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

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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

1. The significance of labor tribunal proceedings

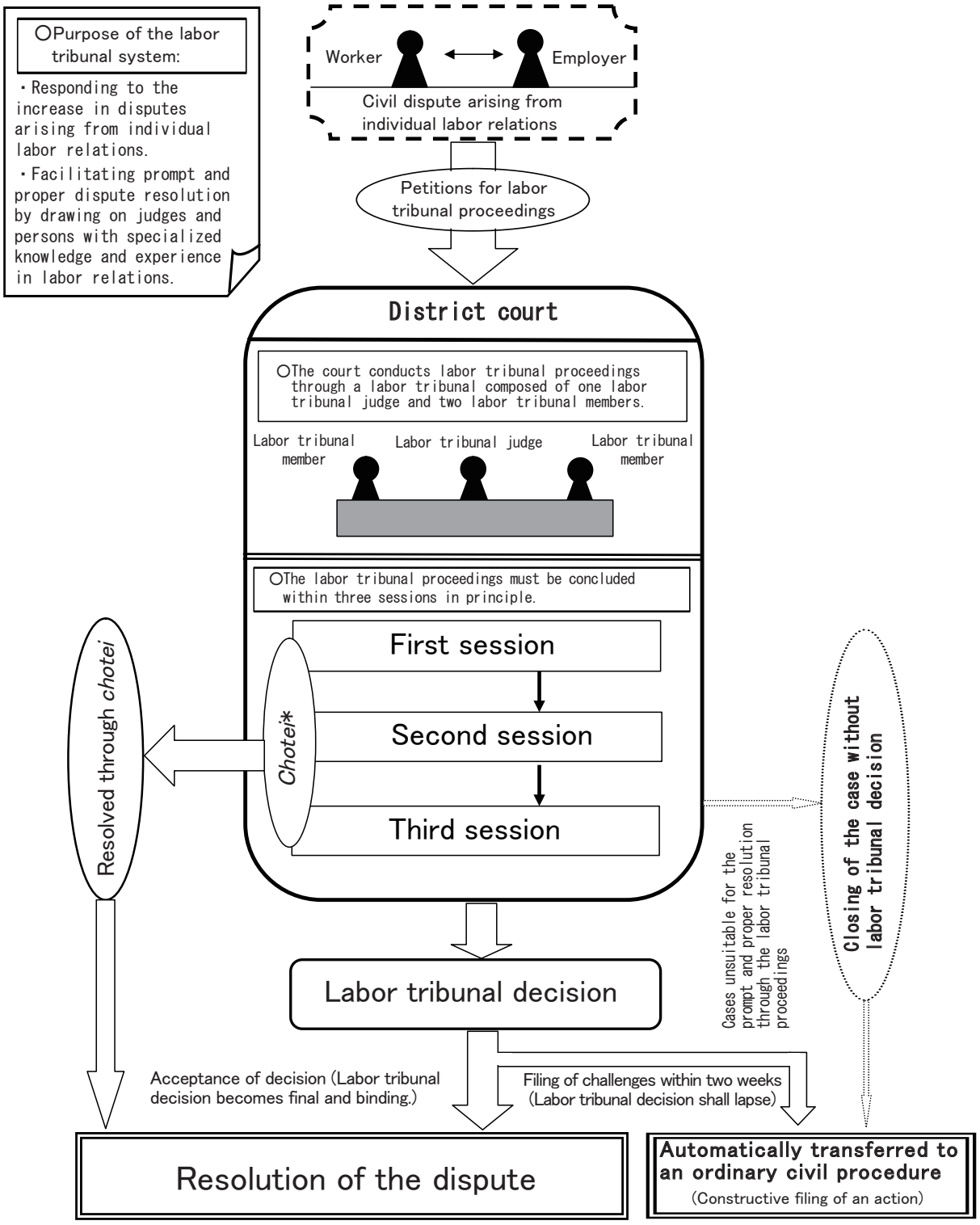
The labor tribunal proceedings (LTP) system was established under the Labor Tribunal Act (LTA; Act No. 45 of May 12, 2004) and started operation in April 2006. Labor-management disputes can be broadly divided into disputes involving collective labor relations between enterprises and labor unions, and 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., *supra* 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.

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