") were approved by the Cabinet in accordance with the Act on Comprehensive Promotion of Labor Policies. The Basic Policies prescribed that "in conducting inspections and providing guidance, approaches shall be taken from the perspective of SMEs, which entail taking into consideration the trends in working hours, the extent to which the business is able to secure personnel, the current developments in business transactions and other such circumstances in the SMEs, and, even in the event that a violation of the LSA, the Industrial Safety and Health Act or other such labor standards-related legislation is identified, the employer shall be encouraged to make improvements on their own accord, in light of the circumstances of the SME concerned" (Chapter 2.1.(3)) (MHLW 2018b, 4–5). Namely, even in cases where violations were identified, the approach would be to *encourage* the employer to make improvements *on their own accord*. The "Code of Conduct for Labor Standards Inspectors,"[11] which was formulated on January 11, 2019, in response to the Basic Policies, also prescribed that "in the event that a legal violation has occurred at an SME, the inspector shall encourage the employer to make improvements on their own accord, in light of the trends in working hours, the extent to which the business is able to secure personnel,

the current developments in business transactions and other such circumstances" (Article 5). Namely, the principle that even in cases where legal violations were found, the approach would be to *encourage* employers to make improvements *on their own accord* was also prescribed in the Code of Conduct.

Provisions on the work conduct of labor standards inspectors had traditionally been prescribed in the "Code of Duties for Labor Standards Inspectors," enacted in 1950. This Code of Duties states that "the primary mission of labor standards inspectors is, above all, to secure working conditions for workers through the enforcement of the labor standards laws and regulations, thereby improving the social and economic benefits for the public and in turn serving the people as a whole" (Tatsuoka 1997). The LSA also prescribes that "the standards for working conditions fixed by this Act serve as minimum standards; a party to a labor relationship must not cause working conditions to deteriorate using these standards as the grounds for doing so, but instead must endeavor to improve them" (Article 1, Paragraph 2).

In fact, it is common to withhold the enforcement of an amendment of a law in the case of certain sizes of workplace. However, it is difficult to rationalize withholding the rectification of legal violations by leaving the improvement to measures to be taken by SMEs on their own in the case of laws that have been in effect for a considerable period of time, even with the gradual application of the law. There are currently approximately 32.17 million workers employed at SMEs across Japan, around 70% of all employees (The Small and Medium Enterprise Agency 2020). It prompts the question whether entrusting employers themselves to improve working condition that fall below the "minimum standards" prescribed in LSA Article 1 could be tantamount to abandoning these workers of SMEs.

If the legal violations of SMEs are dealt with as prescribed by the Basic Policies and Code of Conduct described above—that is, with nothing more than polite explanations and encouragement for employers to take action themselves—and the necessary measures are not taken, if a worker is somehow injured or adversely affected, the labor standards inspection office that did not take the necessary measures may be called into question for its "lack of administrative action." This is an issue that surely requires further debate.

There are also concerns that the MHLW policy of accepting groundless complaints or unreasonable requests from employers could lead to a decline in the morale of inspectors and eventually discourage them from protecting worker safety. Around the time that the Code of Conduct was formulated in 2019, the MHLW set up an email contact point on its website for complaints, requests, and opinions regarding the inspection and guidance work of labor standards inspection offices.[12] There is no shortage of business operators who find inspections and guidance detrimental to the operation of their business and the irrational pretext of the administration. Under such circumstances, labor standards inspectors have been tackling difficult tasks with a strong sense of justice and responsibility.

In this section we drew on the survey results of the Inspector Questionnaire to investigate the current developments and issues of labor standards inspection administration from four perspectives. Despite the fact that there has typically been a shortage of labor standards inspectors, the roles and work expected of labor standards inspectors have increased given the personnel shortages that resulted from the reform of public servants, such that labor standards inspectors are unable to concentrate fully on their primary role of conducting inspections. There has also been a demand from society in recent years for labor standards inspection offices to perform an increasingly diverse range of roles. Supplementing the shortage of labor standards inspectors with outsourcing to private sector providers entails a number of unresolved issues that need further discussions, such as the problems regarding the required authority and status of the labor standards inspectors and the quality of the judgments made by such private sector providers. It is also not possible to confidently argue that there have been significant improvements in the labor environments of SMEs in comparison with around 60 years ago—when it was argued that "the notion of seeking to improve conditions in SMEs by allowing lower standards of working conditions is a logical fallacy, in which priorities are mistaken" (Hiromasa 1997b, 155). Given such

circumstances, there are concerns that the recent basic approach to handling legal violations by SMEs—that is, entrusting employers to make improvements on their own accord—is in effect abandoning the protection of workers employed by SMEs in Japan.

V. Concluding remarks

While Japan has a noted shortage of labor standards inspectors, the roles and work expected of labor standards inspection offices have become increasingly varied in recent years. The amount of work assigned to labor standards inspectors has also risen with the trend toward personnel cutbacks because of the reform to the system of public servants; despite increase in the number of labor standards inspectors, they are still unable to fully concentrate on their primary work of conducting inspections. Since the late 2010s, the possibility of outsourcing inspection services to the private sector has been explored as a means of compensating for the shortage of labor standards inspectors. In 2018, nationwide private outsourcing of some services began for workplaces that had not yet submitted the 36 agreements to the Labor Standards Inspection Office. It is necessary to empirically examine the effectiveness and the problems identified by the labor standards inspectors. Furthermore, discussion is needed on whether such methods lead to the protection of workers.

Looking back on the history of the labor standards inspection administration as shown in this paper, it is clear that its purpose and operational policy have changed over time and with changes in attitudes. In the 1960s, the Ministry of Labour (current MHLW) established the operational policy that securing the legally prescribed working conditions was "a natural premise for running an enterprise"; now, around 60 years later, while labor environments have improved in Japan's SMEs, it is questionable whether it is enough to allow the administrative guidance of SMEs to merely constitute encouraging employers to address legal violations by making improvements on their own accord. Who will protect the workers of SMEs who are unable to rely on a labor union? Regardless of changes in the times, or the changes in ways of working, it is the labor standards inspection offices that are responsible for the protection of workers. Labor standards inspection offices need to strive to maintain a balance between their two contrasting roles of understanding and supporting enterprises on the one hand and conducting inspections with the possibility of imposing sanctions on the other, as they continue to serve as a presence that maintains an environment in which all workers are able to work at ease.

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Notes

1. See Ministry of Foreign Affairs (2013). The source document in English is below.
UN Economic and Social Council, Concluding Observations on the Third Periodic Report of Japan, adopted by the Committee on Economic, Social and Cultural Rights at its fiftieth session (29 April–17 May 2013), E/C.12/JPN/CO/3. See UN Treaty Body Database, https://digitallibrary.un.org/record/749309?ln=en

2. This section is based on Ministry of Labour, Labour Standards Bureau (1997).

3. See Oka (1913) for details of the factory inspection system at the time.

4. Article 427, Paragraph 9 of the 1919 Treaty of Versailles (Treaty of Peace between the Allied and Associated Powers and Germany) set out provisions on the system of inspection and women's participation. In 1923 the ILO adopted the Labour Inspection Recommendation 20, a recommendation on general principles for the organization of the inspection system to secure the implementation of the regulations and provisions intended to protect workers, which set out the need for the establishment of inspection systems as well as the scope of inspections, and aspects regarding inspectors such as their occupational authority and organization. ILO Labour Inspection Recommendation No. 20, ILO https://www.ilo.org/tokyo/standards/list-of-recommendations/WCMS_238976/lang--ja/index.htm (Accessed on March 1, 2021).

5. The labor standards inspectors deal with a number of laws including the Labor Standards Act, the Minimum Wage Act, the Industrial

Safety and Health Act, the Pneumoconiosis Act, the Industrial Homework Act, and the Act on Ensuring Wage Payment.

6. General Affairs Department, responsible for accounting and other such areas, currently no longer in fact exist due to personnel cutbacks, except at certain large labor standards inspection offices.

7. MHLW explanatory materials for the 1st meeting of the Taskforce on Outsourcing of Labor Standards Inspections to Private Sector Providers (March 16, 2017). It is, however, important to note that the scope of work of labor inspectors differs from country to country.

8. Results of an inquiry by the author to the General Affairs Dvision, Labor Standards Bureau, Ministry of Health, Labour and Welfare (December 4, 2020).

9. Hiring numbers are from the *Annual Report* (2013, 2014, 2020) of the National Personnel Authority, passing marks are from public materials (2012, 2013, 2019) of the National Personnel Authority, which are published and refreshed on the website each year and archived at National Diet Library. The passing marks for 2012 and 2013, which are from prior to the period for which documents are retained, were provided by the website *Sensei no dokugaku kōmuin juku*. The passing marks are not raw scores, but standard scores drawn from mean scores, standard deviations, and points allocations ratios for exam questions, for which the pass borderline has declined. https://senseikoumuin.com/roukibairitu/ (Accessed on January 20, 2021).

10. In principle, an employer shall not have a worker working for more than 40 hours per week or more than eight hours per day.…In the event that an employer has legally concluded an Article 36 Agreement (a labor-management agreement relating to overtime work and work on days off) with the majority of its employees and filed this with the relevant labor standards inspection office, the said employer can allow employees to engage in overtime work and work on days off within the scope of the agreement (MHLW 2022, 6). https://www.mhlw.go.jp/new-info/kobetu/roudou/gyousei/kantoku/dl/040330-3.pdf (Accessed on June 29, 2022).

11. See "Code of Conduct for Labor Standards Inspectors" (in Japanese) at https://www.mhlw.go.jp/content/11200000/000711719.pdf (Accessed on March 1, 2021).

12. See "Email point of contact for complaints regarding inspections and guidance" (in Japanese) at https://www.mhlw.go.jp/stf/newpage_03073.html (Accessed on March 1, 2021).

References

Cabinet Office. 2017a. "Dai 1 kai rodo kijun kantoku gyomu no minkan katsuyo tasuku fosu gijiroku" [Minutes of the 1st meeting of the taskforce on outsourcing of labor standards inspections to private sector providers]. Accessed March 1, 2021. https://www8.cao.go.jp/kisei-kaikaku/suishin/meeting/wg/roudou/20170316/gijiroku0316.pdf.

――. 2017b. "Dai 2 kai rodo kijun kantoku gyomu no minkan katsuyo tasuku fosu gijiroku" [Minutes of the 2nd meeting of the taskforce on outsourcing of labor standards inspections to private sector providers], Accessed March 1, 2021. https://www8.cao.go.jp/kisei-kaikaku/suishin/meeting/wg/roudou/20170406/gijiroku0406.pdf.

Hamaguchi, Keiichiro. 2018. *Nihon no rodoho seisaku* [Japan's labor law policy]. Tokyo: JILPT.

――. 2019. "Rodo kijun kantoku shisutemu no isseiki" [A century of labor standards inspection systems]. *Quarterly Labor Law* 265 (Summer 2019):170–190.

Hiromasa, Jun'ichi. 1997a. "Niju-nana nen ho kaisei to sono igi" [Amendment to the Labor Standards Act in 1952 and its significance]. In *Rodo kijun gyosei 50 nen no kaiko* [A retrospective of 50 years of labor standards administration], edited by Labour Standards Bureau, Ministry of Labour, 108–145. Tokyo: Japan Personnel Research Institute.

Hiromasa, Jun'ichi. 1997b. "Rodo kijun ho chosa kai toshin to sono zengo" [Before and after the Report of the Labor Standards Act Review Committee]. In *Rodo kijun gyosei 50 nen no kaiko* [A retrospective of 50 years of labor standards administration], edited by Labour Standards Bureau, Ministry of Labour, 146–168. Tokyo: Japan Personnel Research Institute.

ILO (International Labour Organization). 2006. Strategies and Practice for Labour Inspection, Governing Body Session. Geneva: International Labour Office, meeting document 17 October 2006. https://www.ilo.org/gb/GBSessions/WCMS_GB_297_ESP_3_EN/lang--en/index.htm (Accessed on March 1, 2021).

――. 2011. Report V: Labour administration and labour inspection. International Labour Conference, 100th Session. Geneva: International Labour Office, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C081.

――. 2023. ILO STAT. Accessed February 2, 2023. https://www.ilo.org/shinyapps/bulkexplorer53/?lang=en&segment=indicator&id=SDG_0111_SEX_AGE_RT_A.

Labour Lawyers Association of Japan. 2017. Rodo kijun kantoku gyomu no minkan itaku ni kansuru ikensho [Statement of opinion on the outsourcing of labor standards inspection work to private sector providers], Accessed March 1, 2021. http://roudou-bengodan.org/topics/4901/.

Matsumoto, Iwakichi. 1981. *Rodo kijunho ga yo ni deru made* [Until the Labor Standards Act came into the world]. Tokyo: The Institute of Labour Administration.

MOFA (Ministry of Foreign Affairs). 2013. Japanese Translation of the Concluding Observations on the Third Periodic Report of Japan, Adopted by the Committee on Economic, Social and Cultural Rights at its Fiftieth Session (29 April–17 May 2013) at Economic and Social Council. https://www.mofa.go.jp/mofaj/files/000053172.pdf(Last accessed on March 1. 2021). Accessed March 1, 2021.

MHLW (Ministry of Health, Labour and Welfare). 2018a. "Rodo kijun kantokusho ni 'rodo jikan kaizen shido enjo chimu' o hensei shimasu" [Plans to establish guidance and support teams for improving working hours]. News release, March 27, 2018, https://www.mhlw.go.jp/stf/houdou/0000199557.html (Last accessed on March 1, 2021).

——. 2018b. *Rodo sesaku kihon hoshin* [Basic Policies on Labor]. Accessed on March 1, 2021https://www.mhlw.go.jp/content/11602000/000465363.pdf.
—— 2022. *Kosei rodo sho rodo kijun kantokukan saiyo shiken panfurett* [Labor standards inspector hiring examination pamphlet]. Tokyo: MHLW. Accessed December 10, 2022. https://www.mhlw.go.jp/general/saiyo/dl/roudoukijun_220201_01.pdf.
MHLW, ed. 2019. *Heisei 30 nen ban kosei rodo hakusho* [Annual Health, Report 2018]. Tokyo: Nikkei Printing Inc.
MHLW, Labour Standards Bureau. 2019. *Heisei 29 nen rodo kijun kantoku nenpo* [Annual report on labour standards inspection 2017]. Tokyo: MHLW.
MHLW, Prefectural Labour Bureaus, and Labour Standards Inspection Offices. 2022. "Working Conditions Handbook." Accessed June 29, 2022. https://www.mhlw.go.jp/new-info/kobetu/roudou/gyousei/kantoku/dl/040330-3.pdf.
MIC (Ministry of Internal Affairs and Communications), Statistics Bureau. 2020. "Economic Census for Business Frame." Accessed March1,2021.https://www.e-start.go.jp/en/stat-search/files?page=1&layout=datalist&toukei=00200552&tstat=000001137226&cycle=0&tclass1=000001137228&tclass2=000001137229&tclass3val=0.
Ministry of Labour, Labour Standards Bureau, ed. 1997. *Rodo kijun gyosei 50 nen no kaiko* [A retrospective of 50 years of labor standards administration]. Tokyo: Japan Personnel Research Institute.
Morisaki, Iwao. 2015a. "Shijo kenkyukai: Rodo kijun gyousei no genjo to kadai: Nihon ni okeru rodo kijun gyosei no gaiyo" [Introduction to the current status and issues of labor standards administration: Part 1 Overview of the labor standards administration in Japan]. *Monthly Labor Union* 611 (June 2015): 38–43.
——. 2015b. "Shijo kenkyukai: Rodo kijun gyousei no genjo to kadai: Aratana jitai e no taio:" [Introduction to the current status and issues of labor standards administration: Part 2 Responding to new situations]. *Monthly Labor Union* 612 (July 2015): 28–31.
NPA (National Personnel Authority). 2013. *Heisei 24 nendo nenji hokokusho* [Annual Report FY 2012] Accessed March 1, 2021. https://www.jinji.go.jp/hakusho/h24/1-1-01.html.
——. 2014. *Heisei 25 nendo nenji hokokusho* [Annual Report FY 2013]. Accessed March 1, 2021. https://www.jinji.go.jp/hakusho/h25/1-1-01.html.
——. 2020. *Annual Report FY 2019*. Accessed March 1, 2021. https://www.jinji.go.jp/en/recomme/annual2019/pdf/00-fulltext.pdf.
Oka, Minoru. 1913. *Kojo-ho ron* [Theory of the Factory Act]. Tokyo: Yuhikaku.
Rodo Shimbun-sha, ed. 2008–2019. *Rodo gyosei kankei shokuin roku*. [Directory of Labor Administration Employees]. Tokyo: Rodo Shimbun-sha.
The Small and Medium Enterprise Agency. 2020. *White Paper on Small and Medium Enterprises in Japan*. Tokyo: The Small and Medium Enterprise Agency.
Tatsuoka, Fumio. 1997. "Rodo kijun kantoku no tenkai" [Development of labor standards inspections]. In *Rodo kijun gyosei 50 nen no kaiko* [A retrospective of 50 years of labor standards administration], edited by Labour Standards Bureau, Ministry of Labour, 171–208. Tokyo: Japan Personnel Research Institute.
Zenrodo (Zen rodo-sho rodo-kumiai). 2020a. *Rodo gyosei no genjo* [Current Developments in Labor Administration]. Tokyo: Zenrodo.
Zenrodo (Zen rodo-sho rodo-kumiai), ed. 2020b. "Kaju rodo no kaisho ni muketa kokkateki na gyosei shuho to ho seibi" [Effective administrative methods and legislation to eliminate overwork]. Special issue, *Labour Administration Research* 45 (June 2020):1–20.

IKEYAMA Kiyoko
Doctoral program, Graduate School of Economics, Kobe University. Former director of a labor standards inspection office.

Labor Tribunal Proceedings: The Paradigm Shift in Labor Dispute Resolution and its Future Challenges

ASANO Takahiro

The labor tribunal proceedings were established under the Labor Tribunal Act in May 2004 and launched in April 2006 as a system for resolving civil disputes arising from individual labor relations. Designed to address non-contentious cases, these proceedings are conducted by a labor tribunal committee—a panel consisting of one career judge (labor tribunal judge) and two part-time experts with knowledge and experience in labor relations (labor tribunal members)—which, while seeking to achieve *chotei* (a conciliation) where possible, forms a consensus on a solution in line with the content of the case and in reflection of the relationship of rights and obligations between the parties involved, within the prescribed time frame of three sessions required by the law. Japan's labor tribunal proceedings system was conceived in the course of Judicial Reform amid solid awareness of the necessity for a dispute resolution procedure to respond to the needs of society and the public with the advantages of being *speedy, specialized,* and *suitable*. Labor tribunal proceedings are regarded as a success among the various systems within Japan, and this success is supported by the key approaches—which can be described as the "three Ps"—of those involved in the proceedings: applying a sense of pride as *professionals* to invest concerted efforts (*perspiration*) in striving toward a resolution (*passion*). The vital role played by labor tribunal members presents the challenge of ensuring that their valuable experience and knowledge of labor tribunal proceedings are passed on. Ideally, labor-management disputes should be resolved through discussions between labor and management. However, given that the unionization rate of labor unions is less than 20%, and that compliance with labor laws has yet to become established in the social structure based on employment in Japan, labor tribunal proceedings are becoming increasingly important as a means of implementing labor laws for workers, and there are high expectations for their use in the future.

I. The significance, legislative background, and advantages of labor tribunal proceedings
II. The distinctive characteristics of labor tribunal proceedings as a labor dispute resolution system
III. The composition and authority of labor tribunals and differences from other dispute resolution proceedings
IV. Factors contributing to the success of labor tribunal proceedings and future challenges

I. The significance, legislative background, and advantages of labor tribunal proceedings

1. The significance of labor tribunal proceedings

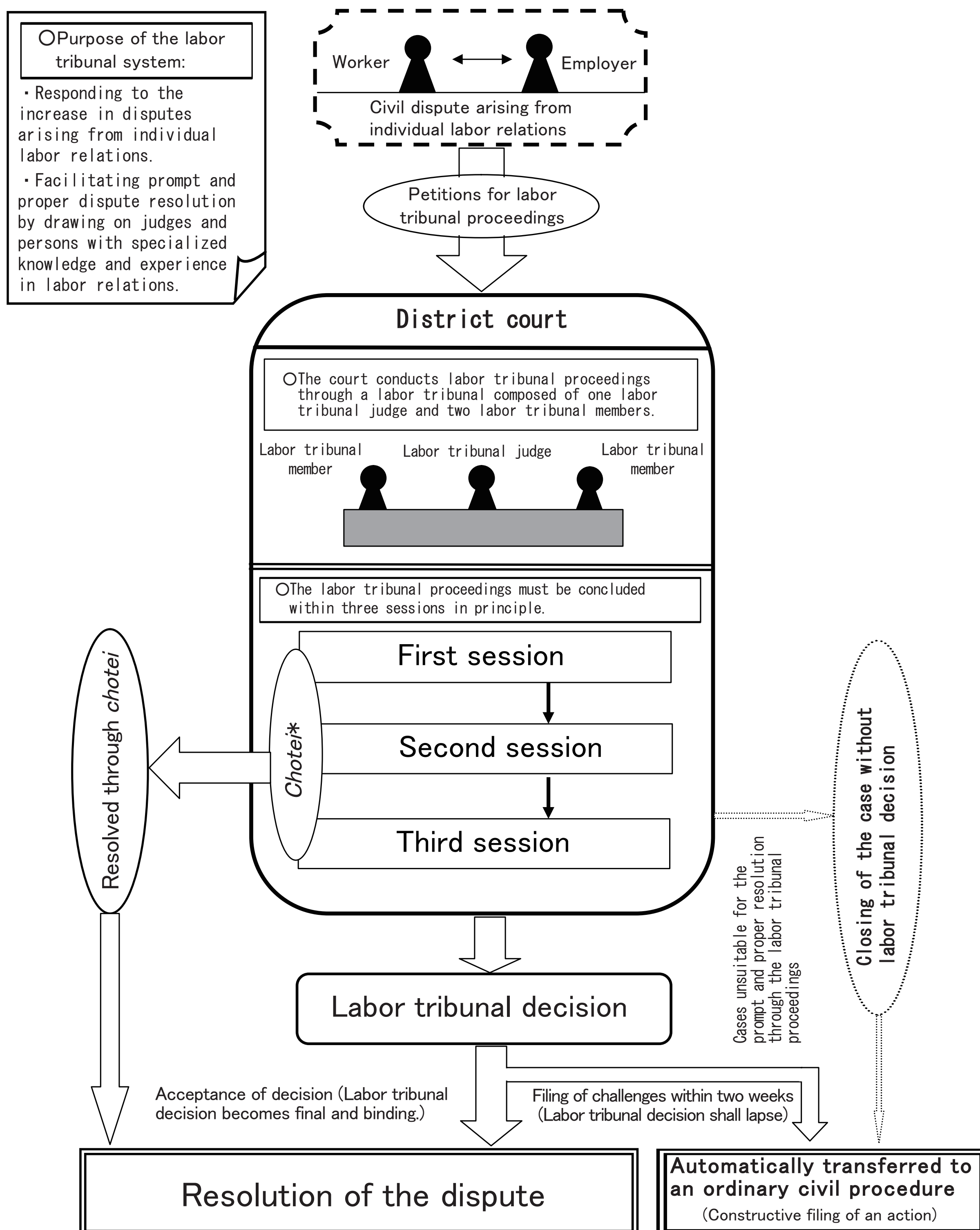
The labor tribunal proceedings (LTP) system was established under the Labor Tribunal Act (LTA; Act No. 45 of May 12, 2004) and started operation in April 2006. Labor-management disputes can be broadly divided into disputes involving collective labor relations between enterprises and labor unions, and disputes involving individual labor relations concerning the rights and obligations between enterprises and workers. The LTP are pursued in the case of such individual labor disputes (referred "civil dispute(s) arising from individual labor relations" in Article 1 of the LTA) regarding areas such as dismissal, *yatoi-dome* (refusal to renew a fixed-term contract), *haiten* (transfers within a company), *shukko* (transfers to another company while maintaining the worker's status with the original company), claims for wages and/or retirement allowances, disciplinary actions, and the binding force of modifications to terms and conditions of employment. Designed to address non-contentious cases, these proceedings are conducted by a tribunal committee—a panel consisting of one career judge (*rodo-shinpan kan*, or labor tribunal judge) and two part-time experts with knowledge and experience in labor relations (*rodo-shinpan* in, or labor tribunal members; one with a background in labor and the other in management)—which, while seeking to achieve *chotei* (a conciliation)[1] where possible, forms a consensus on a solution in line with the content of the case and in reflection of the relationship of rights and obligations between the parties involved, within the prescribed time frame of three sessions required by the law (See Figure 1)[2 3]

The LTP diverge from ordinary civil procedures in the following respects. Firstly, an emphasis is placed on the necessity of oral argument (known as the principle of orality; *kōtō shugi*) and the rendering of the judgment by those who have directly heard the case (the principle of directness; *chokusetsu shugi*), as opposed to the importance of documentary evidence (*shomen shugi*). Furthermore, the proceedings also adopt the principle of all written claims and other documentary evidence being submitted at the same initial timing, rather than submission at the relevant timing, and the approach of conducting direct, non-formally structured hearings as opposed to examination in court. The LTP system is thereby designed to eliminate inefficiency as far as possible and promptly ascertain the truth.[4]

2. The background and advantages of the labor tribunal system

(1) The background of the LTP as a system established amid Judicial Reform

Efforts to consider the state and potential development of judicial processes concerning labor relations disputes were launched following the establishment of the Judicial Reform Council under the Japanese Cabinet in July 1999, as part of steps toward developing a judicial system more accessible to the public. Prior to this, the Revised Code of Civil Procedure (Act No. 109 of June 26, 1996), which had been established in 1996 and had come into force in 1998, had been devised to fulfil expectations from the public for accessible and comprehensible civil trials. This was rooted in the concerns of those involved that measures needed to be taken to address the risk that civil trials—and the up until then typical lack of clarity as to how long such processes would take—would prompt the public to lose faith in legal proceedings. Such concerns were shared by many—practitioners and researchers alike—at that time. This passion for achieving speedy and suitable civil procedure capable of reliably addressing the needs of society and the public had been keenly invested in the Revised Code of Civil Procedure and went on to likewise permeate the Judicial Reform.[5] Amid such developments, *Rōdōkentōkai* (the Labor Study Group) was formed as part of the Judicial Reform Promotion Headquarters and commenced its deliberations in February 2002. Following the publication of its interim summary in August 2003, the commission's deliberations came to fruition in a written proposal outlining the tentative plans for the labor tribunal system, dated December 19, 2003. A bill was submitted by the Cabinet the following year and enacted as the LTA. Given these developments leading up to the labor tribunal system's establishment, it is clear that there was a strong



Source: The Judicial Reform Promotion Headquarters, https://lawcenter.ls.kagoshima-u.ac.jp/shihouseido_content/sihou_suishin/hourei/roudousinpan_s-1.pdf.
**Editor's note*: *Chotei* is translated as "conciliation" in the translation of the Labor Tribunal Act whereas in the labor law academia in Japan, it has been termed as "mediation" for a long time due to its nature of a procedure.

Figure 1. Overview of the Labor Tribunal System

awareness that the proceedings should provide a process for resolving labor disputes that would fulfill what were seen as the needs of society and the public.

(2) The advantages of the LTP: The 3 Ss[6]

These expectations of the LTP—that is, the needs of society and the public—are reflected in the system's key advantages, the "3 Ss": *speedy* proceedings (*jinsokusei*), the utilization of *specialized* knowledge and experience (*senmonsei*), and *suitable* resolutions (*jian tekigosei*).

(i) *Speedy* proceedings

In the initial year of operations, from April 2006 to March 2007, 1,163 labor tribunal petitions were filed with district courts across the country. The average duration of the proceedings of those cases that were closed within the above one-year period was 74.2 days. In fact, over 70% of the cases were closed within three months, with conclusions being passed within an average of around two and a half months. Having even exceeded expectations set out prior to its launch, which estimated around three to four months for a case to be concluded, the system has attracted praise for its speedy operation.[7]

It should be noted that while the average duration of proceedings for district courts nationwide was around 2.6 months to 2.7 months between 2015 and 2018, the average duration is on the increase, rising to 2.9 months in 2019 and 3.6 months in 2020.[8] (Incidentally, in figures from Sapporo, where the author is a member of the Sapporo Bar Association, the Sapporo District Court's average duration of proceedings for labor tribunals was around 2.2 months to 2.4 months between 2015 and 2020.)[9] And yet, when compared with the figures for ordinary civil litigations for labor-related cases, which was around 14.2 months to 14.7 months between 2015 and 2018, and then 15.5 months in 2019 and 15.9 months in 2020, it can be suggested that the speed with which resolutions are reached continues to be an advantage of the LTP.

The number of cases newly received for labor tribunal (hereinafter referred to as new cases) continued to rise after the operation starting year. Preliminary figures in 2020 recorded 3,907 new cases for labor tribunals at district courts nationwide, totaling a record high of 7,870 cases when combined with the 3,963 new cases for ordinary civil procedures concerning labor relations. Looking at the 3,754 cases concluded and settled within 2020 according to the circumstances of their closure, in 2,559 of the cases conciliation was achieved, making a 68.2% conciliation rate. Given that labor tribunals were held in 608 of the cases (16.2% of all cases) and that in 261 of those cases no challenge was filed (around 7% of all cases), almost 80% of all cases were ultimately resolved within the LTP.

(ii) Utilization of *specialized* knowledge and experience

At the beginning of the system's establishment, around 1,000 experts were appointed as labor tribunal members nationwide. These carefully selected experts from various fields possessing an abundance of expert knowledge and experience in recent developments in labor relations received considerable approval from those who used the system.[10] Some reports indicate that judges with experience in labor tribunals have noted that the inclusion of labor tribunal members in the proceedings has opened a new way for deliberations; deliberations could incorporate a greater range of perspectives by drawing on those members' knowledge and experience of the state of and practices in the workplace—aspects that judges would have little grasp of without such insights—and in turn allowed for more well-rounded judgments. As of April 1, 2019, there were a total of 1,506 labor tribunal members nationwide, of which 95 were women (6.3%). In light of the necessary concern for gender balance when hearing the variety of cases processed, the courts are cooperating with the nominating organizations and endeavor to secure highly competent labor tribunal members. The specialized knowledge and experience of the labor tribunal members constitute a key aspect of the labor tribunal system. The courts seek to enhance such

expertise of labor tribunal members by holding an annual study meeting to allow the labor tribunal members to obtain up-to-date knowledge and experience of practical aspects so that they could hone their ability to ascertain the facts that prompt issues and deliberate them from a legal perspective.[11]

(iii) *Suitable* resolutions

In the one year directly following the launch of the LTP system, the percentage of cases that were referred to ordinary civil procedures for a clear-cut decision (as the parties involved were dissatisfied with the tribunal's response) accounted for no more than 10% of all cases.[12] Looking at more recent number, of the 3,754 cases concluded and settled in 2020, around 15% of all cases were referred to ordinary civil procedures.[13] These numbers indicate that the tribunals have been reaching resolutions with a conciliation proposal or a labor tribunal decision suitable for the case.

(3) An additional advantage: Educational effects on micro-, small and medium-sized enterprise owners and other parties concerned

With a succession of newly enacted or revised legislation related to labor relations in recent years, the content of labor and employment laws in Japan has become substantially complex. At the same time, it has been noted that workers and employers (referred to in the LTA as a *jigyōnushi*, literally "business operator")—particularly micro-, small and medium-sized enterprises ("SMEs")—are not equipped with sufficient knowledge of such labor laws and personnel systems.[14] Given also the many significant court precedents—not only from the district or high courts, but even from the Supreme Court—which exert a marked impact on day-to-day business practices, even large enterprises may struggle to gather accurate information on such new developments and other aspects of labor law compliance and to reflect and correctly apply it in the personnel systems adopted in actual workplaces. This is not to mention that for SMEs, fully adhering to labor laws is a next-to-impossible undertaking in practice. It should be noted, however, that there are also SME operators who do not even have any interest in the very labor laws themselves—let alone any debate on the issues of compliance—and follow the principles of common practice of the relevant workplaces or industry, rather than basic knowledge of laws and regulations. Where such an approach is adopted, in some cases, the terms and conditions of employment are often not fully explained to the workers, or steps to dismissals, personnel measures, or changes in the terms and conditions of employment are carried out in a manner that is unlikely to be legally acceptable due to temporary emotions. As a result, a considerable number of cases that would not have developed into labor disputes that appears to have unnecessarily arisen, if only basic knowledge of labor law had been applied.[15]

The LTP have for some time been noted for their educational effects for the operators of SMEs. There appear to be cases in which the LTP actually involve advice on written materials that can be referred to in practice and the state and means of implementing the provisions on work rules.[16]

As the LTP essentially involve solving issues using a legal approach, in many cases the resolutions they result in are somewhat demanding for those employers from SMEs where compliance with labor laws may not be fully established. This may, to some extent, explain the low level of praise for and satisfaction with the system recorded in the results of a "Research on User Experience of the Labor Tribunal System" conducted from 2010 to 2012. On the other hand, however, even those employers from SMEs who note that their own experiences with the LTP have been negative have responded that such experiences prompted them to take steps to place emphasis on compliance and to change their personnel management systems. This exhibits the educational effect of the LTP in ensuring that awareness and understanding of labor laws spread among employers from SMEs, through their experiences of the system.[17] In cases where employers' legal knowledge is lacking, the labor tribunal will—while demonstrating their understanding of the employers' opinions and standpoints—provide appropriate advice and sometimes educational guidance from a legal perspective. This is thought to be one of the factors

boosting the proportion of cases in which conciliation is reached.[18]

(4) The foundations of the labor tribunal system: The "3 Ps"

It is also essential to remember that the key to solving labor issues—which have typically been considered complex and troublesome—within three sessions is the approach of the labor tribunal judges, tribunal members, and the attorneys for the parties concerned, which can be described as the "3 Ps": the *perspiration* and *passion* of *professionals*. Namely, the LTP system requires the work of truly qualified and competent individuals (*professionals*) exerting sincere efforts in advance preparations and other stages of their role (*perspiration*) and seeking to apply the system to resolve disputes (*passion*).[19] Such committed endeavors by those involved have underpinned the success of the labor tribunal system today (the specific nature of and appraisal of such success will be addressed in a later section). Whether the LTP will see advancements in its operation in the future also depends significantly on the practice of these 3 Ps.

II. The distinctive characteristics of labor tribunal proceedings as a labor dispute resolution system

The distinctive characteristics of the LTP system are that it: 1) entails dispute resolution proceedings conducted in the courts, 2) consists of persons with specialized knowledge and experience of labor relations, 3) is intended for the resolution of disputes arising from individual labor relations, 4) is a speedy and simple proceeding for dispute resolution, 5) covers non-contentious cases, entailing *tribunal* proceedings, as opposed to judicial proceedings, and 6) is arranged such that cases are referred to ordinary civil litigations when a challenge to the labor tribunal decision is issued. In this section, let us look at these six characteristics and their surrounding issues in detail. Note that these characteristics of the LTP are different from other dispute resolution systems that handle civil disputes arising from individual labor relations, such as *assen* (mediation) conducted by a Dispute Coordinating Committee in accordance with the Act on Promoting the Resolution of Individual Labor-Related Disputes,[20] and mediation conducted by the 44 prefectural Labor Relations Commissions ("LRC mediation").[21]

1. Dispute resolution proceedings conducted in the courts

In the LTP, a labor tribunal consisting of two labor tribunal members—one labor and one management, each with specialized knowledge and experience, as explained below—and a tribunal judge, is responsible for pursuing proceedings and reaching a decision. The system can therefore be seen as a dispute resolution process specialized in handling labor disputes in court. The fact that the LTP are conducted in the courts seem to generate the sense for the public—the system's users—that they can expect a fair resolution.

Results from the basic report (2011) of the "Research on User Experience of the Labor Tribunal System," a questionnaire for labor tribunal users conducted by a research group at the Institute of Social Science at the University of Tokyo in 2010, showed that in response to a question asking respondent's opinions on the level of importance on certain characteristics of the LTP, the characteristic that was mostly commonly classed as "important" by both workers and management was that the system "consists of proceedings conducted in the courts" (selected by 92.5% of worker and 80.1% of management respondents; the same level of importance could be selected for multiple characteristics).[22] Responses to a question asking the "reasons for using the LTP" (what the parties who were the subject of the complaint expected of the LTP; likewise multiple responses allowed) also showed high percentages of workers and management who "wished to secure a fair resolution," indicating the high levels of expectation for fair resolutions to disputes. These aspects received similar results in the "Second Research on User Experience of the Labor Tribunal System in Japan" (2020) conducted by the same research group from 2018 to 2019.[23]

One of the factors encouraging relevant parties in disputes to expect the LTP to provide a fair resolution may be the fairness of the LTP and its stability and reliability as a dispute resolution process. This idea seems to some extent to be based on the leading role of labor tribunal members as experts in labor relations, and a tribunal judge as a legal expert and professional in dispute resolution in general. Additionally, the setting that the proceedings to resolution is carried out in court might support the idea. That is, the involvement of a judge, who is well versed in the consistent application of a strict fact hearing process to pass judgment on the rights and obligations between the parties, provides the hearing process and judgment with stability. The courts have fulfilled the role of developing legal theory through precedents, thereby supplementing and establishing the labor-contract case law since prior to the establishment of the LTP system.[24] In Japan, labor-related judicial precedents has been both crucial as standard patterns for trials aimed at resolving labor disputes, but also has served as standard patterns that ensure code of conduct in labor-management relations in practice.[25] The dispute resolution proposals set out by the courts—as the entities that have shaped the labor-related legal theory through judicial precedents—are thereby thought to be perceived by relevant parties in a dispute as the resolution criteria not only based on the labor-contract case laws but also unique to the labor tribunal decision in accordance with the LTA (Article 20),[26] which can be assumed to have given a strong impression on the parties involved as fair and reliable resolutions.

2. Involvement of experts with knowledge and experience in labor relations

Prior to the LTP system's establishment, in the deliberations around the time of the Judicial Reform, initially, the courts (and the Ministry of Justice as well) seemed to have believed that neither labor relations nor labor law was an area requiring expertise.[27] However, in light of the establishment of the LTP and its results, such thinking is revealed to be an incorrect understanding of specialization in labor relations and labor laws. Specialization in labor relations does, in the first place, refer to specialized knowledge and experience in systems and practices in labor relations, as opposed to specialization in the content of complex labor laws and regulations, or that in the natural sciences-based issues related to industrial injuries and other such aspects.[28] It is suggested that such specialization typically reveals itself in the adroit nature with which interests between labor and management are coordinated in accordance with the points at issue and the case in question.[29]

In addition to the evidence that has been submitted, labor cases entail "inexplainable aspects," and it is also said that "in some cases it may not be acceptable to adopt the same perspective as might be applied in typical civil cases, even regarding the evidence submitted."[30] [31] While this is a stance that may not directly be drawn from the interpretation of ordinary laws and regulations, as it comes from a considerable understanding of the actual circumstance of labor disputes (whether from the perspective of labor or management) there are facts ("the truth") in a case that can be reached even within a short proceeding period, and the specialized knowledge and experience of labor tribunal members is the key for discovering that truth. It is certainly drawing on the specialized knowledge and experience of the labor tribunal members that allows the truth in light of the actual circumstances of the labor dispute to be promptly reached.[32] The fact that such labor or management members with the specialized knowledge and experience are involved in dispute resolution has also been positively appraised from the perspective of the judges (tribunal judges) as serving a useful role in resolving labor disputes, by ascertaining the contentious points about facts at issue, the actual circumstances of the dispute, as well as formulating appropriate proposals for a dispute resolution, among other benefits.[33]

3. Covers the resolution of civil disputes arising from individual labor relations

Article 1 of the LTA defines the disputes to which the LTP apply as "dispute(s) concerning civil affairs arising between an individual employee and an employer about whether or not a labor contract exists or about any other matters in connection to labor relations," which it subsequently terms "civil disputes arising from individual labor relations." The concept of "labor relations" refers to the relationship between an employee and an employer

(business operator) that may arise from a labor contract or de facto relationship of subordination to the control of the employer (called *shiyō jūzoku kankei* in Japanese), and is also adopted in legislation such as the Act on Promoting the Resolution of Individual Labor-Related Disputes.[34] Disputes concerning labor relations cover matters such as *saiyō naitei kyohi* (withdrawal of a preliminary offer of employment), dismissal, disputes regarding the validity of *yatoidome* (refusal to renew a fixed-term employment contract), *haiten* (transfers within a company), *shukko* (transfer to another company while maintaining the worker's status with the original company), disputes regarding the validity of disciplinary action, disputes seeking the payment of wages and premium wages (overtime premiums) and retirement allowances, disputes regarding the binding effect of modifications to terms and conditions of employment, and disputes claiming damages due to violations of the employer's *anzen hairyo gimu* (obligation to consider safety).[35]

Disputes involving *collective* labor relations—relations between organizations, namely, an employer and a labor union—are addressed by specialist bodies in the form of the Labor Relations Commissions and are therefore not subject to the LTP. The LTP only cover disputes between *individual* workers and their employers. However, provided that disputes take the form of a claim of rights by an individual worker in the context of individual labor relations, claims on the basis of a collective agreement between a labor union and an employer, and claims of rights (such as rights to the nullification of a dismissal or to claim damages) on the grounds of the prohibition of unfair labor practices under Article 7 of the Labor Union Act are also covered by LTP. Disputes regarding treatment that affect a number of workers—such as, gender discrimination, modification of systems determining employment terms and conditions, or dismissals due to restructuring—are also covered by the LTP, such that disputes in which workers in fact have support from a labor union for their claims are covered in practice as well.[36]

The relationships between dispatched workers and client businesses (the business operator to whom the worker is dispatched)—labor relations not based on a labor contract—are suggested to "fall under such 'labor relations'" based on that the employer's obligation to consider safety applies due to the special application of several provisions of the Labor Standards Act (under Article 44 of the Act on Securing the Proper Operation of Worker Dispatching Businesses and Protecting Dispatched Workers) and the fact that the LTA describes the disputes covered as those "between an employee and *jigyōnushi* (a business operator) " as opposed to "between an employee and *shiyōsha* (an employer)."[37]

An Issue that has recently arisen is whether the refusal to renew individual contracts for work, for example, can be covered under the LTP as dismissal disputes. The administrative notifications on the enactment of the Labor Contracts Act (*Kihatsu* No.0810-2 (Aug. 10, 2012), *Kihatsu* No.1026-1 (Oct. 26, 2012), *Kihatsu* (Mar. 28, 2013), *Kihatsu* No. 0318-2 (Mar. 18, 2015), *Kihatsu* No. 1228-17 (Dec. 28, 2018)) state that the condition for being classed as a "worker" prescribed in the Labor Contracts Act (Article 2, Paragraph 1) is "being employed by an employer"; this is determined according to whether a relationship of subordination to the control of an employer is recognized, based on a judgment that takes into consideration all factors, namely, the form in which labor is provided, whether remuneration is paid as compensation for the labor provided, and the related aspects. With the increasing number of "employee-like persons," who work under independent contract or business entrustment contract (people working as freelancers or private business operators or otherwise), the opportunity to have a dispute relating to a work arrangement recognized as a labor contract—regardless of how the contract is titled—addressed through the LTP is a considerable advantage for such people. On the other hand, there are many so-called gray zone cases in arrangement that shares similarities with labor contracts but cannot be directly classed as labor contracts. Whether such grey areas can be covered under the LTP is a challenging issue both in terms of interpretation and operation.[38]

An Osaka High Court judgment from July 8, 2014 (*Hanrei Jiho* No. 2252, 107) addressed said issue as follows:

> “Labor tribunals are limited to covering “civil disputes arising between individual workers and business operators regarding matters concerning labor relations (civil disputes arising from individual labor relations)” (LTA Article 1). While this can be interpreted as the requirement for a petition to be considered lawful (LTA Article 6), the aforementioned “labor relations” should not be limited to relations based solely on labor contracts, but also encompass relations between workers and business operators that arise from de facto relationships of subordination to an employer. Considering the purpose of labor tribunal proceedings, which seek to provide a flexible and suitable resolution to disputes within three sessions, when providing evidence of the circumstances of a de facto relationship of subordination with an employer that suggest it appropriate for such proceedings to be applied to reach a conclusion, the requirement should be to provide prima facie evidence, and that is sufficient.”

In addition to the above statement, the Osaka High Court, based on the specific facts, reversed the first instance ruling of the Kyoto District Court, which had rejected the petition as unlawful, and remanded the case back to the first instance court. Pushing ahead with the above approach that the “labor relations” subject to the LTP should not be limited to relations based solely on labor contracts, but also encompass relations between workers and business operators that arise from de facto relationships of subordination to an employer, if there is clear prima facie evidence of the circumstances that find it appropriate for such proceedings to be applied to reach a conclusion, it is for now possible to support the Osaka High Court’s decision to commence the LTP. Moreover, the Osaka High Court decision in this case did in fact lead to the resumption of the LTP and a resolution through conciliation.[39]

On the other hand, there is a precedent of a dispute’s classification as a civil dispute arising from individual labor relations being denied and the petition in turn being dismissed in accordance with LTA Article 6, in the case of a dispute regarding termination of the contract between a company and the individual who served as *daihyō torishimari yaku* (the company’s representative director) until directly prior to the dispute (Tokyo District Court (Nov. 29, 2010) 1337 Hanrei Taimuzu 148). At the same time, commentary on this case suggests that it clearly did not involve “matters regarding labor relations.”[40] Such cases in the so-called gray area are expected to continue to increase in the future. As the number of such cases increases, the ability to utilize the LTP—which provide the possibility of a speedy, suitable, and effective resolution in accordance with the actual circumstances of the dispute—even for such gray area cases is, given the recently blurred peripheries of the “worker” concept, a considerable help to exactly those workers who fall into such peripheries. From this perspective also, the aforementioned decision of the Osaka High Court and the outcome it produced—that is, the conciliation reached following the resumption of proceedings—are a highly useful reference in practice. It could be suggested that the labor tribunal committees are expected to proactively address even gray area cases.

4. Speedy and simple proceedings

The speedy process, completed within three sessions as a rule, is a particularly notable characteristic of the LTP. It is no exaggeration to suggest that it is even the indispensable factor that provides the LTP with a unique raison d’être setting it apart from ordinary court proceedings. Given that civil disputes arising from individual relations are “disputes in which a worker’s livelihood is at stake,” it was therefore sought to ensure that the LTP would provide for the speedy and intensive resolution of disputes by prescribing that, as a rule, “labor tribunal proceedings must be concluded by the end of the third date for proceedings” (LTA Article 15, Paragraph 2). It should be noted, however, that reaching a certain level of dispute resolution in such short, intensive proceedings would not be possible with the efforts of the labor tribunal committee alone. The cooperation of those parties to the dispute—the LTP users—is essential, and the obligation of the parties to the dispute to endeavor to ensure that the speedy progression of proceedings is stipulated in the provisions of the law.[41]

In relation to the importance of simplicity—in terms of the ease of access to proceedings for the parties to the

dispute—in the LTP, greater emphasis is placed on the speediness of dispute resolutions. It can, however, be suggested that the speediness of dispute resolutions, which may ultimately contribute to increasing the access to such proceedings, does also in turn provide for simplicity. Simplicity may also be ensured through means such as the standardization of written documentation.[42]

5. Process for non-contentious cases

Let's see Sugeno et al. (2007, 30–32) for details of comparisons with court proceedings and with civil conciliation proceedings. Here, we will address the suggestion that particularly the nature of the LTP as a procedure for non-contentious cases is reflected in the content of the labor tribunal's decision. That is, the provisions that: "The labor tribunal [committee] renders a labor tribunal decision based on the rights and interests between the parties that were found as a result of proceedings, and in light of the developments in the labor tribunal proceedings. Through a labor tribunal decision, the labor tribunal may confirm the relationship of the parties' rights to one another, order the payment of monies, delivery of objects, or any other payment of economic benefits, and may specify other matters that are considered to be appropriate for the resolution of the civil dispute arising from individual labor relations" (LTA Article 20, Paragraphs 1 and 2). These provisions state that the tribunal is able to render its decision not only based on the rights and interests between the parties but also in light of the "developments in the labor tribunal proceedings," and that said decision may encompass content that is "considered to be appropriate." When considered in combination with the possibility that the tribunal decision itself may be invalidated if one of the parties concerned is dissatisfied and filed lawful challenge, the content of the tribunal decision—while obliged to take into account the rights and interests between the parties—is not exclusively for the realization of rights according to substantive law, but may also be flexibly determined by the labor tribunal committee.[43] For example, in cases involving dismissal, the labor tribunal must operate based on a judgment made in view of rules that draw on the rights and obligations between the concerned parties and assess whether the dismissal is an abuse of the employer's right to dismiss; If the developments in the labor tribunal proceedings are such that the worker does not necessarily wish to return to their former position, and the employer is also not averse to a financial solution, a tribunal decision specifying financial compensation may be passed. At the same time, when passing a flexible tribunal decision, it is necessary to clearly stipulate how the rights and obligations between the concerned parties under the substantive law have ultimately been settled. Given that the majority of the LTP's dismissal cases in particular result in conciliation being reached with a financial solution on the premise that the employment relationship would be terminated, any labor tribunal decision passed in a dismissal case is expected to provide a judgment that clarifies what would have been the natural course of the status prescribed under the labor contract and other such rights and obligations between the parties, while taking into account the wishes of those involved in the dispute.[44]

Although a labor tribunal committee is able to set out a decision that is to some extent flexible, it must give sufficient consideration to whether the decision is "appropriate" (LTA Article 20, Paragraph 2) which is the criterion defining the labor tribunal decision.[45] Namely, the content of the labor tribunal decisions are typically delimited on the basis of the criterion of what is "appropriate." Thus, tribunal decisions that do not reasonably bear relation to the rights and interests between the parties concerned, and that are clearly contrary to the wishes of the parties concerned or otherwise appear unlikely to be accepted, are not considered "appropriate" because the decisions have taken into account the "developments in the labor tribunal proceedings" and are not considered "appropriate."[46]

In a related case contesting the illegality of adding a non-disclosure clause to the tribunal decision contrary to the wishes of the petitioner (Nagasaki District Court (Dec. 1, 2020) 107 *Journal of Labor* Cases 2), the court's judgment stated that: "As 'a labor tribunal decision is rendered based on the rights and interests between the parties that were found as a result of proceedings, and in light of the developments in the labor tribunal

proceedings' (Article 20, Paragraph 1), the content of the decision needs to satisfy the requirement of appropriateness—that is, it must be appropriate for the resolution of the case. Given the provisions of the aforementioned paragraph, as well as that the LTP involve not only the rights between the parties concerned in establishing a decision but also adjusting the interests of the parties concerned, it is also the case that when determining whether the content of a decision is appropriate, it should be considered from the perspective of whether the decision reasonably bears relation to the rights between the parties concerned, the rights that are the subject of the petition, and whether the decision is potentially acceptable and foreseeable to the parties concerned in light of developments in the labor tribunal proceedings. It should, however, be noted that the labor tribunal decision is made 'in light of' the rights and interests between the parties and the developments in the labor tribunal proceedings (LTA Article 20, Paragraph 1), and as long as it is possible to specify matters that are considered to be appropriate for the resolution of the civil dispute arising from individual labor relations (LTA Article 20, Paragraph 2), if that decision may cease to be valid based on a challenge from one (or both) of the relevant parties, regardless of the grounds, (LTA Article 21, Paragraph 3), given that the decision is not exclusively for the realization of rights under substantive law but may also be flexibly determined by the labor tribunal committee, when determining what is appropriate, consideration should also address the potential for contributing to a resolution suited to the actual circumstances of the case, as opposed to stringently ensuring the decision's reasonable relation to the rights between the parties concerned and other aforementioned aspects."

On that basis, the judgment regarding whether the non-disclosure clause is appropriate was made in view of the reasonable relation to the rights between the parties and the developments of the labor tribunal proceedings. Thereby, while in this case the court did not deny the reasonable relation to the rights between the parties, it determined that the non-disclosure clause could be seen as a violation of LTA Article 20, Paragraphs 1 and 2, on the grounds that "setting up the non-disclosure clause, which was clearly rejected by the plaintiff as a conciliation proposal, was unlikely to be accepted even reluctantly and therefore the non-disclosure clause in this labor tribunal decision can only be classed as not potentially acceptable. Said clause can thereby not be considered to have been set out through the developments in the proceedings, and is not appropriate."[47]

6. Challenges to the labor tribunal decision and transfer to court proceedings

The LTP system is linked with court proceedings. If one of the parties concerned files a challenge, the labor tribunal decision ceases to be valid, and the case reverts back to the timing of the petition to the labor tribunal and is treated as a suit filed at that time. Though the labor tribunal decision is not a coercive dispute resolution system, when it ceases to be valid due to a challenge by one of the parties, in order to reach an ultimate resolution to the dispute based on the LTP dispute resolution mechanism, the case is automatically referred to court proceedings. This also assists in ensuring that LTP are effective dispute resolution proceedings. That is, by ensuring this link with litigation, LTP becomes a system that ultimately plans for a coercive dispute resolution by court proceedings, such that both parties have to be aware of the potential costs of court proceedings, and the full-scale judicial process they involve, that will arise if they reject a conciliation proposal or file a challenge, which may to some extent influence their motivation to bring the case to a conclusion at the conciliation stage or, at the latest, the tribunal decision stage. This aspect differs significantly from administrative mediation proceedings and other such procedures.[48]

If the filing of challenge results in a labor tribunal being transferred to court proceedings as described above, it is also the case that the labor tribunal is, according to the stance of the Supreme Court, not classified as a "judicial decision in the prior instance," as referred to in the Code of Civil Procedure, Article 23, Paragraph 1, Item 6 (The *Ono Lease* case, Supreme Court (May 15, 2010) 1018 *Rohan* 5). It is therefore permissible for the judge involved in the labor tribunal to preside over the case once it is transferred to an ordinary civil procedure. This is a disputable aspect particularly for those parties who received a disadvantageous judgment in the labor

tribunal, from the perspective of due process. The Tokyo District Court is said to pursue the approach that labor tribunal cases that have been transferred to ordinary court proceedings after the filing of a challenge are presided over by a judge other than the tribunal judge who presided over said case at the labor tribunal.[49] However, in the district courts in particular, it is in a sense unavoidable that the judge who presided over the labor tribunal also presides over the ordinary civil procedures following a challenge; the allocation of cases and other such factors leave no option, due to issues such as the limited number of judges capable of presiding over a civil cases. In light of possibility, attorneys for the parties concerned in LTP—particularly those in rural areas with a limited number of assigned judges—are expected to prepare exhaustively for and engage in vigorous verbal discussion at the tribunal sessions with a view to ensuring that the labor tribunal, a body equipped with specialized knowledge and experience of both labor and management—can pursue a fruitful hearing process and in turn reach a fair and proper conclusion, as well as thoroughly providing the party they represent with explanations that also cover the potential developments following a challenge. It can therefore be argued that the education and training of attorneys capable of handling such cases (especially those who are younger, with relatively little experience) is an important issue.

III. The composition and authority of a labor tribunal committee and differences from other dispute resolution proceedings

1. The composition and authority of a labor tribunal committee

As explained above, LTP possess a unique significance as dispute resolution proceedings. It also identifies three aspects that distinguish LTP in comparison with LRC mediation in which the tripartite structures of representatives of labor, management, and public interests is used.[50]

The first of these differences is that while in the case of LTP, there are legal provisions enforcing appearance at the proceedings (LTA Article 31), LRC mediation allows the other party the option of deciding whether to cooperate with the mediation proceedings (that is, whether to attend the sessions). Whether a labor tribunal should immediately close a tribunal case if the other party does not appear at the tribunal session despite having been summoned by the tribunal judge (LTA Article 14) is also an issue of the LTP that is under dispute. One interpretation of the issue argues that: As the law does not recognize the other party's right to reject the petition for LTP, provided a petition for a labor tribunal has been filed, it is not permitted to skip LTP and transfer straight to court proceedings on the wishes of the other party. In relation to this, Article 2 of the Labor Tribunal Regulation prescribes the obligation of the parties concerned to conduct LTP in good faith. Therefore, even if the other party does not cooperate with LTP and does not appear at the proceedings, LTP should be conducted once the petitioner has been allowed to suitably assert and provide proof supporting their claims as suited to the case (if, for instance, no claims or proof are offered by the other party, the petitioner will typically be able to finish providing their claims and proof within the first session), rather than simply closing the labor tribunal case.[51]

The second aspect distinguishing LTP from LRC mediation is the differing role of members with backgrounds in labor and management. It is stipulated that tribunal members are involved in the deliberations and resolutions of the labor tribunal committee (LTA Article 12). In other words, decisions (resolutions) of the labor tribunal committee are made by majority vote; although tribunal members are not judges, they not only offer their opinions as part of deliberations, but also participate in the resolutions regarding the formulation of conciliation proposals and the tribunal decision themselves on an equal footing with the judge (labor tribunal judge). It is clearly specified that in LTP each tribunal member, both members whose backgrounds are in labor or in management, possess the right to vote on resolutions. It can be suggested that they participate to a greater extent than mediation members involved in LRC mediation.[52]

The third differing aspect is that in LTP it is stipulated that the tribunal members, while possessing backgrounds

in labor or management, shall “perform the duties necessary for processing the labor tribunal case from a neutral and fair standpoint” (LTA Article 9, Paragraph 1). This establishes the expectation not only for the neutrality and fairness of the labor tribunal committee as a whole—which would naturally be a given—but also for the neutrality and fairness of the individual tribunal members. In LTP, the labor tribunal members’ backgrounds—whether their experience is in labor or management—therefore often remain concealed in practice. (It should, however, be noted that in the tribunal court, three members of the labor tribunal are customarily seated such that the tribunal judge (judge) is in the middle, the tribunal member with a labor background is seated close to the petitioner (worker), and the tribunal member with a management background is seated close to the other party (employer) and therefore it is likely that in reality it is clear to the parties involved which member has a labor background, and which has a management background). Moreover, in light of the tribunal members’ position and their strong demands for neutrality and fairness, a tribunal member is expected to avoid contact with the parties involved in settings other than the tribunal sessions.[53] Comparing this with the approach taken for cases of examination involving unfair labor practices addressed by Labor Relations Commissions clearly reveals the difference in legal status. In the process towards *wakai* (settlement), there are no particular restrictions prohibiting the parties concerned (the worker or employer involved in a case) from getting in contact outside of the Commission sessions, with the Commission members for labor and management participating in the procedures for recommending a settlement. At times both the worker and employer make contact with the labor member and employer member respectively outside of the Commission sessions to actively express their opinions on the direction of the dispute resolution and request the representatives to serve as an intermediary between them and the public interest members.[54]

2. The legal status of a labor tribunal conciliation and tribunal decision

Turning to the distinctive legal status of a conciliation or decision reached by a tribunal, it should firstly be noted that conciliation may be pursued by the labor tribunal committee at the LTP sessions until the proceedings are concluded (Rules of Labor Tribunals Article 22, Paragraph 1). The entry of the conciliation agreement into the record has the same effect as a judicial settlement (LTA Article 29, Paragraph 2; Civil Conciliation Act, Article 16). A labor tribunal decision also has the same effect as a judicial settlement, provided no challenge to that decision is filed (LTA Article 21, Paragraph 4). Having the same effect as a judicial settlement means that the decision is recognized to have the formative, enforceable effect and res judicata, depending on the content of the labor tribunal.[55] In the case of LRC mediation, in contrast, even if an agreement is established as a result of the mediation, it is merely treated as a civil settlement (Civil Code, Article 695).

3. Measures ordered prior to conciliation and penalties for noncompliance with measure

LTP also have a system of “pre-conciliation measure orders” as a provisional disposition prior to the labor tribunal (LTA Article 29 Paragraph 2; Civil Conciliation Act, Article 12). While this is far from frequent even nationwide, there are cases, for instance, in labor tribunals seeking confirmation of the lack of validity of *haiten* (a transfer within a company). In these cases, measure orders could be issued to hold the orders of the transfer whose validity is contested and for the petitioner to be able to work in their previous department until the labor tribunal case is completed. There is no enforceable effect for the measure orders, but a relevant party who does not comply despite having no reasonable grounds could be punished with a non-criminal fine of not more than 100,000 yen (LTA Article 32); it is, in effect, compulsory.[56]

It should, however, be noted that as these pre-conciliation measures require the labor tribunal committee to issue a tentative conclusion even prior to the sessions, they have raised pending issues that need to be addressed, such as how to address the burdens of the tribunal members, what form the prior consultations should take, and what daily allowances should be paid in the event that the judge and tribunal members also communicate by

telephone or other such means in order to hold informal meetings promptly. There is also still the outstanding problem of the fact that as the same labor tribunal committee is responsible for both whether to adopt pre-reconciliation measures and the tribunal itself that follows, it might have reached a conclusion in advance. However, in cases of transfers that can clearly be seen as an abuse of the employer's authority over personnel matters, the issue of orders for measures as a provisional disposition is truly in line with the needs of society and the public; it is undoubtedly necessary for the utilization of such steps to be addressed in more depth in a future discussion.

IV. Factors contributing to the success of labor tribunal proceedings and future challenges

1. The success of LTP and its contributing factors

Over fifteen years have passed since the launch of the labor tribunal system in April 2006. While, as noted above, the system has seen close to 4,000 cases, almost the same number as labor-related ordinary court proceedings, the majority of cases are processed within three sessions (excluding the prolonged average periods of proceedings that resulted from the COVID-19 pandemic) and within around three months, with a resolution rate of approximately 80%. This would seem to reflect the important position that LTP occupies as a process for resolving civil disputes arising from individual labor relations, and how it has become established as a system that responds to the needs of society and the public. In this sense, the LTP can be recognized as a success, as they fulfill the objectives envisaged in the Judicial Reform.

Let us look at the factors that contribute to such success. It has been suggested that the greatest contributing factor is that, at the time the system was initially founded, "with a growing need for specialist judiciary proceedings to address the increasing number of disputes related to individual labor relations, amid the developments of Judicial Reform, a consultative body bringing together concerned parties from the courts, legal community, labor and management, the administration and academia was created and, following thorough discussion, a new system was conceived as a consensus, and all those involved rallied behind it in united efforts."[57] Its speediness and high resolution rate remains strong still today. This can be attributed to the fact that a professional judge (tribunal judge) and tribunal members with backgrounds in labor and management assess the rights between the concerned parties promptly and effectively, and, even in the event that conciliation cannot be achieved, strictly adhere to the system of passing a tribunal decision in line with the actual circumstances of the case, in light of the rights between the parties concerned;[58] to the role played by the attorneys serving as agents to the parties concerned closely familiarizing themselves with LTP and providing guidance to the parties concerned regarding the specifics of the system; and also to the cooperation of the related organizations and bodies with the smooth implementation of the system.[59]

2. The challenges of labor tribunal proceedings

(1) The 3 Ps and the ongoing endeavors to explore the progressive application of LTP

In the wake of Work Style Reform, Japan's labor and employment laws are entering a period of significant change. Specifically, in order to address the disparity in treatment between regular workers (full-time, open-ended employment) and non-regular workers (part-time, fixed-term employment), a Japanese version of the principle of equal pay for equal work (also referred to in Japan as the principle of equal and balanced treatment) has been incorporated in the Part-Time Workers and Fixed-Term Workers' Act (Act on Improvement of Personnel Management and Conversion of Employment Status for Part-Time Workers and Fixed-Term Workers) and the amended Worker Dispatching Act (Act on Securing the Proper Operation of Worker Dispatching Businesses and Protecting Dispatched Workers) thereby regulating the means of determining terms and conditions of employment through mandatory statute. In the future, cases contesting potential violations of the principle of equal and

balanced treatment (cases where it is difficult to pass judgment without advanced legal judgment and understanding of the circumstances for labor and management) could be brought to the LTP. Such cases would not typically be considered to fall in the category of disputes for which speedy proceedings, generally completed within three sessions, would be fitting. However, while there have in the past been suggestions that sexual harassment cases and cases of workplace bullying (known as "power harassment" in Japan) are complex and challenging, and thereby not suited to LTP, it is possible to reach a resolution by having the perpetrator participate in the proceedings as a person concerned, and, having pursued a hearing to reveal how the facts fall into place, offer a proposed resolution.[60] Such cases appear at first glance complex and challenging, but once the practical perspective is established and the specific circumstances of the individual case are considered, the direction to be taken in the resolution can be comparatively concisely determined. Thus, it is necessary to broaden the scope of LTP, which draws on the specialist insights of members with experience and knowledge of labor and management, and possess an enthusiasm to resolutely engage in resolving such complex and challenging cases. On the other hand, the LTP system is not what could be described as an "all-round athlete." Therefore, particularly the attorney serving as an agent to the petitioner must hone his or her batting eye—that is, the ability to determine which process will be most fitted for resolving the labor dispute concerned.

A mainstay of the labor tribunal system's success today, as established above, has always been the way in which those involved in the proceedings take pride in their role as *professionals* and, investing sincere efforts—*perspiration*—in their preparation and other stages, and approach the system with the *passion* to apply it to solve disputes. In the past it was such a suggestion that in the case of the revised Code of Civil Procedure, around 10 years after its establishment, there was a waning of the enthusiasm among legal practitioners to respond the needs of the public—as the system's users—by striving for a more speedy and suitable approach in implementing civil trials[61]; there are concerns that those involved in the labor tribunal system may similarly lose their enthusiasm.[62] Therefore, the importance of the 3Ps and the ongoing efforts to explore the progressive application of the LTP, while conceptual, need to be reiterated. In terms of the concrete measures to be applied, there are three keys as explained below: ensuring and passing on specialist competence, raising public awareness and knowledge of the LTP, and facilitating access to proceedings.

(2) Ensuring specialist competence (passing on experience and insights)

(i) Ensuring the competence of attorneys

Results from the survey of labor tribunal system users note the necessity of improving attorneys' specialist knowledge and experience of labor tribunals.[63] *Rodo hosei iinkai* (Committee on Labor Law Legislation) of *Nihon Bengoshi Rengokai* (Japan Federation of Bar Associations, JFBA) has taken a central role in holding training workshops as opportunities to secure sufficient attributes and competence for operating labor cases and LTP by making e-learning accessible to attorneys affiliated with each of the local bar associations nationwide. Where local bar associations have established a committee covering the jurisdiction of the JFBA Committee on Labor Law Legislation, the training to secure the necessary competence for labor tribunals is implemented under the organization of such committees as it fits the actual circumstances of each local bar association. Local bar associations that possess such committees also work with their respective district courts to hold meetings for consultation and the exchange of opinions as a forum for frank discussion in which attorneys may share their thoughts on the issues involved in the operation of LTP and the courts can offer their perspective on the issues of and possible improvements that could be made to the attorneys' approaches to labor tribunal proceedings.[64]

There are also cases in which tribunal members and the committees covering the jurisdiction of the JFBA Committee on Labor Law Legislation at local bar associations share opinions and strive toward improvements by engaging in discussions of their respective challenges and potential areas for enhancement. Given the role that attorneys need to play in LTP as "competent users" of the labor tribunal system, and the necessity of securing

a greater number of such attorneys,[65] it can also be suggested that another pending task is to enhance the training and guidance (on-the-job training and guidance within firms or beyond the boundaries of a certain firm) of attorneys, particularly younger attorneys, by attorneys who are truly qualified and competent individuals (*professionals*) with skill and experience in labor cases and LTP.

(ii) The tribunal judge's approach to proceedings

It is above all important for labor tribunal judge to run proceedings such that every opportunity is used to secure the trust of the parties concerned while steering the dispute toward a conciliation. Parties to the case in serious confrontation tend to find it rather difficult to speak their mind at an early stage. It is crucial to listen persistently and carefully, while also using one's imagination, not only to the parties' opinions, but also to their respective standpoints and feelings, or the current conditions in their industry, and to explain the significance and limitations of LTP while encouraging a conciliation. Moreover, in cases where the judge cannot sufficiently form a personal conviction (*shinshō*; their own perception or opinion of the case as to the facts found), and something unclear remain, it is important to identify the reasons for such unclarity while working toward conciliation. These unclarity of the case sometimes increases tendency to end in settlement. In light of LTP's educational effects on labor law compliance, the efforts to provide appropriate advice is also the key to securing trust. In addition, in order to allow tribunal members to draw effectively on their specialized knowledge and experience in proceedings and consultations, it is also necessary to devise means of allowing those members to show their presence felt in line with the content of the case, their respective roles at each stage, from informal meetings on the progress of the proceedings, identifying and deliberating the contentious aspects, and the hearing process. From the perspective of the attorney or other agent of the parties concerned, the critical factor in reaching a successful conciliation, is the order of listening and the order of persuasion. Hearings are carried out with the parties sitting opposite each other. When each party's arguments are asked in turn with a view to reaching conciliation, it is necessary for a tribunal judge with a resolution scenario in mind, from the perspective of the impact on the psychological state of the parties to the dispute and of sharing information on the resolution that is envisaged with each of the attorneys, to give great consideration to the question of from which party—the petitioner or the other party—to start asking intentions and in what order to persuade them regarding conciliation. An attorney with a certain level of proficiency has a picture of a possible resolution when taking on the case, and approach the labor tribunal sessions after earnest efforts to persuade the relevant parties in advance, anticipating the attitude of the other party, and planning how to deal with it. Therefore, it would be necessary to bear in mind that some cases in which it is beneficial for a tribunal judge to speak frankly with the attorneys, prior to commencing proceedings toward conciliation, to hear their opinions such as possible resolutions, and the order in which the parties should be asked their intentions or persuaded to accept such resolutions.[66]

(iii) Passing on the experiences and insights of labor tribunal members

Whether or not the LTP will be utilized in the future depends on capable persons' participation who possess the specialized knowledge and experience necessary for a tribunal member. Labor tribunal members are expected to approach resolving labor disputes with a sense in good human resource management and criteria based on industry market condition. To do so, they must be equipped with a correct understanding of labor and employment laws, which provide the model criteria for resolutions. The Ministry of Health, Labour and Welfare conducts an annual training on the resolution of disputes concerning individual labor relations, which draws on a textbook filled with extensive fundamental insights and up-to-date information on labor and employment laws, as well as utilizing actual precedents to explore specific labor dispute resolutions. Many labor tribunal members make earnest use of this opportunity to thoroughly develop their knowledge and understanding. Training workshops hosted by the courts are also held as needed.

In addition to such classroom-based training, it is vital to ensure an exchange of experiences between current and former labor tribunal members—allowing labor tribunal members to share among each other the practical knowhow, newly-devised approaches and other such insights that they have gleaned from their hands-on experiences as tribunal members—in order for the necessary specialized knowledge and experience to be passed on. The Liaison Council of Labor Tribunal Members ("Liaison Council") was established on that basis on April 22, 2017. The Liaison Council is a voluntary association (private organization neither mandated nor controlled by law) of current and former labor tribunal members, as well as interested persons such as researchers, attorneys, and related organizations. On commission from the Liaison Council, the National Federation of Labour Standards Associations publishes the quarterly "Newsletter for Labor Tribunal Members," which seeks to provide a wealth of information for labor tribunal members to draw on the experience of others, by covering revisions to LTP and labor-related laws, trends in labor-related precedents, the labor tribunal system from the perspective of attorneys, and the insights from labor tribunal members on their ways in which they have freed themselves of concerns and confusion, reached a sense of achievement, and their success stories and cautionary tales. The presence of the Liaison Council is vital for passing on and developing the rich and valuable experience and the insights of those experienced labor tribunal members with a long history of service; it is strongly hoped that steps will be taken to organize and establish the human and physical foundations that will ensure its ongoing operation.[67]

(3) Public awareness raising and dissemination of information

There is a video which was produced as a Supreme Court initiative, entitled "*Yoku Wakaru! Rodo Shinpan Tetsuzuki*" (An informative guide to labor tribunal proceedings).[68] The around 12-minute video seeks to increase the accessibility of the LTP system by concisely introducing the key characteristics of LTP, while using dramatic reenactment to provide a simple explanation of how LTP is applied to resolve disputes regarding dismissals: the video allows the public to develop a clear picture of how dispute resolution unfolds in the case of labor disputes involving dismissals and other such issues. Such initiatives to raise awareness among and disseminate information to the public are crucial to the ongoing development of LTP as they provide considerable momentum prompting members of the public to recognize the legal significance and related issues of the phenomena they encounter and to take action seeking to ensure the implementation of the law. Alongside such initiatives, it is also necessary to devise means of providing greater opportunities for the users of the LTP system to select an agent with whom they are satisfied, through efforts by the JFBA Committee on Labor Law Legislation and the respective committees of the local bar associations to widely notify and inform the public of the presence of attorneys who have acquired training to secure sufficient competence in labor cases and LTP.

(4) Improving the accessibility of the LTP using online resources and expansion to district court branches handling cases

Video hearings had already been tentatively implemented for LTP since the system's inception. With the sudden progress, prompted by the COVID-19 pandemic, in the utilization of information technology for judicial proceedings, LTP have also been operated online via Microsoft Teams.[69]

Such initiatives to expand the use of LTP are also reflected in the expansion of labor tribunals to the branches of district courts. At the time the LTP system was initially established, cases were only handled by the main district courts (of which there are 50 nationwide). However, upon requests from bar associations around Japan, consultation between the JFBA and the Supreme Court resulted in LTP also being handled by the Tachikawa Branch of Tokyo District Court and Kokura Branch of Fukuoka District Court from FY 2010 onward, and later by the Hamamatsu Branch of the Shizuoka District Court, the Matsumoto Branch of the Nagano District Court, and the Fukuyama Branch of the Hiroshima District Court from FY 2017 onward. In addition to the proactive steps taken to utilize online formats, there are expectations that, in light of the importance of labor and management

specialists with roots in the community participating in LTP, continued efforts will be made to enhance judicial services by exploring the possibilities for increasing the number of branches handling cases, and in turn, further expanding the system's organization to meet the needs of society and the public.[70]

3. Concluding remarks

The operation of the LTP system entails various problems and challenges that have not been touched on in this paper: the problems concerning labor unions issuing petitions and persons who are not attorneys serving as agent to a party concerned under the special permission, the expansion of district court branches that handle cases, and discussions on common rules to district court branches for the handling of documentary evidence (It has been argued that while the documentary evidence needs to be sent to the tribunal members to ensure the quality of the hearings, there are problems pointed out such as the privacy issues related to the handling of confidential information and the possibility of overburdening the labor tribunal members). I believe, however, that depending on the future operation of the system, there would come a time when LTP, as proceedings that enable a speedy resolution suited to the actual circumstances of the case, could be recognized as the core process for resolving labor-management disputes (such that the labor tribunal system occupies a status by which, provided a case is not related to a latest practical topic of debate or an especially complex or challenging issue,[71] when it comes to the merits of "the proceedings" for a labor dispute case is a labor tribunal). It has typically been the ideal for labor-management disputes to be resolved through discussion between labor and management. However, with the unionization rates of labor unions, which are supposed to form the foundation for labor and management to follow their own process to reach an appropriate resolution, currently lower than 20%,[72] and the fact that labor law compliance, which should serve as the compass for detecting and highlighting labor issues and developing resolutions, is yet to sufficiently pervade the social structure based on employment (employment society) in Japan.[73] The capacity of LTP which could ensure speedy and suitable resolutions, are increasing its authoritative presence as a means of implementing labor laws, and there are high expectations for their utilization in the future. As a legal practitioner handling labor disputes and consultations for advice on labor issues on a day-to-day basis in a regional city—where I witness some of the effects of a lack of knowledge or concern about labor and employment law among both workers and employers, which present themselves as a constant negative domino effect; even though unlawful personnel measures are in place, labor disputes fail to arise, such unlawful approaches are allowed to remain unaddressed, and even be passed on as the norms of the workplace; or, in contrast, labor disputes become unnecessarily severe—I strongly hope that the progressive development of the LTP plays a significant role in the advancement of labor law compliance for the employment society.

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Notes

1. This paper uses the term "conciliation" for *chotei* according to the LTA translated by the Ministry of Justice. See Keiichiro Hamaguchi, "Labor-management Relations in Japan Part III: Systems for Resolving Individual Labor Disputes," *Japan Labor Issues* 5, no.33 (August-September 2021). It notes that "*Assen* has been termed as 'conciliation,' and *chotei*, as 'mediation' in the labor law academia in Japan for a long time. However, it defines *assen* and *chotei* as 'mediation' and 'conciliation' respectively in the view of general understanding." https://www.jil.go.jp/english/jli/documents/2021/033-06.pdf.
2. Kazuo Sugeno, Ryuichi Yamakawa, Tomoyoshi Saito, Makoto Jozuka, and Satoko Otokozawa, *Rodo shinpan seido: Kihon shushi to horei kaisetsu* [Labor tribunal system Purposes of and commentary on laws and regulations: Basic purpose and commentary on laws and regulations], 2nd ed. (Tokyo: Kobundo, 2007), 2–3.
3. See Kazuo Sugeno, "The Birth of the Labor Tribunal System in Japan: A Synthesis of Labor Law Reform and Judicial Reform," *Comparative Labor Law and Policy Journal* 25, no. 4 (2004): 519–533.
4. Makoto Jozuka, "Rodo shinpan seido ga minji-sosho ni ataeru shisa" [Implications of the labor tribunal system for civil litigation], *Hanrei Times* no.1200 (April 2006): 5–8.

5. Makoto Jozuka, "Rodo shinpan seido ga minji sosho ho kaisei ni ataeru shisa" [Implications of the labor tribunal system for the revision of the Code of Civil Procedure] in *Gendai minji tetsuzuki ho no kadai: Kasuga Ichiro sensei koki shukuga*, ed. Shintaro Kato, Hiromasa Nakajima, Kouichi Miki, and Masaaki Haga (Tokyo: Shinzansha, 2019), 776.
6. Sugeno, et al., *supra* note 2, 244–246.
7. Sugeno, et al., *supra* note 2, 244–246.
8. It should, however, be noted that the increases in the average duration of proceedings in 2020 may be attributable to the unusual circumstances of the COVID-19 pandemic, which prompted a nationwide declaration of a state of emergency and resulted in the cancellation of the date of labor tribunal decision alongside other sessions, and difficulty in setting the dates themselves.
9. The latest statistical data is drawn from data compiled by the Sapporo District Court on the basis of materials created by the Administrative Affairs Bureau of the General Secretariat of the Supreme Court and disclosed to the Sapporo Bar Association's Committee on Labor and Employment in materials dated February 25, 2021.
10. Sugeno, et al., *supra* note 2, 244; Koichi Nanba, et al., "Zadankai: Rodo shinpan 1-nen o furikaette" [Roundtable discussion: Looking back on a year of labor tribunals], Kenji Tokuzumi speech, *Hanrei Times* 1236 (July 2007): 28, etc.
11. Haruko Abematsu, head of the second division of the Administrative Affairs Bureau, General Secretariat, the Supreme Court, "Rodo shinpan seido no unyo jyokyo to saikin no saibansho no torikumi ni tsuite" [Operation of the labor tribunal system and recent court initiatives], The 3rd Symposium of the Liaison Council of Labor Tribunal Members, *Rodo shinpanin tsushin* 9, (2019): 4.
12. Sugeno, et al., *supra* note 2, 246.
13. Sapporo District Court, *supra* note 9.
14. Kazuo Sugeno, *Rodoho* [Labor law], 12th ed. (Tokyo: Kobundo, 2019), 1058.
15. Yachiyo Iseki, "Hibi no kensan to netsui koso ga kagi" [Day-by-day enthusiasm and endeavors to hone knowledge are the key] under the title of (4) Kihon teki na chishiki no fusoku o oginau hitsuyo [The need to compensate for the lack of basic knowledge], *Rodo shinpanin tsushin* 4, (2018): 3.
16. Ichiro Wada, "Bengoshi kara mita rodo shinpan seido" [The labor tribunal system from a lawyer's perspective], *Rodo shinpanin tsushin* 3 (2017): 3–4.
17. Iwao Sato, "Riyo-sha chosa kara mita rodo shinpan seido no kino to kadai" [Drawing on 'Research on User Experience of the Labor Tribunal System in Japan' to address the functions and issues of the labor tribunal system], Rodo shinpan seido sosetsu 10 shu-nen kinen shimpojiumu dai ichi bu [Symposium Commemorating the 10th Anniversary of the Labor Tribunal System part 1], *Quarterly Labor Law* 248 (2015): 78.
18. See Tetsunari, Doko, *Rodo iinkai no yakuwari to futo rodo koi hori: Kumiai katsudo o sasaeru shikumi to ho* [The role of Labor Relations Commissions and theory of unfair labor practice: Mechanisms and laws supporting union activities], (Tokyo: Nippon hyoron sha, 2014), 58. It notes the effectiveness of educational guidance at the stage of examination in case employers lack legal knowledge; this is an example of settlement in labor dispute by the Labor Relations Commission.
19. Ichiro Natsume, et al., "Rodo shinpan seido sosetsu 10 shu-nen kinen shinpojiumu dai 2bu paneru disukasshon" [Part 2 Panel Discussion of the Symposium Commemorating the 10th Anniversary of the Labor Tribunal System], Makoto Jozuka speech, *Quarterly Labor Law* 248 (2015): 90.
20. Sugeno, *supra* note 14, 1088, 1098–1101.
21. Sugeno et al., *supra* note 2, 25–35. It organizes such distinctive characteristics of the LTP into six categories. See also Sugeno, *supra* note 14, 1147–1149 and Yuichiro Mizumachi, *Shokai Rodo ho* [Labor and employment law], (Tokyo: University of Tokyo Press, 2019) 1339–1340. They identify five such characteristics. Moreover, see Ryuichi Yamakawa, *Rodo funso shoriho* [Laws for labor dispute resolution], (Tokyo: Koubundou, 2006) 152. It alternatively identifies seven distinctive characteristics. All of these sources generally share common aspects.
22. ISS (Institute of Social Science, the University of Tokyo), ed. *Rodo shinpan seido ni tsuite no ishiki chosa kihon hokokusho* [Basic report on the survey of attitudes toward the labor tribunal system] 2011, 87. https://jww.iss.u-tokyo.ac.jp/survey/roudou/pdf/report.pdf.
23. ISS, ed. *Dai 2 kai Rodo shinpan seido ni tsuite no ishiki chosa kihon hokokusho* [The 2nd basic report on the survey of attitudes toward the labor tribunal system] 2020, 38. https://jww.iss.u-tokyo.ac.jp/survey/roudou/pdf/report_200730.pdf.
24. Kazuo Sugeno, (Interviewers, Masahiko Iwamura, and Takashi Araki), *Rodo ho no kijiku: Gakusha 50 nen no shii* [The key foundations of labor and employment laws: Fifty years of scholarly contemplation] (Tokyo: Yuhikaku, 2020), 151.
25. Nobuo Takai, Kunio Miyazato, and Hideo Chigusa, *Ro-shi no shiten de yomu saikosai juyo rodo hanrei* [Read from the Labor and Management Perspective: Important Labor Cases of the Supreme Court] (Tokyo: Keiei Shoin, 2010), 308.
26. Sugeno, et al., *supra* note 2, 41.
27. Sugeno, *supra* note 24, 152.
28. Sugeno, et al., *supra* note 2, 29; Kazuo Sugeno, "Roshi funso to saibansho no yakuwari: Rodo jiken no tokushoku to saibansho no senmonsei" [Labor disputes and the role of courts: Characteristics of labor cases and the courts' expertise], *Hoso Jiho* 52, no.7 (July 2000):1979.
29. Such specialization of the labor tribunal members is said to be demonstrated in the situations where the interests of the parties involved are adjusted and balanced for the decision. Sugeno et al., s*upra* note 2, 29, point out that the labor tribunal members' expertise with in-depth knowledge of personnel management and labor-management relations is demonstrated in coordinating interests in each case, which is unique to Japan. The tribunal members comprehensively consider the characteristics of labor relations dealing with abstract concepts such

as “reasonableness” in disadvantageous changes in work rules and “reasonable grounds” for dismissal.
30. Yukio Yamaguchi, attorney at law and former judge, “A last-minute compromise prompted the creation of today’s labor tribunal system (Transcript of a speech)” *Rodo shinpanin tsushin*, no.9 (2019): 14–15.
31. Yoshiaki Ugai (Attorney at law) “Jirei kenkyu: Shinpanin ni kitai sareru mittsu no P (koen roku)” [Case study: 3Ps expected to labor tribunal members], *Rodo shinpanin tsushin*, no.8 (2019), 8–16. It demonstrates the significant difference in the approach to viewing evidence in labor cases and ordinary civil cases with the example of the *Yamanashi Prefecture Credit Union* case, Supreme Court (Feb. 19, 2016) 70-2 *Minshu* 123. Ugai poses the hypothesis regarding the background to this judgment, suggesting that with the rising number of judges and attorneys and other agents with experience of the labor tribunal system, legal community has begun seeing the appearance of experts with understanding of the special nature of labor cases; such a trend served as the driving force for the Supreme Court to consider the labor-contract case law which committed to the worker’s specific position in a labor relationship (subordination to the control of the employer—*jūzokusei*) and culminated in the Supreme Court judgment of the *Yamanashi Prefecture Credit Union* case. While this opinion is unique, as Ugai notes, it is the case that said Supreme Court judgment, unlike ordinary civil cases, appraises the evidence and the facts in light of the actual circumstances of the labor dispute.
32. Jozuka, *supra* note 4, 8–9. It notes that unlike the principle of burden of proof, which is practically applied in an ordinary civil procedure, the unique structure of the proceedings and judgment in the LTP allows for the proportion and extent of the personal conviction (*shinsho*) of the labor tribunal committees to be reflected in the judgment. Addressing the structure of proceedings and judgments in labor tribunals, Jozuka’s paper introduces the “one-step theory” and the “two-step theory” and suggests that the LTP are grounded in the “one-step theory.” The “one-step theory” shows the LTP’s unique structure, by which a judgment is made by giving consideration to all aspects of the “rights between the parties” and “factors to be coordinated,” including the extent and proportion to which personal convictions have been developed for each. The “two-step theory” indicates the approach of considering the aspects to be coordinated, on the basis that the aim to provide proof, the burden of proof, and the level of proof in a tribunal decision, follow the same approach as that of an ordinary civil procedure. From my experience handling a labor tribunal as an attorney serving as an agent to one of the parties concerned, my understanding is that the tribunals are conducted according to an approach similar to the one-step theory, an approach that can be seen as the subtle benefit of the LTP. This unique proceedings and judgment structure, combined with the specialist knowledge and experience of the labor and management representatives who serve as tribunal members—as a differing approach to the “level of proof” applied in an ordinary civil procedure—appear to provide the LTP with greater certainty of discovering the truth in light of the actual circumstances of the case.
33. Sugeno et al., *supra* note 2, 29; Kazuo Sugeno, et al., “Zadankai Rodo shinpan seido 1nen: Jisseki to kongo no kadai” [Roundtable discussion: One year after the establishment of the labor tribunal system: Achievements and future challenges] *Monthly Jurist*, no.1331, (April 2007): 26.
34. Sugeno, *supra* note 14, 1058, 1150–1163.
35. Sugeno et al., *supra* note 2, 57.
36. Kazuo Sugeno, “Rodo shinpan gaikan” [Overview of labor tribunal] in *Rodo shinpan jirei to unyou jitsumu* [Labor tribunal cases and its practices], ed. Japan Federation of Bar Association under supervision by Kazuo Sugeno (Tokyo: Yuhikaku, 2008), 16.
37. Sugeno et al., *supra* note 35, 16. Sugeno, et al., *supra* note 14, 1151.
38. Kunio Miyazato, “Rodo shinpan no taisho ‘Rodo kankei ni kansuru jiko” [Significance of “matters relating to labor relations,” the subject of labor tribunals], Commentary on Osaka High Court judgment of July 8, 2014, *Monthly Jurist* no. 1506, 117–118. It identifies the issues, introducing and analyzing the recent cases involving gray areas.
39. Miyazato, *supra* note 38, 12–13, 118.
40. Miyazato, *supra* note 38, 12–13, 118.
41. Sugeno et al., supra note 2, 12–13.
42. Sugeno et al., *supra* note 2, 32–33.
43. Sugeno et al., *supra* note 2, 30.
44. Takashi Araki, *Rodoho* [Labor and employment law] 4th ed., (Tokyo: Yuhikaku, 2020) 607 draws on the *X Gakuen* case (Saitama District Court, April 22, 2014, *Rodo Keizai Hanrei Sokuho* No. 2209, 15) as a lawsuit filed for status confirmation following a labor tribunal decision of a monetary resolution. It observes that “with regard to the tribunal decision to order the employer to ‘pay 1.44 million yen as a monetary resolution,’ this case was not a judgment that excluded claims for the confirmation of status and therefore does not fall under abuse of the right to sue in terms of the petition to claim for confirmation of status. In light of the case, it is thought that the ‘monetary resolution’ was interpreted to mean the dissolution of the employment relationship, and that there was scope for an ultimate resolution to be reached. As there are a considerable number of labor tribunals regarding monetary resolution for dismissal or non-renewal of contract that have passed similarly worded judgments, in order to ensure that labor tribunals become the ultimate resolution for such disputes in the future, it is necessary to pay close attention to the manner in such a judgment recorded, such as dismissing such petitions in the main text of the tribunal decision.” Also see Mizumachi *supra* Note 21 1347. It argues along the same lines. For detailed analysis and clarification of the lawsuit, see Keiichiro Hamaguchi, “*Rodo shinpan ni okeru ‘kaiketsu-kin’ no igi: X gakuen jiken*” [The significance of monetary resolution in labor tribunals: The *X Gakuen* case] *Monthly Jurist*, no.1478, (April 2015): 111.
45. Yamakawa, *supra* note 21, 167–168.
46. Yamakawa, *supra* note 21, 167–168.
47. This was a case in which the plaintiff issued a claim for the defendant to pay a total of 1.5 million yen, consisting of 1.4 million yen solatium and 100,000 yen of attorney fees, and late payment charges, as damages in accordance with the State Redress Act, Article 1,

Paragraph 1, on the grounds that in spite of the fact that the plaintiff had rejected the proposal for a conciliation with a non-disclosure clause, the labor tribunal in this labor tribunal case, in violation of LTA Article 20, Paragraphs 1 and 2, passed a labor tribunal decision that included a non-disclosure clause, thereby violating the plaintiff's freedom of expression (Constitution of Japan, Article 21), freedom of thought and conscience (Id. Article 19), and the right to the pursuit of happiness (Id. Article 13) and in turn causing mental harm to the plaintiff. The court held that the non-disclosure clause, while bearing reasonable relation to the confirmed status of the parties and other aspects, and also being foreseeable, was not potentially acceptable and in turn not appropriate; therefore, and the non-disclosure clause could be recognized to be a violation of LTA Article 20, Paragraphs 1 and 2. The claim for damages was, however, dismissed on the grounds that the labor tribunal decision including a non-disclosure clause could not be classed as an unlawful act as prescribed in Article 1, Paragraph 1, of the State Redress Act.
48. Sugeno et al., *supra* note 2, 34; Araki, *supra* note 44, 608.
49. Tetsu Shiraishi authored and edited, *Rodo kankei sosho no jitsumu (dai 2 han)* [Labor-related litigation practice, 2nd ed.], (Tokyo: Shoji homu, 2018), 584.
50. Doko, *supra* note 18, 9.
51. Sugeno et al., *supra* note 2, 228.
52. It should be noted that in the conciliation of labor disputes by the Labor Relations Commissions, resolutions are passed by a majority of the members—who are made up of three members representing labor, management and public interests respectively—such that the labor and management members of the Commission have a significant influence in resolutions, similar to that of labor tribunal members in tribunal decisions.
53. Sugeno et al., *supra* note 2, 80.
54. Takahiro Asano, "Rodo kumiai ho 24 jo, Roshi iin no futo rodo koi jiken no shinsa to e no san'yo to" [Participation of labor and management members of a Labor Relations Commission in the examination of unfair labor practice cases, etc. under Article 24 of the Labor Union Act] in *Shin kihon ho konmentaru rodo kumiai ho* [New basic law commentary: Labor Union Act], extra issue of legal seminar no.209, edited by Satoshi Nishitani, Tetsunari Doko, and Hiroya Nakakubo, (Tokyo: Nippon Hyoron-sha, 2011), 252–253.
55. Sugeno et al., *supra* note 2, 103.
56. Mizumachi, supra note 21, 1345; Yoshimaro Amagai, "Rodo shinpan tetsudzuki ni okeru 'chotei mata wa rodo shinpan mae no sochi meirei': Jinji ido meirei, kaiko shobun ni kakawaru sochi meirei no jissai" ["Measure Order before Conciliation or Labor Tribunal" in Labor Tribunal Proceedings: Practice of Order concerning Personnel Transfer and Dismissal], *Romujijo*, no.1366 (July 2018) 48–53; Eri Udeda, "Rodo shinpan mae no sochi meirei" [Orders for measures before labor tribunals], *Chuo rodo jiho*, no.1238, (2018) 52–53.
57. Sugeno, *supra* note 24, 168.
58. While proceedings may be closed in accordance with LTA Article 24 (Closing in accordance with Article 24) in the event that a case, due to its nature, is not working with the labor tribunal system, this is only an exceptional measure, and the labor tribunal is obliged to seek to secure a conciliation or pass a tribunal decision as far as possible. See Sugeno, *supra* note 14, 1163. It notes that in the five-year period from 2014 to 2018, the number of cases that were closed under Article 24 was in fact as little as 4.5% of all petitions.
59. Sugeno, *supra* note 14, 1150.
60. Yoshiaki, Ugai, *Jirei de shiru rodo shinpan seido no jissai* [Labor Tribunal Proceedings System in practice through case studies], (Tokyo: Rodo Shimbun-sha, 2012), 29–30.
61. Jozuka, *supra* note 5, 776; Takaaki Muto, "Saiban kan kara mita shinri no jujitsu to sokushin" [Enhancement and facilitation of proceedings from the judge's perspective], *Ronkyu Jurist*, no.24 (2018): 14; Hiroshi Takahashi, et al., "Zadankai Minji sosho ho kaisei 10 nen, soshite aratana jidai e" [Roundtable discussion: Ten years after revision of the Code of Civil Procedure and a new era], Hiroshi Takahashi speech, *Monthly Jurist*, no.1317 (2006): 40.
62. Kazuo Sugeno, "Rodo shinpan-in no yakuwari" [The role of labor tribunal members], *Rodo shinpan-in tsushin* no.8 (2019): 7.
63. Sato, *supra* note 17, 80–81.
64. Motoaki Kimura, and Masato Fujita, "Fukuoka chiho saibansho ni okeru rodo shinpan jiken no jitsumu" [Practice of labor tribunal cases in Fukuoka District Court], *Hanrei Times*, no.1303 (October 2009), 19–20; Joji Dando et al., "Tokyo chisai rodo bu to tokyo 3 bengoshi kai no kyogikai dai 11 kai" [The 11th conference of the Tokyo District Court Labor Division and the Tokyo San Bengoshikai (Three Tokyo Bar Associations)], *Hanrei Times*, no.1403 (October 2014), 29–50.
65. Kimura and Fujita, *supra* note 64, 20.
66. Doko, supra note 16, 58–60. It draws on a vast amount of actual experience to provide commentary on devising means of reaching a settlement in Rabor Relations Commissions. The approaches it introduces can also be applied to the LTP.
67. National Federation of Labour Standards Association, *Rodo shinpanin tsushin*, no. 1 (2017).
68. https://www.courts.go.jp/links/video/roudoushinpan_video/index.html.
69. I have already participated in two labor tribunals conducted online. Online sessions have an advantage that a scheduled date can be set promptly. Holding proceedings online means less potential for problems coordinating dates of appearance, even in cases in which an attorney is representing a party from a remote location. However, it should be noted that there is the possibility for difficulties seeing the face expressions and other such aspects of the participants where not all participants could be captured by the camera, and also the possibility of mishaps such as the audio temporarily cutting out. Given (although it may not yet be an issue) the ability for the parties to the dispute to turn off their video or use mute at a timing they see fit, it is necessary to establish rules at least during the hearing process. Participants should be prohibited settings that interfere with efforts to form a personal conviction, or if a certain party wishes to use the

mute function to discuss a matter internally, then, they must seek the permission of the labor tribunal committee.

70. Sugeno, *supra* note 14, 1152. It appraises expanding more district court branches dealing with the LTP and such an enhancement of judicial services for labor disputes.

71. Joji Dando, et al. *supra* note 64, 25–33. More specifically, large scale disputes, disputes with a significant external impact, or cases entailing an extremely vast number of issues could be cited such as cases of economic dismissal, cases of disadvantageous changes to work rules with highly large amounts of related factors, cases to invalidate *haiten* (internal transfers within a single company) with highly large amounts of background and related factors, and industrial accident cases that require insights of a medical expert.

72. Results from the Ministry of Health, Labour and Welfare's 2020 "Basic Survey on Labour Unions" (available only in Japanese) show that the estimated unionization rate (percentage of union members among all employees) is 17.1%. https://www.mhlw.go.jp/toukei/itiran/roudou/roushi/kiso/20/index.html.

73. Koji Takahashi, "The Future of the Japanese-style Employment System: Continued Long-term Employment and the Challenges It Faces," *Japan Labor Issues*, vol.2, no.6 (April-May 2018) 6. It describes the characteristics of Japanese social structure based on employment as "Since the Japanese-style employment system is at the center of the country's "employment society" (a coined term by Kazuo Sugeno to describe the mixed structure of employment practice, labor market, and other institutions related to people's working-life), predicting its future would lead to an awareness of basic directions of change in that structure and major issues that it could face in future." https://www.jil.go.jp/english/jli/documents/2018/006-02.pdf.

ASANO Takahiro

Professor, Faculty of Law, Hokkai-Gakuen University and attorney at law

Commentary

Is a Part-time Instructor Whose Role is Exclusively to Teach University Language Classes a "Researcher"?

The *Senshu University (Conversion of a Fixed-Term Labor Contract to an Indefinite-term Labor Contract)* Case
Tokyo High Court (Jul. 6, 2022) 1273 *Rodo Hanrei* 19

HOSOKAWA Ryo

I. Facts

X worked as a part-time instructor (*hijōkin kōshi*) teaching German language at the School of Business Administration of University Y, under an approximately one-year fixed-term labor contract with the university commencing in April 1989. After the initial one-year period, X continued to work for University Y under the fixed-term contract, which was renewed each year.

X's academic experience included conducting research and publishing papers on German literature while pursuing a master's degree and a PhD program at graduate school. These research achievements were the basis on which X was employed by University Y as a part-time instructor. However, while X's role as a part-time instructor at University Y entailed teaching classes and conducting examinations in German language, it did not include engaging in research. X was also neither allocated a research office nor provided with research funding by University Y.

On June 20, 2019, X applied to University Y to have her labor contract converted from a contract with a fixed-term to a labor contract without a fixed-term (indefinite-term contract), on the grounds of paragraph 1 of Article 18 of the Labor Contracts Act (LCA), which entitled her to said conversion to an indefinite-term contract because her total contract term with University Y had exceeded five years (the "five-year rule" for conversion to an indefinite-term contract). University Y in return claimed that X was a "researcher" as prescribed under item 1 of paragraph 1 of Article 15-2 of the Act on the Revitalization of Science, Technology and Innovation (Science, Technology and Innovation Act) and thereby refused to recognize the conversion to an indefinite-term contract on the grounds that said item prescribes that for those classed as researchers the total contract term must have exceeded 10 years, as opposed to five years, for conversion to an indefinite-term contract to be possible (10-year special provision). X responded by filing a lawsuit claiming that University Y's refusal of her application for conversion to an indefinite-term contract was in breach of the law and seeking confirmation of her status—namely, that she held the rights provided by an indefinite-term contract with University Y—as well as payment of solatium (*isharyō*) and other such damages on the basis that University Y had committed a tort. Of X's claims, the court of first instance (Tokyo District Court (Dec. 16, 2021) 1259 *Rohan* 41) recognized her demand for confirmation of her status as an employee with an indefinite-term contract. University Y therefore appealed to the Tokyo High Court.

II. Judgment

Tokyo High Court dismissed Y's appeal and upheld the judgment of the court of first instance which had approved X's demand for confirmation of X's status as an employee under an indefinite-term contract. The judgment is summarized below.

Item 1 of the paragraph 1 of Article 15-2 of the

Science, Technology and Innovation Act stipulates that the 10-year special provision applies to researchers and technical experts in the field of science and technology who have concluded a fixed-term labor contract with a university (humanities also fall under “science and technology”). The purpose of this provision is to avoid the following situations, according to statements made during the deliberations pursued in the process of establishing the Science, Technology and Innovation Act and the wording of Article 15-2 of the Act. Namely, research and development are often conducted as part of projects with a predetermined durations exceeding five years. Recognizing the five-year rule for the conversion of contracts—the conversion prescribed in Article 18 of the LCA—for fixed-term contract workers who participate in such projects and thereby engage in research and development and related tasks entails the risk that employers will terminate the contracts of such workers before exceeding a total contract period of five years in order to avoid the said conversion to an indefinite-term contract. This, in turn, may hinder the pursuit of the project and prevent said worker from producing research results.

The School Education Act stipulates that “instructors may engage in duties equivalent to those of professors or associate professors” (Para. 10, Art. 92). It also prescribes that the duties of professors and associate professors are to “possess outstanding knowledge, ability and accomplishments in teaching, research or the practical pursuit of their discipline, and to instruct students, provide guidance for students’ research, and engage in research” (Para. 6 and 7, Art. 92). That is, in the duties of university professors, associate professors, and instructors, a distinction is drawn between teaching and research such that they may not be seen as an inseparable unit. It is assumed that there may be professors, associate professors, and instructors who exclusively engage in teaching and are not responsible for conducting research.

Moreover, stipulations for qualification as an instructor set out in the Standards for Establishment of Universities (SEU)—which require instructors to be “deemed to have the educational abilities suitable for taking charge of the education offered by a university in their special major” (2007 SEU, Item 2, Art.16 (2022 SEU, Art.15, item 2))—also reflect the assumption that university employees whose role is to draw on their educational ability to exclusively provide instruction as instructors. Instructors, who are exclusively responsible for teaching as assumed in paragraph 10 of Article 92 of the School Education Act and Article 16 of the SEU, cannot therefore be seen to be engaging in duties equivalent to those of a professor or associate professor engaging in teaching and research. It is not assumed that such instructors are subject to “the 10-year special provision” as “researchers.”

To be classed as a “researcher” according to item 1 of paragraph 1 of Article 15-2of the Science, Technology and Innovation Act, a worker must have concluded a fixed-term labor contract to engage in research or development and related work and must be engaged in research or related work at the university with which said worker has concluded the fixed-term labor contract. Classing a part-time instructor who is not engaged in research or development at the university with which they have concluded the fixed-term contract as a “researcher” as prescribed in said item would not be consistent with the purpose of the legislating the Science, Technology and Innovation Act .

The judgment recognized that on June 20, 2019, when X applied to University Y for conversion to an indefinite contract, an indefinite-term contract between X and University Y commencing March 14, 2020, the day following the expiration of the term of the then fixed-term labor contract, was established on the grounds of paragraph 1 of Article 18 of the LCA.

III. Commentary

This case is the first precedent to have been brought to the court to determine whether the demand of a part-time instructor—who had teaching classes at a university over a number of years under a fixed-term labor contract renewed each year—to exercise

her right to the five-year rule (for contract conversion as prescribed under Article 18 of the LCA) could be dismissed on the grounds of applying the 10-year special provision prescribed in the Science, Technology and Innovation Act, given that the total contract period was less than 10 years. More specifically, it is the first to have contested whether a part-time university instructor falls under the category of "researcher" to which the Science, Technology and Innovation Act is applied.

In European countries, there is a tendency for legal systems applied to fixed-term labor contracts to operate on the assumption that such contracts will be used for temporary and therefore to place restrictions on the reasons for which such contracts can be used and limit the number of times that they may be renewed and the total contract period. In contrast, Japan's regulations on fixed-term contracts are limited to restrict the upper limit on contract periods. There are neither restrictions on the reasons for which fixed-term contracts can be used, nor restrictions on aspects such as the number of times such contracts can be renewed or the total period for which they can be used. There are consequently a considerable number of workers who work for the same employer for a number of years under a fixed-term labor contract that is repeatedly renewed. The part-time university instructor at the center of this issue in this case is one such worker.

Since the 2000s, Japan has seen a continuing rise in the number of workers working under fixed-term labor contracts—workers who are referred to as *hiseiki rōdōsha* (non-regular workers). This trend has also included growing numbers of not only those workers whose income is a supplement to the main source of income for their household (such as housewives or students working part time)—who formerly made up a significant portion of non-regular workers—but also non-regular workers (fixed-term contract workers) whose income from non-regular employment is the source with which they maintain their livelihoods. This prompted a 2012 amendment to the LCA aimed at protecting fixed-term contract workers (≈non-regular workers). One item covered in this amendment was granting the right to the five-year rule—namely, the right of a fixed-term contract worker whose fixed-term labor contract has been repeatedly renewed over a period exceeding five years to have their fixed-term labor contract converted to a labor contract without a fixed term (LCA Art. 18).[1]

An exception to the five-year rule is in place for researchers, technical experts, and other such employees in the fields of science and technology, including the humanities. Namely, the 10-year special provision for researchers, technical experts and other such employees in the field of science and technology, as prescribed in paragraph 1 of Article 15-2 of the Science, Technology and Innovation Act. This exception to the LCA is said to have been established due to concerns that the five-year rule may prompt universities and other such employers to seek to avoid having to convert to contracts without fixed terms for young fixed-term contract researchers engaged in projects lasting over five years by ceasing to renew such researchers' fixed-term contracts before the five years have passed, which would in turn adversely affect the teaching, research and career development provided by and pursued by such researchers.[2] The point at issue in this case was whether said 10-year special provision applied. A significant number of universities responded to the 2012 amendment to the LCA from April 2018 onward (once five years had passed from the starting date in 2013) by converting to indefinite-term contracts for those part-time instructors who requested said conversion.[3] On the other hand, many universities refused said conversions to indefinite-term contracts for part-time instructors with a total contract period of less than ten years, on the understanding that part-time instructors fall under the aforementioned provision set out in paragraph 1 of Article 15-2 of the Science, Technology and Innovation Act (or Article 7 of the Act on Term of Office of University Teachers, which is covered below). University Y also adopted the latter stance. That is, in response to X's assertion of the five-year rule in accordance with Article 18 of the LCA, University Y rejected said request on the grounds that X did not possess the right to conversion to an indefinite-term labor contract because she fell

under paragraph 1 of Article 15-2 of the Science, Technology and Innovation Act.

As it states, the judgment in this case addressed this point by determining that paragraph 1 of Article 15-2 of the Science, Technology and Innovation Act was created on the assumption that the rule for conversion to an indefinite-term contract after a period of five years may not be appropriate for researchers such as those engaged in long-term project research or other such work. Therefore, in order to fall under the category of "researcher" to which said article applies it is necessary to be engaged in research or development and other such related work at a university or other such institution. The judgment also drew on the provisions of the School Education Act to clearly indicate that it is possible for there to be university teachers at a university who are exclusively engaged in teaching, and thereby appears to consider X to be a "university teachers exclusively engaged in teaching" as opposed to a "researcher." This judgment's interpretation of the definition of "researchers" as prescribed in paragraph 1 of Article 15-2 of the Science, Technology and Innovation Act seems appropriate in light of the purpose of the provisions of the Act, as they are noted in the judgment. Given that a considerable number of universities such as University Y have refused the majority of part-time instructors who are effectively engaged exclusively in teaching (classes) the opportunity to convert a fixed-term contract to an indefinite-term contract even after their total contract terms have exceeded five years, this judgment is anticipated to have a significant impact on this issue in practical terms.

The judgment determined that X does not fall under the category of "researchers" for whom paragraph 1 of Article 15-2 of the Science, Technology and Innovation Act is applied. This prompts the question of what condition requires a person to be considered as a "researcher," other than giving university lectures? A worker who is engaged in research activities conducted by the research institution with which they have concluded a fixed-term labor contract will obviously fall under the category of "researcher." However, some of university faculty members who, although not participating in research projects conducted on an institutional level by their university or research facilities within their university, pursue research independently and publish their results through extramural academic journals or academic conferences. While X was neither allocated a research office nor provided with research funding by the university, would X, despite being part-time instructors, be considered a "researcher" if X were conducting extramural research activities, having been allocated a research office or provided research funding by the university? There is still room for debate as to what makes up the criteria for "researchers" to whom paragraph1 of Article 15-2 of the Science, Technology and Innovation Act applies.

In addition to the Science, Technology and Innovation Act, the Act on Term of Office of University Teachers, etc. ("University Teachers' Term of Office Act") likewise establishes a "10-year special provision." This provision can only be applied if one of the three following conditions are satisfied: a worker must (i) be employed at an education and research institution with a particular demand for diverse human resources given the pursuit of advanced, interdisciplinary, or comprehensive education and research and given the unique nature of the field or methods of the other education and research conducted at said education and research institution, (ii) be *jokyō* (an assistant professor), or (iii) have a role that entails providing teaching and pursuing research for a predetermined period in accordance with a particular plan that the university has set out or is participant in (University Teachers' Term of Office Act, Art. 4). The University Teachers' Term of Office Act involves more stringent regulations and procedural requirements in comparison with paragraph 1 of Article 15-2 of the Science, Technology and Innovation Act.

The application of the 10-year special provision under the University Teachers' Term of Office Act has been recognized by the court of first instance of the *Hagoromo University of International Studies* case (Osaka District Court, Jan. 31, 2022), and in the *Educational corporation Chaya Shirojiro Kinen*

Gakuen (*Tokyo University of Social Welfare*) case (Tokyo District Court, Jan. 27, 2022, 1268 *Rohan* 76), both cases in which the plaintiff workers were employed as full-time instructors (*sennin kōshi*).[4] Furthermore, the *Baiko Gakuin University* case (Hiroshima High Court (Apr. 18, 2019) 1204 *Rohan* 5), while not a case in which application of the 10-year special provision was disputed, addressed whether the fixed-term employment of a specially appointed associate professor (*tokunin junkyōju*) should be recognized under item 1 of paragraph 1 of Article 4 of the University Teachers' Term of Office Act (the plaintiff asserted that his employment did not fall under said item and was therefore under an indefinite-term contract). In this case, the judgment held that "given the demand for university autonomy, (the Act) clearly intends to allow universities that employ faculty members with a fixed term a certain amount of discretion." The judgment therefore found that the "particular demand for diverse human resources" specified in item 1 of paragraph 1 of Article 4of the University Teachers' Term of Office Act was applicable in this case, given one of the purposes for which said specially appointed associate professor was hired—namely, the fact that "his past successes in marketing activities to recruit students were also taken into consideration" when he was hired.

On the other hand, the appeal of the aforementioned *Hagoromo University of International Studies* case (Osaka High Court (Jan. 18, 2023) 2028 *Rojun* 67) found that item 1 of paragraph1 of Article 4 of the University Teachers' Term of Office Act did *not* apply. The judgment held that (1) regarding employment under item 1 of paragraph1 of Article 4 of the University Teachers' Term of Office Act, it is necessary, given the purpose with which the Act was enacted, for it to be "reasonable to determine a contract period," and (2) the position at issue needs to be an "advanced, interdisciplinary, or comprehensive education and research" position. It thereby determined that said article did not apply, given that the plaintiff, a full-time instructor on a fixed-term contract whose role was to provide teaching to prepare students for taking state examinations, (despite having accumulated professional experience before being hired) was engaged in work that "had little to do with" facilitating "practical education and research that draws on experience of the working world" or (advanced, interdisciplinary, or comprehensive) "research." As such precedents indicate, the application of the 10-year special provision under the University Teachers' Term of Office Act is also anticipated to prompt debate in the future.

The case was appealed to the Supreme Court and a petition for acceptance of appeal was filed, and the decision of the Supreme Court was the focus of much attention. On March 24, 2023, the Second Petty Bench of the Supreme Court (Koichi Kusano, Chief Justice) dismissed the appeal and the petition for acceptance of appeal, and therefore the High Court decision in this case became final.

1. For related survey results, see Yuko Watanabe, "New Rules of Conversion from Fixed-term to Open-ended Contracts: Companies' Approaches to Compliance and the Subsequent Policy Developments," *Japan Labor Issues* 2, no.7 (June-July 2018): 13–19. https://www.jil.go.jp/english/jli/documents/2018/007-03.pdf.
2. See Takashi Araki, *Rodoho* [Labor law], 4th ed. (Tokyo: Yuhikaku, 2020) 531; Statements by House of Representatives member Wataru Ito at the 7th Meeting of the Committee on Education, Culture, Sports, Science and Technology of the House of Representatives for the 185th Diet (November 29, 2013). https://www.shugiin.go.jp/internet/itdb_kaigirokua.nsf/html/kaigirokua/009618520131129007.htm.
3. For example, the university where I am employed converts labor contracts to indefinite-term labor contracts for those part-time instructors who demand such a conversion and whose contract has been repeatedly renewed such that the total contract period exceeds five years.
4. The first instance of the *Hagoromo University of International Studies* case, Osaka District Court (Jan. 31, 2022) 2476 *Rokeisoku* 3, was brought to the court to determine whether the 10-year special provision prescribed by the University Teachers' Term of Office Act should be applied to a full-time instructor employed under a fixed-term labor contract stipulating the contract term as three years and that the contract could be renewed once. The *Educational corporation Chaya Shirojiro Kinen Gakuen (Tokyo University of Social Welfare)* case, Tokyo District Court (Jan. 27, 2022) 1268 *Rohan* 76, was disputed whether the 10-year special provision prescribed by the University Teachers' Term of Office Act should be applied to a full-time instructor whose one year fixed-term labor contract had been repeatedly renewed for over five years. In both cases, it was recognized that the 10-year special provision prescribed by the University Teachers' Term of Office Act should be applied. The latter of the two cases also

involved a dispute over the termination (refusal to renew) of the plaintiff faculty member's contract, and on this point, the plaintiff's claims were recognized.

The *Senshu University (Conversion of a Fixed-Term Labor Contract to an Indefinite-term Labor Contract)* Case, *Rodo Hanrei* (*Rohan*, Sanno Research Institute) 1273, pp.19–24.

HOSOKAWA Ryo

Professor, Aoyama Gakuin University. Research interest: Labor Law.

Statistical Indicators

Main Labor Economic Indicators

1. Economy

The Japanese economy is picking up moderately, although some weaknesses have been seen recently. Concerning short-term prospects, the economy is expected to show movements of picking up, supported by the effects of the policies, under the “new normal”. However, slowing down of overseas economies is downside risk of the Japanese economy, amid ongoing global monetary tightening and other factors. Also, full attention should be given to price increases, supply-side constraints, fluctuations in the financial and capital markets and the spread of infectious diseases in China. (*Monthly Economic Report*,[1] February 2023).

2. Employment and unemployment

The number of employees in January increased by 570 thousand over the previous year. The unemployment rate, seasonally adjusted, was 2.4%.[2] Active job openings-to-applicants ratio in January, seasonally adjusted, was 1.35.[3] (Figure 1)

3. Wages and working hours

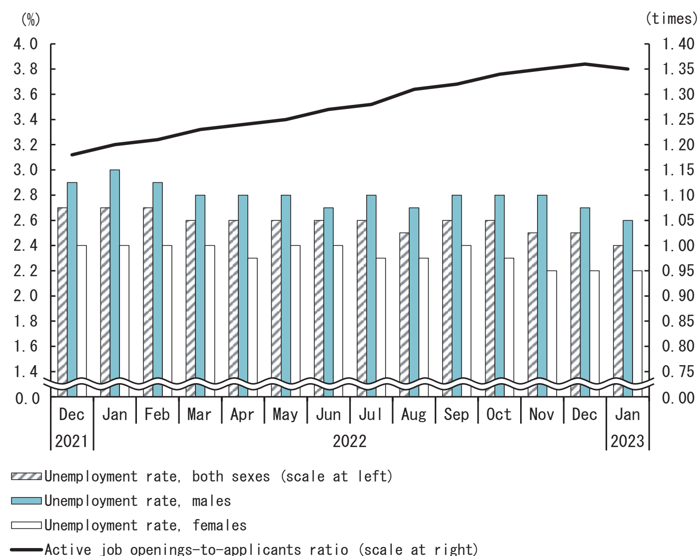
In January, total cash earnings increased by 0.8% year-on-year and real wages (total cash earnings) decreased by 4.1%. Total hours worked decreased by 1.1% year-on-year, while scheduled hours worked decreased by 1.3%.[4] (Figure 2)

4. Consumer price index

In January, the consumer price index for all items increased by 4.3% year-on-year, the consumer price index for all items less fresh food increased by 4.2%, and the consumer price index for all items less fresh food and energy increased by 3.2%.[5]

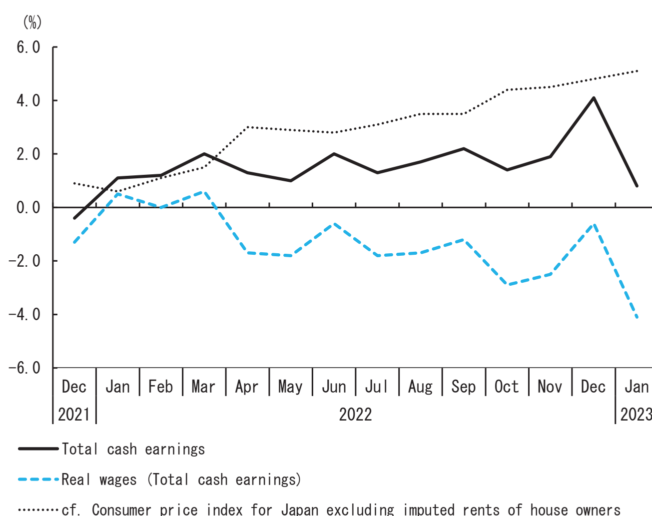
5. Workers’ household economy

In January, consumption expenditures by workers’ households increased by 5.3% year-on-year nominally and increased by 0.2% in real terms.[6]



Source: Ministry of Internal Affairs and Communications (MIC), *Labour Force Survey*; Ministry of Health, Labour and Welfare (MHLW), *Employment Referrals for General Workers*.
Note: Active job openings-to-applicants ratio indicates the number of job openings per job applicant at public employment security. It shows the tightness of labor supply and demand.

Figure 1. Unemployment rate and active job openings-to-applicants ratio (seasonally adjusted)



Source: MHLW, *Monthly Labour Survey*; MIC, *Consumer Price Index*.

Figure 2. Total cash earnings / real wages annual percent change

For details for the above, see JILPT *Main Labor Economic Indicators* at https://www.jil.go.jp/english/estatis/eshuyo/index.html
Notes: 1. Cabinet Office, *Monthly Economic Report* analyzes trends in the Japanese and world economies and indicates the assessment by the Japanese government. Published once a month. https://www5.cao.go.jp/keizai3/getsurei-e/index-e.html
2. https://www.stat.go.jp/english/data/roudou/results/month/index.html
3. https://www.mhlw.go.jp/english/database/db-l/general_workers.html
4. For establishments with 5 or more employees. https://www.mhlw.go.jp/english/database/db-l/monthly-labour.html
5. https://www.stat.go.jp/english/data/cpi/index.html
6. MIC, *Family Income and Expenditure Survey*. https://www.stat.go.jp/english/data/kakei/index.html

What's on the Next Issue

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