Chapter IV Labor-Management Relations

1 Labor-Management Relations in Japan

In-House Labor-Management Relations Play a Key Role

In Japan, there persisted an employment practice where dismissal of regular employees was kept to a minimum, and these employees were nurtured and utilized in the internal labor market over a long term. The various systems of employment relations have developed to adjust to this internal labor market. This phenomenon had been reflected in the characteristic of individual labor-management relations, in particular at large corporations, with (1) periodic recruitment of new graduates with the assumption of job security until retirement, (2) education and training through flexible reassignment of regular employees and on-the-job-training (OJT), and (3) personnel management by seniority for remuneration and promotion in accordance with accumulation of work performance.

The labor-management relations between employee groups and companies have also developed into enterprise labor-management relations, whereby in tandem with the long-term employment practice, enterprise unions of mainly large corporations allow their regular employees to be an union member. Typically, one enterprise union is organized per company and the union officials are also employees. Since the managers and executives that represent the employers had once been ordinary employers as well before being promoted to their position, they share common interests with the union members.

In corporations where labor unions exist, collective bargaining takes place between the labor union and corporation, and working conditions such as annual wage increases, lump-sum benefits, working hours, welfare issues and others are determined. At corporations, in addition to collective bargaining, labor-management consultation systems exist in diverse formats at voluntary bases. This system is widely seen also at corporations which are not unionized and the system is used to discuss such issues as management policy and the formulation of production plans, among others. This labor-management consultation system is said to contribute to the establishment of stable labor-management relations.

Labor-Management Relations at Industry and National Levels

Nevertheless, there is a limit to the bargaining powers of Japanese enterprise unions, in contrast to the labor unions which are organized cross-corporate organizations as seen in Europe. It could be said that the Shunto (spring labor offensive) developed as a means of supplementing the limitations of enterprise unions. Under Shunto system industrial organization unions of the labor unions organize a unified, cross-corporate struggle, and national centers perform such tasks as strategic coordination between industrial trade unions and arousal of public sentiments. The Shunto system has resulted in the creation of a social ripple-effect system whereby a pattern-setting labor-management grouping determines the wage increase rate,

which is in turn used as a reference by other labor-management groups in their negotiations.

Rengo (Japanese Trade Union Confederation), which is the national center, and management organizations such as Nippon Keidanren (Japan Business Federation) have established a venue for regular discussions, and for issues on which they share the same opinion, a joint policy proposal is duly submitted to the central government.

A second point of importance is the role in governmental councils on the formation of labor and social policy. Representatives of labor organizations and management organizations and management organizations participate in these councils and endeavor to ensure that in the process of consensus building on policy, the position of workers and employers is duly reflected.

Shortcoming of the Conventional Modality

The long-term employment practice is faltering due to changes in the labor market structure such as decreasing birth rate and rapidly aging society as well as long-term economic stagnation since the 1990s, and revision of the seniority-based wage system is being advanced.

A rapid increase in atypical workers such as part-time workers has imposed tremendous influence on the modality of collective labor-management relations. The unionization rate fell below 20% in 2003, and sank further to 18.1% in 2008. The unionization rate of part-time workers amounts to only 4.7% (see IV-1). Labor unions comprising mainly regular employees have fallen absolutely behind the organization of atypical workers. In addition, looking at the situation by scale of corporation reveals stark differences in organization of labor unions. In other words, in 2008, the unionization rate among corporations with more than 1,000 employees was 45.3%, but among corporations with between 100 and 999 employees this figure was 13.9%, and for corporations with less than 99 employees, the figure was 1.1%. This demonstrates that labor unions in small, medium and micro enterprises have diminished even further in presence.

Shortcomings can also be seen in the Shunto method. With international intensifying competition, management have taken such measures as flexible personnel management reflecting corporate results as a modality for wage increases, rationalization of wage standards that enable the maintenance of international competitiveness, establishment of a wage system that recognizes abilities, results and contributions, and as well as the multi-streaming of wage management. It is becoming clear that cross-industry wage increases are increasingly difficult in such an environment.

In contrast to the period when wage hikes could be guaranteed thanks to high-speed growth, international corporate competition has intensified, and in the increasingly severe corporate management environment we have entered a period in which labor conditions could be lowered. Japan's labor unions is tested whether they can regain their power and influence and demonstrate their presence in the labor market.

IV-1 Changes in the Number of Union Members and the Estimated Unionization Rate for Part-time Workers (Unit Labor Union)

Year	Number of labor union members among part-time workers			Ratio to all union members	Number of short-time workers	Estimated unionization rate
	(in 10,000)	Year-on-year difference (in 10,000)	Year-on-year difference ratio (%)	(%)	(in 10,000)	(%)
2001	28.0	2.0	7.8	2.5	1,042	2.7
2002	29.2	1.3	4.5	2.7	1,097	2.7
2003	33.1	3.8	13.1	3.2	1,098	3.0
2004	36.3	3.1	9.5	3.6	1,107	3.3
2005	38.9	2.6	7.3	3.9	1,172	3.3
2006	51.5	12.6	32.4	5.2	1,187	4.3
2007	58.8	7.3	14.2	5.9	1,218	4.8
2008	61.6	2.8	4.7	6.2	1,232	5.0

Source: Ministry of Health, Labour and Welfare, *Survey of Labour Unions, 2008*

Notes: 1) "Part-time workers" are those who work fewer hours than regular workers at the same business operation, or work regular working hours with a shorter workweek, and referred to as "part-time workers" at the workplace.

2) The number of short-time workers is the number of those who are classified as "employed" in the *Labour Force Survey* with less than 35 working hours per week.

3) Estimated unionization rate is calculated by the following formula: Number of union members among part-time workers ÷ Number of short-time workers.

2 State of Unionization and Labor Union Structure

Unionization Rate of 18.7%

According to the "Survey of Labor Unions" issued by the Ministry of Health, Labour and Welfare, as of June 30, 2005, there were 61,178 unit labor unions in Japan. The estimated unionization rate is 18.7%, with about 10.138 million out of a total of around 54.16 million employed workers belonging to unions.

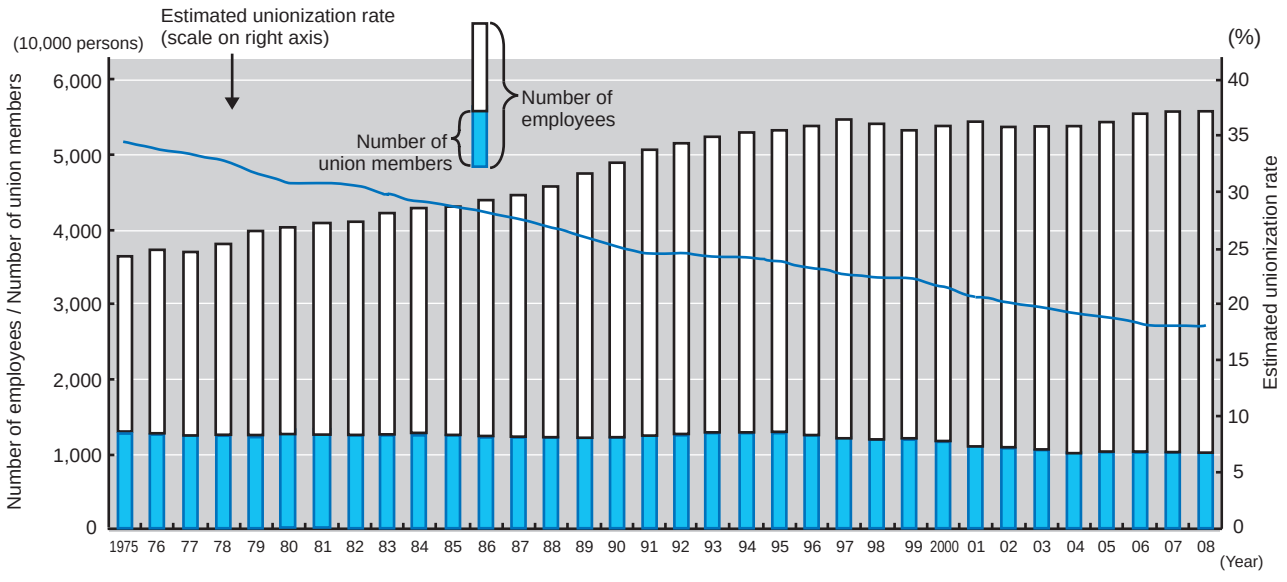
The organizational structure of Japan¬s labor unions is overwhelmingly dominated by enterprise unions. Craft unions and industry trade unions also exist-though in small numbers-but in Japan where long- term employment is common, over 90 percent of unions are enterprise unions.

Unionization Rate has Shown a Steady Decline Since its Peak in 1949

Since its peak in 1949, the estimated unionization rate has continuously declined because the growth in the number of union members has not kept up with the growth in numbers of employees. In addition, the number of union members in 2004 peaked at around 12.62 million, before going into steady decline (see IV-2).

Broken down by industry, unionization rates are high in electricity, gas, heat, and water supply (59.3%), compound services (57.6%), government service (44.7%), and finance and insurance (44.5%). In contrast, rates are low in industries such as agriculture, forestry, and fisheries (2.6%), real estate and rental and leasing of goods (2.8%), accommodations and eating and drinking places (3.8%), services (miscellaneous) (4.6%), and living-related/personal services and amusement (6.2%). The industry with the largest number of union members is the manufacturing industry (25.6%) (see IV-4).

IV-2 Changes in the Number of Employees and Union Members, and the Estimated Unionization Rate (Unit Labor Union)



IV-3 Unionization Rate by Size of Enterprise

(10,000 persons, %)

Size of enterprise	The number of union members	The number of employees	Estimated unionization rate
Total	825.7	5,015	16.5
More than 1,000 workers	487.7	1,077	45.3
300-999 workers	123.9	1,390	13.9
100-299 workers	69.3		
30-99 workers	23.8	2,511	1.1
Fewer than 29 workers	3.5		
Others	117.4	–	–

Source: Ministry of Health, Labour and Welfare, *Survey of Labour Unions, 2008*

Notes: 1) The total number of unit unions
2) "Others" includes members of unions that embrace more than one industry (excluding group enterprises) and unions whose size is not known.
3) "Number of employees" represents workers employed by private enterprises, excluding agriculture and forestry.

IV-4 Unionization by Industry (Unit Labor Union)

Industry	Number of union members (1,000 persons)		(%)	Number of employees (1,000 persons)	Estimated unionization rate (%)
All industries	9,988,736	[2,849,209]	100.0	5,416	–
Agriculture, forestry, and fisheries	15,196	[1,383]	0.2	59	2.6
Mining	6,243	[784]	0.1	3	20.8
Construction	938,579	[61,087]	9.4	444	21.1
Manufacturing	2,759,474	[436,820]	27.6	1,076	25.6
Electricity, gas, heat supply and water	189,646	[24,657]	1.9	32	59.3
Information and communications	381,662	[65,263]	3.8	181	21.1
Transport	856,381	[68,094]	8.6	319	26.8
Wholesale and retail trade	1,074,053	[493,860]	10.8	955	11.2
Finance and insurance	721,665	[350,425]	7.2	162	44.5
Real estate	27,665	[6,823]	0.3	100	2.8
Scientific research, professional and technical services	146,840	[25,790]	1.5	144	10.2
Eating and drinking place, accomodations	112,971	[49,429]	1.1	300	3.8
Living-related and personal services and amusement services	115,401	[57,110]	1.2	186	6.2
Education and learning support	597,721	[316,310]	6.0	261	22.9
Medical health care and welfare	452,946	[350,631]	4.5	564	8.0
Combined services	293,529	[68,321]	2.9	51	57.6
Services	207,279	[36,522]	2.1	447	4.6
Public service	1,033,599	[417,728]	10.3	231	44.7
Other industries	57,986	[18,172]	0.6	–	–

Source: Ministry of Health, Labour and Welfare, *Survey of Labour Unions, 2008*

Notes: 1) The total number of unit labor unions
2) The "other industries" category covers members of unions that embrace more than one industry (excluding group enterprises) or whose industrial classification is unclear
3) Figures in brackets represent female union members

Primary Reasons for the Falling Unionization Rate are the Growth of the Service Sector and Increases in Part-time Workers

There are two factors behind the falling unionization rate. Firstly, the burgeoning of development in the service economy has increased the proportion of the commerce and service among overall industries, in which the unionization rate have historically been low. Secondly, the diversification of employment has resulted in increasing numbers of part-time workers who are difficult to organize. Another factor is attrition of numbers due to retirement of people who used to be union members and who are not being replaced by new members.

Labor Union Structure

Japanese labor unions basically have a "triplicate structure". That is, (1) enterprise labor unions organized at each business, (2) industrial trade unions organized as loose federations of enterprise union members gathered by industry, and (3) national centers (a typical example being the Japanese Trade Union Confederation) made up of the industry trade unions gathered at the national level.

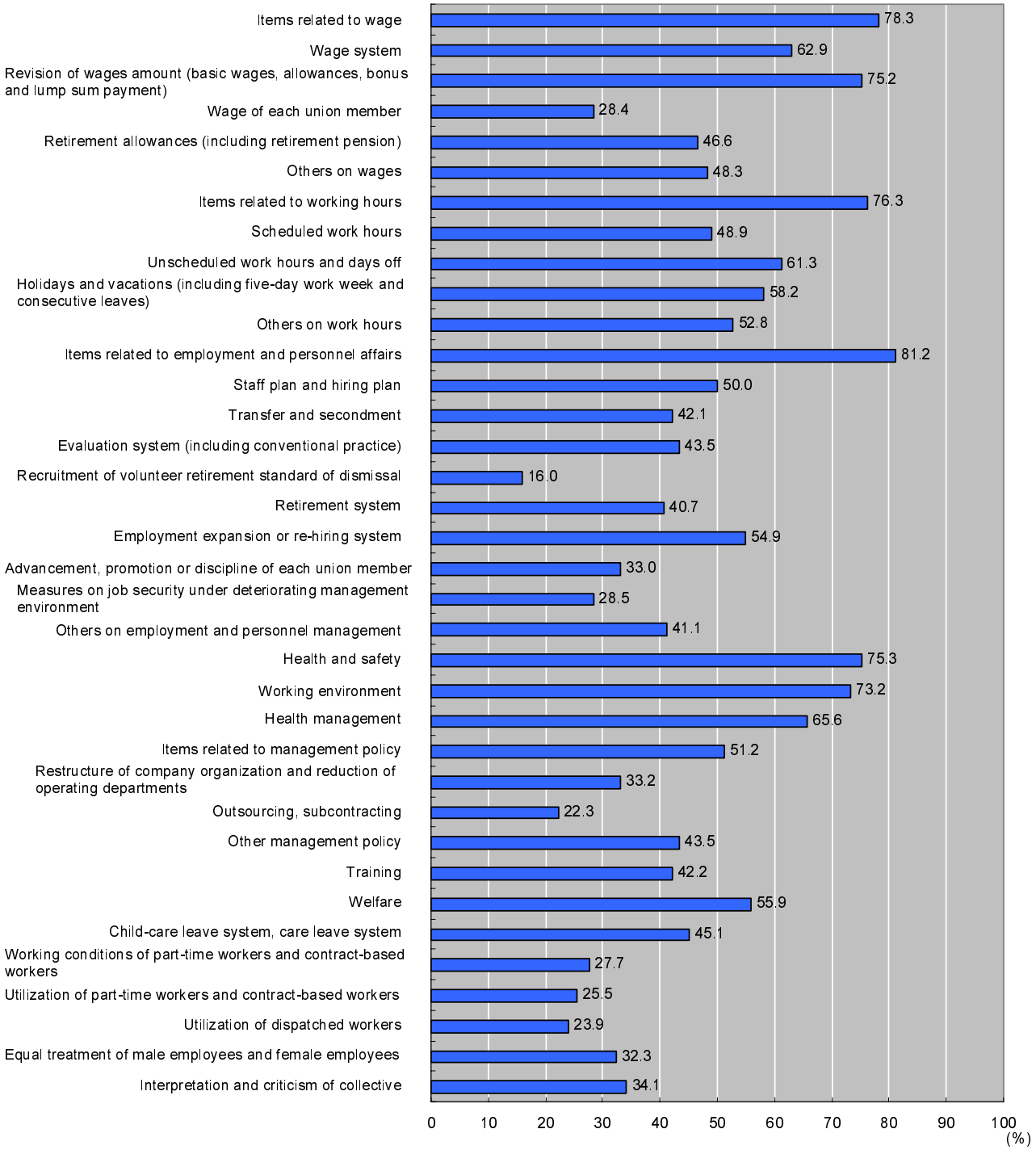
Enterprise Labor Unions: Asserting Labor's Basic Rights

Enterprise labor unions are Japan's dominant form of labor organization because each enterprise union exercises labor's three primary rights: the rights to organize, bargain collectively, and strike. Each enterprise union has most of the staff, funding, and other materials necessary to exercise labor's three primary rights. Labor unions play the role of maintaining and improving workers' quality of life and working conditions. In order to do so, they engage in three primary activities: activities with management, activities within the unions, and activities outside the organization. First of all, as individual unions, enterprise unions maintain and improve working conditions as in figure IV-5 and participate in management through collective bargaining and consultation with the management. Next, as for activities within the unions, enterprise unions not only deal with organizational operations but also provide their members with services through various kinds of mutual aid activities.

Finally, when it comes to activities outside the organization, enterprise unions individually seek to provide benefits to their members by using their influence for various policies on the regional, industrial, and national levels concerning employment and working conditions as well as quality of life of their members. In addition, recently, more and more labor unions are getting involved with community and volunteer activities in order to improve their public relations.

Incidentally, the enterprise unions are only intended for regular staff employed at the concerned companies, and non-regular staffs are generally not included. The enterprise union is a mixed union organized as a single trade union for all regular staffs, without distinction between white-collar and blue-collar.

IV-5 Ratio of Labor Unions by Items regarding Subject between Labor and Management, Whether or Not Negotiation Was Held and Session through Which Negotiation Was Held (in the Past 3 Years)
Total Labor Unions=100, Multiple Answers



Source: Ministry of Health, Labour and Welfare, *Japanese Labour Unions Today II-Survey Results on Collective Bargaining and Labour Disputes, Policy Planning and Research Department (2007).*

Note: The last 3 years means from July 1, 2004 to June 30, 2007.

Industrial Trade Unions: The Mechanism and Roles

Enterprise unions are limited by their own resources to engage in the above-mentioned three activities. In order to expand their effectiveness, they have established industrial trade unions. Industrial trade unions support their member unions' actions against business owners by consolidating requests concerning chief working conditions such as wages and working hours on the industrial level, collecting and providing information and basic materials, and coordinating negotiation strategies. In terms of activities within the organization, industrial trade unions provide their members with a variety of services through mutual aid activities, including life insurance, pension, medical insurance and so on. In addition, industrial trade unions participate in the formation and decision-making processes of national industrial policies, consult with economic organizations and develop international cooperation among labor unions.

National Centers: The Mechanism and Roles

National centers (mainly Rengo-the Japanese Trade Union Confederation) provide members with support for actions against business owners by, for example, deciding comprehensive standards for requests regarding working condition issues such as wages and working hours. However, the most important role of the national centers is their participation in national politics. Rengo, the largest of the national centers, maintains and improves workers' quality of life by sending its members to various advisory bodies in the government, participating in the decision making processes of government policy making, and concluding and maintaining cooperative relations with political parties.

Acts of Labor Dispute Take Place at the Company Level

Japan's labor-management relations are basically cooperative, but labor disputes do occur occasionally. 6.0% of labor unions "have had labor disputes" between labor unions and employers in the last three years representing a decline from the figure of the previous survey. Looking at the ratio of labor unions with labor dispute by their size, while labor unions of all sizes were in the range of 5% to 6%, labor unions with 1,000 to 4,999 members alone marked a lower rate of 3.2%. Furthermore, in industrial trade unions, more labor disputes occurred in the transport and communication industry than in other industries. Most labor disputes take place in enterprises.

Above we examined the structure and function of Japan's labor unions, and labor disputes, but enterprise unions are most familiar to their members and play the most immediate role in maintaining and improving their quality of life. Furthermore, enterprise unions serve as the foundation for relations with industrial unions and national centers. For example, staff and financial resources move from individual enterprise unions to industrial unions in the form of dispatches and financial contributions, and then flow further from industrial unions to national centers.

Accordingly, most board members of industrial trade unions and national centers are dispatched from enterprise unions, and hold positions at those enterprises. Moreover, union dues of major enterprise unions often exceed those of their affiliated industrial trade unions. Labor disputes occur almost exclusively at the enterprise level. However, there are also cases in which there is a reverse flow of information and policies from national centers, through industrial trade unions, to the individual enterprise unions.

3 Shunto: Spring Labor Offensive

What is Shunto?

Shunto, the spring labor offensive, is a united campaign by the labor unions, led by Industrial Unions. It is launched every year between March and April, the main aim of negotiations being higher wages. Beginning in 1955, Shunto has become a platform for wage rise demands throughout Japan. By establishing a schedule for strike action and unified demands in each industry, Shunto provided a framework that surpassed internal individual corporate negotiations, instead creating a bargaining method whereby wage increases could be secured throughout the entire industry. The aim of Shunto when it was initially launched was, "the realization of wage increases to put wages on a par with Europe and the US".

The results of these negotiations did not merely affect the industrial sector. Their influence fanned out in the late 1950s to form what became known as the "spring labor settlement" throughout Japan as a whole, including small and medium enterprises and the public sector. From the 1960s and the period of rapid economic growth, the driving force behind Shunto-the so-called pattern setter-was the labor-management negotiations in the steel industry, which was representative of the bullish manufacturing sector as a whole. In addition, in 1964, the Japan Council of Metalworkers' Unions (IMF-JC) was formed as the result of the merger of labor unions in the following four metals industry sectors: steel, ship-building and engineering, electric, and automobiles. This private sector metalworkers organization took the lead in the Shunto wage increase negotiations each year.

An End to Rapid Growth and a Shift in Shunto Policy

The period of rapid growth came to an end with the first oil shock in 1973. Commodity prices jumped 20% bringing confusion to the market and for the first time in the post-war period real GDP recorded negative figures. It was in 1975 that the "theory of economic conformance" first appeared in the Shunto, which was essentially a self-imposed limit on wage increase demands with the aim of achieving price stability. Ever since, Shunto has come to be dominated by this concept. As a result, the initial direction of Shunto's achievement, "large scale wage increases" to realize wage that is equivalent to Europe and the US, was abandoned and an end was brought to the era of two-digit annual wage increases.

After rapid growth ground to a halt, the "theory of economic conformance" espoused by IMF-JC, which took the lead in negotiations resulted in inflation being controlled and made a significant contribution to the macro-economy and the achievement of moderate growth in the 4-5% range. This theory of economic conformance functioned as a kind of "social income distribution mechanism" built in to the Japanese economy. However, following the collapse of the bubble economy, Shunto demands, which had been premised on the theory of economic conformance, were faced with a deflationary economy from the late 1990s, bringing Shunto to a second point of transition in its history.

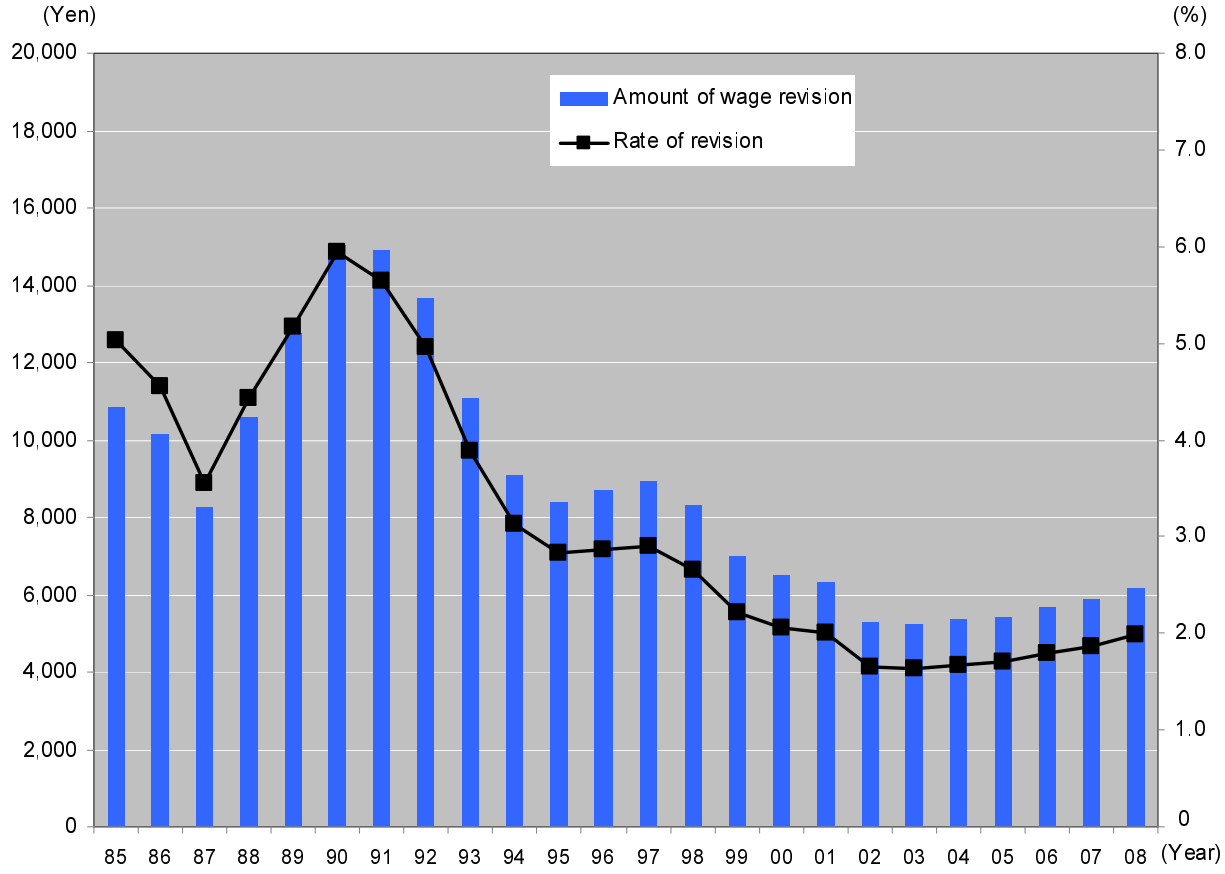
Shunto in the Post-bubble Era

The collapse of the bubble economy resulted in Japan falling into a recession which has become known as the "lost decade". From the latter half of the 1990s deflationary tendencies intensified, and the labor-side's demand structure of "annual pay increases + commodity price increases + improvements in living standards" at Shunto lost effectiveness, due to the fact that they had been premised on continuous economic growth. The wage increase rate accordingly slumped (see IV-6).

Entering the 21st century, Shunto found it difficult even to maintain the so-called annual pay increases (equivalent to 2%), impacted by the long recession, permeation of performance-based pay system, the persistent deflationary economy, and the hollowing out of industry, among other factors. From 2002 the IMF-JC ceased to make a unified request for hikes in base pay, and the phenomenon of Shunto ceasing to seek wage hikes continued. Therefore, management has thus declared that "Shunto is dead" in that industry-wide settlements for hikes in base pay have come to an end.

Since being written off for a second time, however, a new role is being sought for Shunto as a means of correcting disparities. One new initiative for remedying disparities between enterprises is the determination of wages based on occupational rates. IMF-JC is exploring migrating to an occupational wage-based method of determining wage levels, while the Japanese Electrical, Electronic and Information Union moved to an occupational wage-based demand system, beginning from the 2007 Shunto, to demand wages commensurate with the value of work according to occupation. Following the collapse of the bubble economy, there have also been conspicuous moves to narrow disparities between enterprises of different sizes (large versus small) and between different forms of employment (regular versus non-regular). In response, RENGO has established "joint struggle committees" for small and medium enterprises and for part-time workers with the involvement of relevant industries. The purpose of these committees is to establish independent standards for demands with the aim of rectifying disparities by achieving a general improvement in wage and working conditions, and they are now expanding the scope of their activities to address fresh challenges.

IV-6 Fluctuations in Revisions to Average per Capita Wage and Rate of Revision (Weighted Average)



Source: Ministry of Health, Labour and Welfare, *Results of Spring Wage Negotiations by Major Private Companies*

Note: In principle up to 2003, companies surveyed are those with a capital of over 2 billions and whose labor union is comprised of over 1,000 workers, among member enterprises in the first section of Tokyo Stock Exchange or Osaka Stock Exchange (before 1979: simple average, after 1980: weighted average). Meanwhile in principle after 2004, they are those with a capital of over 1 billion and whose labor union is comprised of over 1,000 workers (weighted average).

4 Labor Disputes and Resolution Systems

Decline in Collective Disputes and Increase in Individual Disputes

Due in particular to the diversification of forms of employment resulting from changes in Japan's social and economic structure, the unionization rate is declining by the year (standing at an estimated 18.1% as of the end of June 2008, a joint record low alongside last year's rate, according to the summarized findings of the 2008 Labor Union Survey announced by the Ministry of Health, Labour and Welfare (hereinafter referred to as MHLW) on December 16, 2008), and the dispute settlement and collective industrial dispute resolution functions of unions (measured in terms of the number of unfair labor practice relief and dispute adjustment cases) are weakening.

At the same time, the diversification of forms of employment and consequent increase in individualized employment management are pushing up the number of individual labor disputes.

Below, we first review the collective and individual dispute resolution systems, and then examine the state of operation of each and recent trends in collective and individual industrial disputes.

Collective Industrial Disputes

1. Resolution systems

The Labor Union Act provides arrangements for obtaining relief from unfair labor practices and a system of labor relations commissions involved in providing such relief in order to protect and promote labor union activity by providing an avenue of redress in the event that an employer commits certain acts against a labor union or its members. The Labor Relations Adjustment Act takes as its starting point the settlement of labor disputes through voluntary adjustment by the parties concerned, and provides for government assistance with this process.

(1) Unfair Labor Practice Relief System

The unfair labor practice relief system prohibits prejudicial treatment, refusal of collective bargaining, and dominance and intervention by employers against labor unions and union members and provides for corrective measures in the event of such acts in order to normalize relations between labor and management and secure labor's right of association, right of collective bargaining, and right of collective action as guaranteed by the Constitution of Japan.

Redress is provided by labor relations commissions (both prefectural and central) – independent tripartite administrative bodies made up of representatives of the public interest, employees, and employers.

Examinations of unfair labor practice cases consist of the following steps: (1) filing of a complaint in order to apply for relief, (2) investigation (at which step the parties present their arguments, evidence is gathered, and points of dispute are identified), (3) hearing (including examination of witnesses), (4) meeting of a public interest committee (to determine the facts and the details of any order issued in response), and (5) issuance of an order. At the final stage of the procedure, the labor relations commission either rejects the case or orders remedial action through administrative disposition. Relief orders are drafted according to the actual circumstances of each case, and labor relations commissions are allowed discretion in formulating the details of such orders. Parties that object to the decision of the prefectural labor relations commission following the first examination may request reexamination by the Central Labour Rela-

tions Commission (hereinafter referred to as CLRC) or dispute the case further in court by bringing an action to have the order (administrative disposition) annulled. In the event that an opportunity arises for resolution of a case through discussion between labor and employers in the process of investigation and hearing, a labor relations commission may recommend that the parties concerned reach a settlement. If a settlement is reached, the case is concluded.

(2) Dispute Adjustment System

The methods of adjustment of labor disputes provided for by the Labor Relations Adjustment Act are: conciliation, mediation, and arbitration. Labor relations commissions are involved in adjustment. Labor disputes subject to adjustment include situations involving a risk of industrial action (defined as actions hindering both labor's and management's normal activities, such as slowdowns and lockouts as well as strikes).

Conciliation: Conciliation commences following an application by one or both interested parties. Conciliators appointed by the labor relations commission chairperson from among a register of conciliators (often consisting of a mix of representatives of the public interest, employees, and employers) confirm the arguments of each party and produce a conciliation proposal. However, the decision on whether to accept this proposal is left to the parties themselves.

Mediation: Mediations commence following: (1) an application from both parties, (2) an application as provided for under a collective agreement by one or both parties, or (3) in the case of cases involving public services, an application from one interested party, the decision of the labor relations commission, and the request of the Minister of Health, Labour and Welfare or the prefectural governor. A tripartite mediation committee formed of representatives of the public interest, employees, and employers (and on which employees and employers are equally represented) is appointed by the labor relations commission chairperson. Both parties present their opinions, and the committee drafts a mediation proposal that it advises them to accept. Acceptance of this proposal is left to the parties themselves.

Arbitration: Arbitration takes place in the event of an application either by both parties, or by one or both parties in accordance with the provisions of a collective agreement. The labor relations commission chairperson appoints three people agreed to by the parties from among public interest members to form an arbitration committee. This committee meets after hearing about the circumstances from the parties, and determines the details of an award by majority vote of the arbitration members. The arbitration award is prepared in writing and has equal force as that of a collective agreement.

In the case of industrial action by parties involved in public services (transportation, postal and telecommunications services, water, electricity and gas supply, or medical and public health services), the labor relations commission and Minister of Health, Labour and Welfare or prefectural governor must be informed at least 10 days in advance. In the event of industrial action regarding any kind of business, moreover, the parties must immediately notify the labor relations commission or prefectural governor.

2. Trends in Actual Functioning and Cases Handled

(1) Unfair Labor Practice Cases

The numbers of unfair labor practice cases handled over the past five years are shown in IV-7 and 8, from which it can be seen that the numbers of both pending cases handled by prefectural labor relations commissions (first examinations) and the CLRC (reexaminations) are both following downward trends. Particularly notable is the large decrease in the number of cases car-

IV-7 Number of Unfair Labor Practice Cases (First Examinations)

	Cases pending			Cases concluded		
	Carried over from previous year	New cases	Total pending	Withdrawals/ settlements	Orders/ decisions	Total concluded
2003	856(1)	363	1,219(1)	280	116	396
2004	823(1)	311	1,134(1)	240	135	375
2005	759(1)	294	1,053(1)	273	135(1)	408(1)
2006	645	331(2)	976(2)	247	108	357(2)
2007	619	330(1)	949(1)	314(1)	147	461(1)

Source: Website of the Central Labour Relations Commission.
Note: Figures in parentheses indicate the number of first examinations by the Central Labour Relations Commission, and are included in the totals to their left. Total concluded in 2006 includes two cases that were transferred.

IV-8 Number of Unfair Labor Practice Cases (Reexaminations)

	Cases pending			Cases concluded		
	Carried over from previous year	New cases	Total pending	Withdrawals/ settlements	Orders/ decisions	Total concluded
2004	270	83	353	47	25	72
2005	281	90	371	57	65	122
2006	249	77	326	79	69	148
2007	178	76	254	37	59	96
2008	158	51	209	38	57	95

Source: Website of the Central Labour Relations Commission.

ried over from the previous year, despite no major change in the number of new cases filed. In conjunction with this, the total number of pending cases is also declining.

While more cases that come before the CLRC are concluded by "order/decision" than by "withdrawal/settlement," overwhelmingly more are resolved by "withdrawal/settlement" than "order/decision" in the case of prefectural labor relations commissions. Furthermore, although the total number of cases coming before prefectural labor relations commissions is on the rise, the number handled by the CLRC declined after peaking in 2006 and is now holding steady.

The unfair labor practice relief system was revised by amendment of the Labor Union Act in 2004 to expedite and improve examinations by enhancing the examination procedure and related arrangements. The main changes consisted of the introduction of (1) planned examination (development of examination plans and establishment of targets for examination periods); (2) swifter and more appropriate determination of the facts (through ordering the appearance of witnesses and submission of articles, and by limiting the submission of evidence in annulment actions concerning articles subject to submission orders); (3) development of the CLRC's examination arrangements (to enable orders to be issued through conference by a subcommittee consisting of five public interest members, and to provide training and assistance by the CLRC to prefectural labor relations commissions); and (4) promotion of settlements (by allowing labor relations commissions to advise the parties to reach a settlement, and through treatment of the execution of records of settlement as debt).

Following these changes, the 62nd An-

nual Report on Labour Relations Commissions (2007) (2008, pp. 10, 15) shows that the average length of cases that came before prefectural labor relations commissions and were concluded by order/decision was 1,462 days in 2004, but that this began to decline the following year and had fallen to 839 days in 2007. Similarly, the length of cases handled by the CLRC declined sharply from 1,514 in 2006 to 956 in 2007.

(2) Dispute Adjustment Cases

The situation regarding pending and concluded dispute adjustment cases is shown in IV-9. From this, it is evident regarding pending cases that the number of cases carried over from the previous year, the number of new cases, and, accordingly, the total number of pending cases are all declining. Broken down by means of adjustment, the overwhelming majority are adjusted by conciliation. This is probably due mainly to conciliation's procedural simplicity and its fulfillment in practice of a mediatory role in identifying the problems at issue.

IV-9 Number of Pending and Concluded Adjustment Cases

	Cases pending						Cases concluded				Resolution rate (%)
	Carried over from previous year	New cases pending				Total					
		Conciliations	Mediations	Arbitrations	Total				Abandoned	Total	
2003	150 (30)	573	21 (18)	11 (9)	605 (27)	755 (57)	132	326 (38)	167 (9)	625 (47)	66.1
2004	130 (10)	526 (8)	4	1	531 (8)	661 (18)	147	279 (4)	133 (2)	559 (6)	67.7
2005	102 (12)	560 (5)	4	0	564 (5)	666 (17)	139	270 (4)	130 (1)	539 (5)	67.5
2006	127 (12)	515 (2)	5 (1)	1	521 (3)	648 (15)	108	289 (3)	173 (2)	570 (5)	62.6
2007	78 (10)	467 (3)	5 (1)	0	472 (4)	550 (14)	103 (12)	219 (2)	149	471 (14)	59.5

Source: Website of the Central Labour Relations Commission.

Note: Figures in parentheses indicate the number of cases involving specified independent administrative agencies, and are included in the original figures.

$$\text{Resolution rate} = \frac{\text{Cases resolved}}{\text{Total cases resolved} - \text{cases withdrawn}} \times 100$$

Regarding trends in how cases are concluded, the number being abandoned due to failure of adjustment is largely constant. However, there has been a clear decline in the number of withdrawals and resolutions in recent years, and this has accordingly led to decline in the total number of cases concluded.

Regarding the grievances leading to dispute adjustment, IV-10 shows that financial grievances have accounted for approximately 40% and non-financial grievances for approximately 60% in all years. A breakdown of the financial grievances shows that "lump-sum payments" are somewhat commoner than all other categories except "other." The commonest non-financial grievance is "pursuit of collective bargaining" (around 30%), followed by "management/personnel" (around 23%).

Looking at trends in the resolution rate shown in IV-11, it can be seen that while the number of cases in itself has remained largely unchanged, the resolution rate has declined year on year every year since peaking in 2004.

IV-10 Grievances Giving Rise to New Pending Labor Dispute Adjustment Cases (All Labour Relations Commission)

(Number of cases and percentage of total)

	2003		2004		2005		2006		2007	
Total	1,052(37)	100%	949(15)	100%	991(13)	100%	956(6)	100%	851(6)	100%
Financial	398(37)	37.8	363(7)	38.3	333(7)	33.6	371(4)	38.8	306	36.0
Wage increases	39(4)	3.7	39(3)	4.1	35(3)	3.5	40(1)	4.2	27	3.2
Lump-sum paments	77(1)	7.3	71(1)	7.5	75	7.6	95	9.9	54	6.3
Working hours and holiday leave	26(2)	2.5	31(1)	3.3	27	2.7	30	3.1	35	4.1
Other	256(30)	24.3	222(2)	23.4	196(4)	19.8	206(3)	21.5	190	22.3
Non-financial	645	61.3	564(8)	59.4	644(6)	65.0	569(1)	59.5	531(6)	62.4
Management/ personnel	260	24.7	210(1)	22.1	228	23.0	192	20.1	191	22.4
Pursuit of collective bargaining	301	28.6	287(7)	30.2	317(5)	32.0	263(1)	27.5	246(4)	28.9
Union approval/ activities	34	3.2	19	2.0	33	3.3	40	4.2	21(1)	2.5
Other	50	4.8	48	5.1	66(1)	6.7	74	7.7	73(1)	8.6
Conclusion or complete revision of agreement	19	1.8	22	2.3	14	1.4	16(1)	1.7	15	1.8
Total number of cases	605		531		564		521		472	
Average number of grievances per case	1.74		1.79		1.76		1.83		1.80	

Sources: Secretariat of the Central Labour Relations Commission, *62nd Annual Report on Labour Relations Commissions* (2007), (2008) pp.148

Note: Totals do not match the total number of cases due to the inclusion of multiple grievances per case. Figures in parentheses indicate the number of cases handled by the CLRC, and are included in the totals to their left.

IV-11 Labor Dispute Adjustment Case Resolution Rate (excluding Specified Independent Administrative Agencies, All Labour Relations Commission)

(Number of cases and percentage of total)

	2003	2004	2005	2006	2007
Number of cases concluded	578	553	534	565	457
Number of cases concluded excluding with- drawals and transfers	446	406	395	457	366
Number of resolutions	288	275	266	286	217
Resolution rate	64.6	67.7	67.3	62.6	59.3

Sources: Secretariat of the Central Labour Relations Commission, *62nd Annual Report on Labour Relations Commissions* (2007), (2008) pp.156

Note: Resolution rate = number of resolutions / number of cases concluded excluding withdrawals and transfers

From IV-12, it can be seen that the overall average time required for adjustment reflects the large number of conciliation cases. Although on the decline by the year, the average case still takes around 45 days (one and a half months) to conclude.

IV-12 Average Length of Labor Dispute Adjustment Cases (All Labour Relations Commission)

(number of cases and days)

	Conciliations		Mediations		Arbitrations		Total	
	No. of cases concluded excluding withdrawals and transfers	Average length	No. of cases concluded excluding withdrawals and transfers	Average length	No. of cases concluded excluding withdrawals and transfers	Average length	No. of cases concluded excluding withdrawals and transfers	Average length
2003	438	50.1(36.4)	40	23.1(22.6)	9	280(28.0)	487	47.4(35.3)
2004	407	48.8(36.7)	5	57.6(31.4)	–	–	412	48.9(36.6)
2005	393	47.9(34.3)	3	48.0(30.7)	–	–	396	47.9(34.3)
2006	452	47.1(34.2)	4	27.5(27.5)	–	–	456	47.0(34.2)
2007	361	42.8(36.6)	4	52.8(32.5)	–	–	365	42.9(36.6)

Source: Secretariat of the Central Labour Relations Commission, *62nd Annual Report on Labour Relations Commissions (2007)*, (2008) pp.158

Note: Number of cases concluded, excluding withdrawals and transfers, pending for less than one year. Figures in parentheses indicate the number of days treating periods in excess of two months as 61 days.

Regarding the prevalence of disputes, the summarized results of MHLW's 2007 Survey of Collective Bargaining and Labour Disputes announced on July 4, 2008 reveal that over 90% of unions had had no labor dispute, and only 5-6% responded that they had. The commonest reason given for having had no such disputes was the resolution of conflicts that had arisen through discussion (49.7%), followed by the absence of conflict altogether (40.1%). These proportions far outweighed the other options (regarding which multiple responses were allowed).

Individual Labor Disputes

Japan has two systems for resolving individual labor disputes: one administrative and one judicial.

1. Administrative system

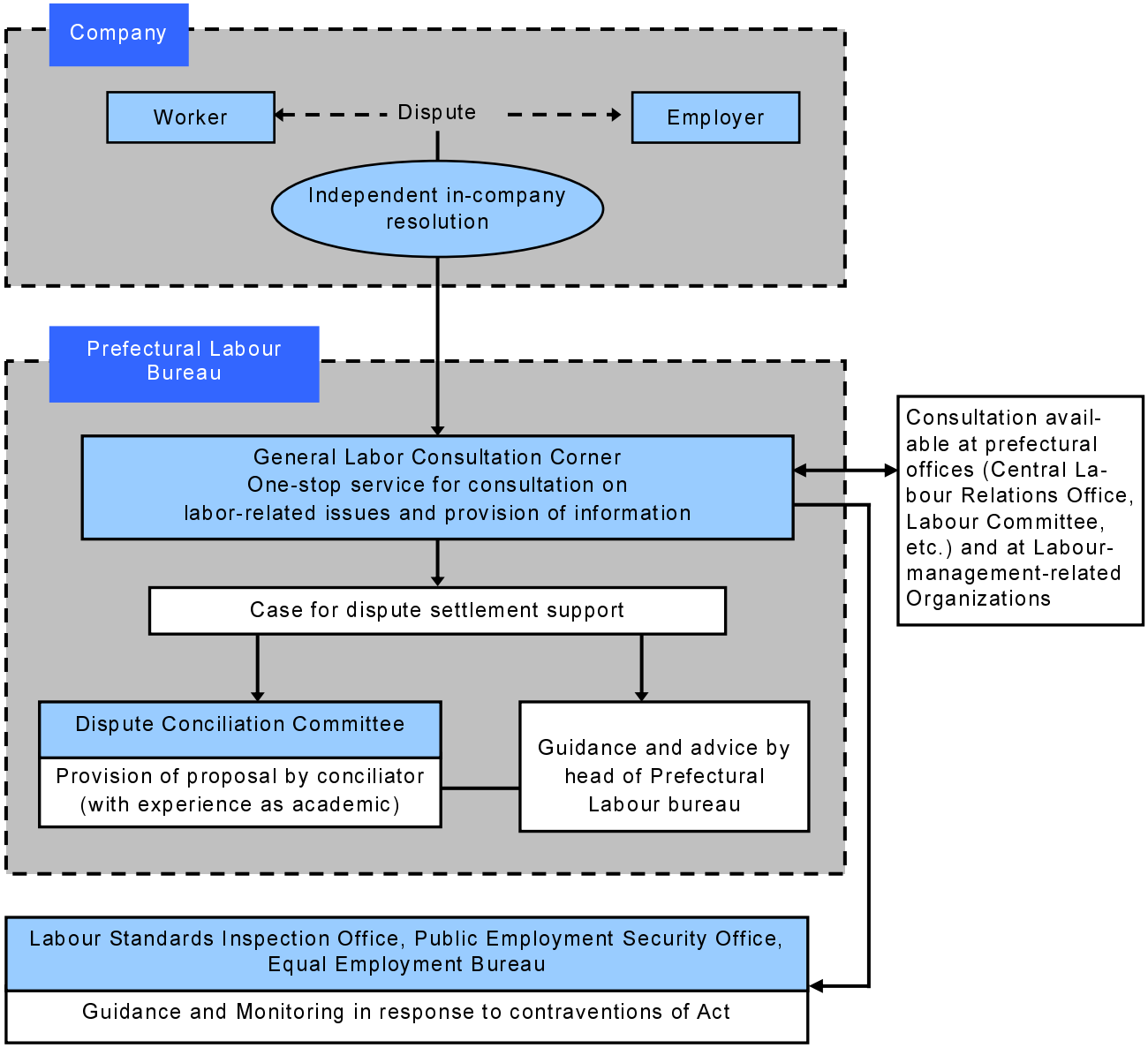
(1) Resolution system

The administrative system for resolution of individual labor disputes is based on the Act on Promoting the Resolution of Individual Labor Disputes. In simple terms, the resolution system set out by this act consists of three steps; namely, "information provision and consultation" at the consultation service, followed by "advice and guidance" by the head of the labor bureau in question in the case that an independent resolution cannot be achieved between labor and management, and finally "conciliation" by the Dispute Resolution Council (see IV-13). A wide range of disputes concerning the initiation, conduct, and termination of employment are eligible for resolution by this system, including disputes at the time of hiring, withdrawal of job offers, internal transfers, temporary transfers, permanent transfers, changes in working conditions, discrimination such as sexual harassment in the workplace, and dismissals (including dismissals due to restructuring and dismissal of fixed-term contract employees).

(2) Trends in Actual Functioning and Cases Handled

The dispute settlement system functioned as shown below in FY2007 (based on "State of Operation of the Individual Labor Dispute Resolution System in FY2007" announced by the Labour Dispute Settlement Office of the Regional Bureau Administration Division of the Minister's Secretariat of MHLW on May 23, 2007).

IV-13 Flowchart for Dispute Settlement according to the Act on Promoting the Resolution of Individual Labor Disputes



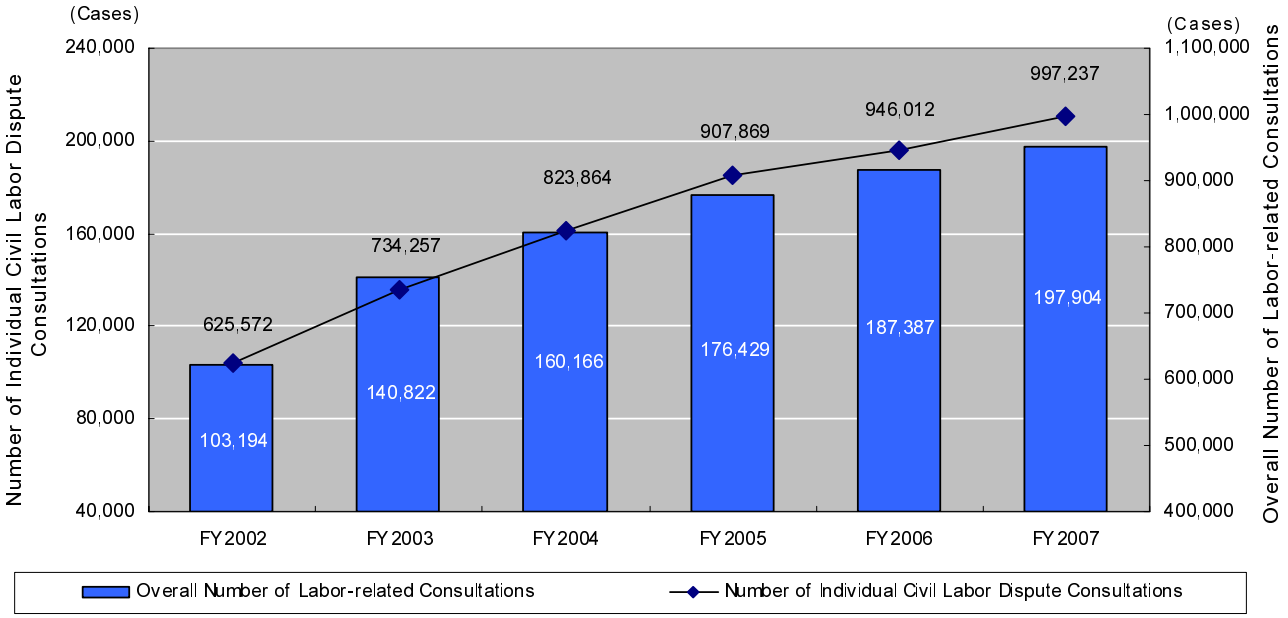
Source: Ministry of Health, Labour and Welfare, *Status of Implementation of Individual Labour Dispute Resolutions Systems in FY 2007* (released May 23 and revised June 12, 2008)

Consultations: There were approximately 995,000 consultations, representing a 5.2% increase on the previous year. Of these, the number involving individual civil labor disputes (including dismissals not related to contravention of labor legislation or the lowering of working conditions) amounted to approximately 198,000, a year-on-year increase of 5.5% (see IV-14).

A breakdown of these individual civil labor disputes shows that the most common consultation was in regard to "dismissals" (22.8%), followed by "other working conditions" (21.5%), "lowering of working conditions" and "bullying or harassment" (both 12.5%), "inducement to retire" (7.7%), and "temporary and internal transfers" (3.6%) (see IV-15). Note that the breakdown is approximately the same at the stage of applications for guidance and advice from the

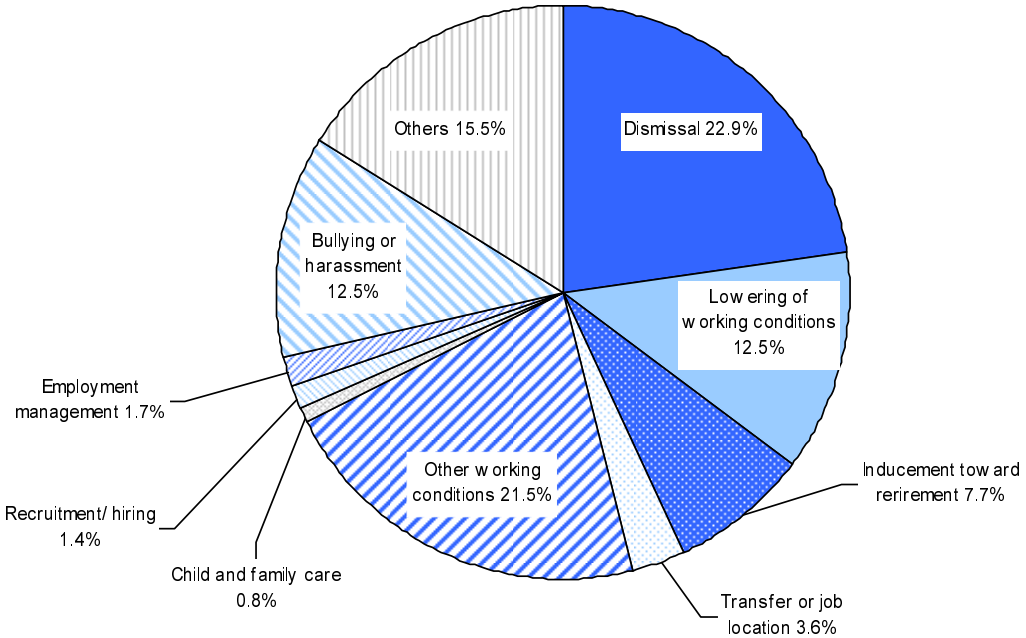
heads of prefectural labor bureaus and at the stage of application for conciliation by the Dispute Resolution Council. The only difference is at the stage of application for conciliation, where "bullying or harassment" accounts for a larger proportion (15.1%) and "lowering of working conditions" for a smaller proportion (8.4%).

IV-14 Number of Consultations (FY2007)



Source: Ministry of Health, Labour and Welfare, *Status of Implementation of Individual Labour Dispute Resolutions Systems in FY 2007* (released May 23 and revised June 12, 2008)

IV-15 Breakdown of Civil Consultation Cases (FY2007)



Source: Ministry of Health, Labour and Welfare, *Status of Implementation of Individual Labour Dispute Resolutions Systems in FY 2007* (released May 23 and revised June 12, 2008)

Guidance and advice: The number of requests for guidance or advice from the heads of prefectural labor bureaus amounted to 6,652, a 15.5% year-on-year increase.

Regarding the attributes of applicants, a breakdown of employees by employment status shows that 51.8% are full-time employees, 21.1% are part-time workers, and 19.3% are dispatched or fixed contract employees. In terms of the size of the business establishment to which they belong, 30.1% were from establishments with 10 to 49 employees, followed by 21.1% from establishments with fewer than 10 employees, and 11.7% from establishments with 100 to 299 employees. Applications from employees at non-unionized establishments accounted for 68.0%. The trends in the attributes of users of the system were largely the same for conciliation applications as well. Of the applications received, 6,591 had been processed by March 31, 2008, of which 6,416 (97.4%) resulted in advice or guidance being provided. Of these, 6,408 received advice and eight cases received guidance. 95.6% of the applications received were dealt with within a period of one month.

Conciliations: The number of conciliation applications received amounted to 7,844, a 13.3% year-on-year increase. 7,744 of these had been processed, with 2,976 cases (38.4%) resulting in agreement between the parts in dispute, 567 cases (7.3%) being withdrawn, and 4,166 cases (53.8%) resulting in conciliation being broken off for reasons such as the non-participation of one or other of the parties in dispute. The time required for conciliation was not more than one month in 57.1% of cases, and more than one month but less than two months in 35.0% of cases.

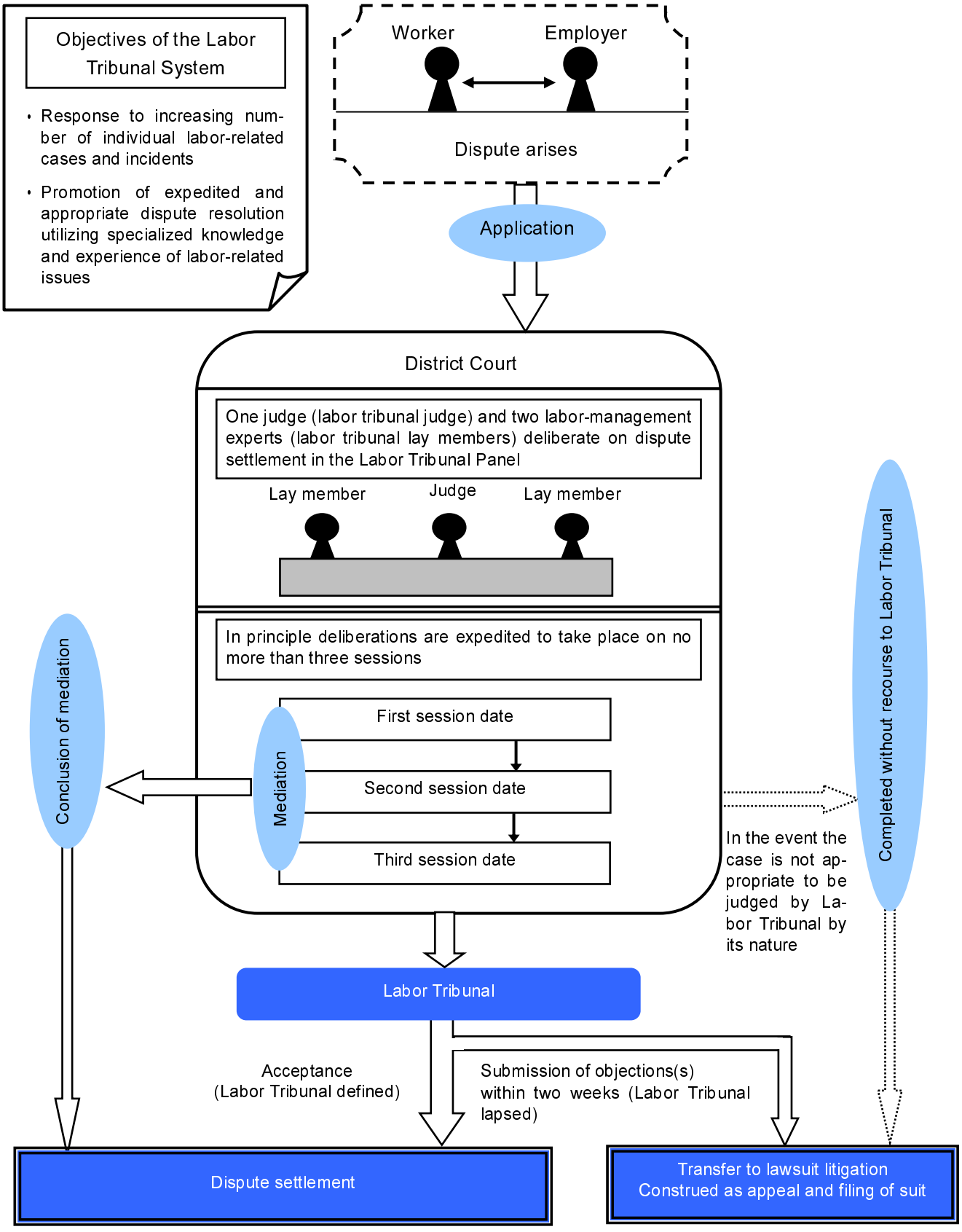
2. Judicial System

(1) Resolution Systems

Two methods of judicial resolution of individual labor disputes are available: civil litigation and the labor tribunal system, which entered operation in April 2006. As the former is conducted in accordance with the same procedure as other civil cases, it is the latter that we will consider below.

The labor tribunal system is basically aimed at disputes concerning rights and obligations in individual labor relations (individual civil disputes in labor relations), and in contrast to ordinary civil litigation cases concerning labor relations, procedures for dispute resolution are accelerated by a tribunal composed of a judge (labor tribunal judge) and persons involved in industrial relations (labor tribunal lay members). This tribunal panel attempts a resolution by mediation, but if this fails then a ruling is handed down (within three sessions as a rule). If there is any objection to a decision, then the case automatically proceeds to become an ordinary civil lawsuit (see IV-16).

IV-16 Overview of the Labor Tribunal System



Source: Website of Prime Minister of Japan and His Cabinet

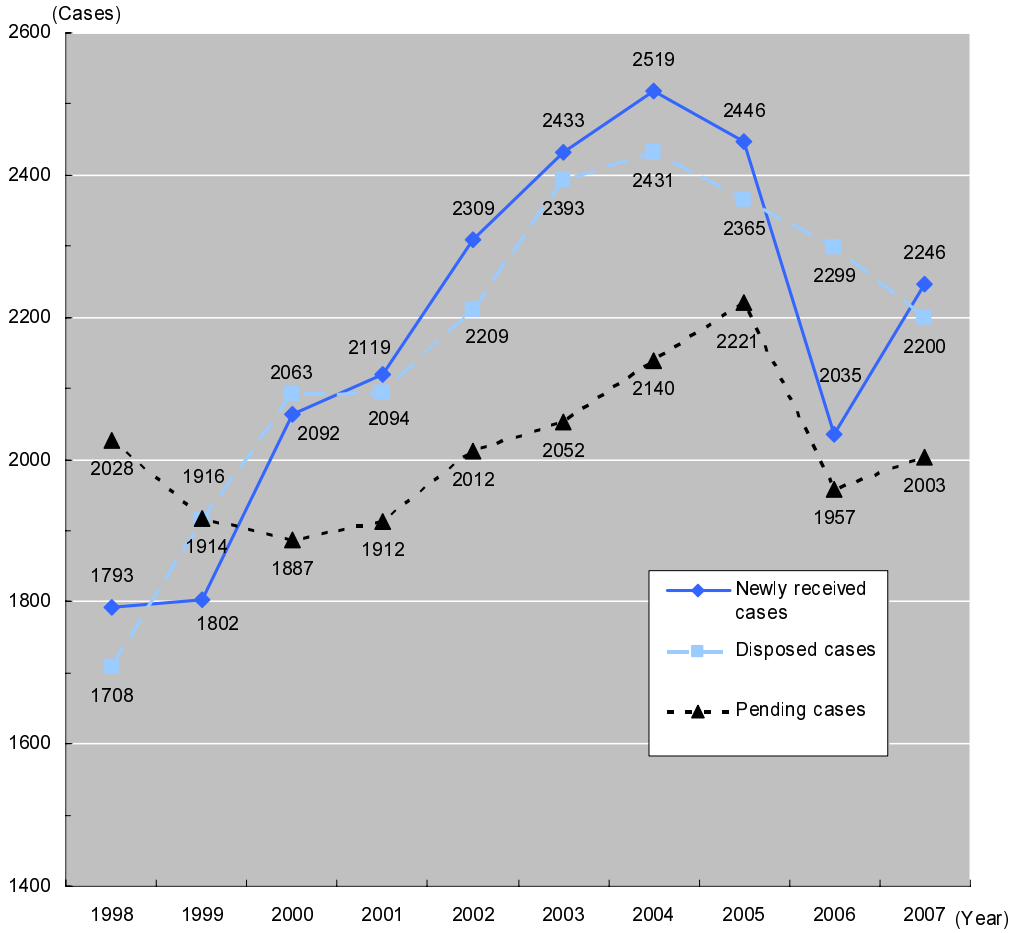
(2) Trends in Actual Functioning and Cases Handled

The number of ordinary civil labor relations cases has been on the decline over the past few years. (The following figures are taken from the General Secretariat of the Supreme Court's Outline of Labor Relations Civil Administrative Cases for 2007, The Lawyers Association Journal, 60(8) (2008)). Viewed over the period of the past decade, however, it can be seen that the number has increased compared with the first two or three years (IV-17).

In 2007, 2,246 ordinary civil litigation cases concerning labor relations came before the district courts of Japan, of which 2,105 had employees as plaintiffs and employers as defendants. A breakdown shows that cases most frequently arose concerning "wages, etc," (1,246), followed by actions for "determination of continuation/discontinuation of employment contracts, etc." in relation to retirements and dismissals (537), and "others" including claims for compensation (322) (see IV-18).

In the same year, the district courts handed down rulings in 2,200 cases, with the average time for deliberations being 11.7 months. 701 cases (31.9%) were concluded in "not more than six months," 639 cases (29.0%) were concluded in "not more than one year," and 649 cases (29.5%) were concluded in "not more than two years," meaning that approximately 90% of all cases took no more than two years to conclude. There has been no change in these trends over the past five years.

IV-17 Number of Newly Received, Disposed, and Pending Ordinary Civil Litigation Cases concerning Labor Relations (District Courts, 1998-2007)



Source: General Secretariat of the Supreme Court, *Outline of Labor Relations Civil and Administrative Cases for 2007,* The Lawyers Association Journal, 60(8), p. 47 (2008)

IV-18 Number of Newly Received Ordinary Civil Litigation Cases concerning Labor Relations by Party and Type of Claim (District Courts, 2003-2007)

	Newly received	Plaintiff: Employee Defendant: Employer				Plaintiff: Employer Defendant: Employee	Other
		Total	Declaration of existence of employment contract, etc.	Wage, etc.	Other	Declaration of absence of employment contract, compensation, etc.	Declaration of invalidation of resolution of expulsion, etc.
2003	2,433	2,319	530	1,473	316	103	11
2004	2,519	2,309	573	1,427	309	186	24
2005	2,446	2,303	507	1,437	359	135	8
2006	2,035	1,900	456	1,130	314	124	11
2007	2,246	2,105	537	1,246	322	121	20

Source: General Secretariat of the Supreme Court, *Outline of Labor Relations Civil and Administrative Cases for 2007,* The Lawyers Association Journal, 60(8), p. 50 (2008)

Regarding labor tribunals, on the other hand, 1,494 new cases came before the district courts in 2007. These break down into two approximately equal categories: 780 "non-pecuniary" cases and 714 "pecuniary" cases. A more detailed inspection reveals the commonest cause, accounting for 719 cases, to be the non-pecuniary "declaration of status" (under employment contracts relating to retirements/dismissals and personnel transfer cases), followed by 441 pecuniary cases concerning "wages and benefits." Wage and benefit cases probably include grievances concerning overtime pay and pay in lieu of notice. 147 of the non-pecuniary cases were classified under "others," which in many instances are likely to be claims for compensation (see IV-19).

1,450 labor tribunal cases were disposed of, and approximately 70% were concluded by mediation. The next commonest form of conclusion, though trailing by a large margin, was labor tribunal judgment, which accounted for 306 cases. It should be noted, however, that objections were filed regarding the majority of labor tribunal judgments. (Regarding the above, see IV-20, where "Article 24 termination" refers to cases that were terminated by the authority of the labor tribunal due to their inappropriate nature pursuant to Article 24 of the Labor Tribunal Act.) Approximately 70% of the disposed cases were concluded in not more than three months (around 5% in one month, 30% in two months, 35% in three months, and just under 30% in six months), and the average period of examination in 2007 was 2.5 months (compared with 2.4 months in 2006), indicating that resolutions are achieved more rapidly than with ordinary civil actions. Of the disposed cases, at least 90% were concluded in not more than three sessions (around 5% were not examined, 16% were examined once, 36% twice, and 40% three times), indicating that the system is working largely as it is supposed to.

IV-19 Number of Newly Received Labor Tribunal Cases by Type of Case (District Courts, 2007-2008)

	Newly received	Non-pecuniary			Pecuniary			
			Declaration of status	Other		Wages and benefits	Retirement allowances	Other
2006	877	463	418	45	414	266	66	82
2007	1,494	780	719	61	714	441	126	147

Source: General Secretariat of the Supreme Court, *Outline of Labor Relations Civil and Administrative Cases for 2007*, The Lawyers Association Journal, 60(8), p. 56 (2008)

Note: Newly received cases in 2006 are from April to December.

IV-20 Number of Disposed Labor Tribunal Cases by Reason for Conclusion (District Courts, 2007-2008)

	Number disposed	Labor tribunal judgment		Successful mediation	Article 24 termination	Withdrawn	Rejected or transferred, etc.
			Objection filed				
2006	606	107 (17.7)	74 〈69.2〉	427 (70.5)	19 (3.1)	50 (8.3)	3 (0.5)
2007	1,450	306 (21.1)	178 〈58.2〉	997 (68.8)	47 (3.2)	93 (6.4)	7 (0.5)

Source: General Secretariat of the Supreme Court, *Outline of Labor Relations Civil and Administrative Cases for 2007,* The Lawyers Association Journal, 60(8), p. 56 (2008)

Note: The figures for 2006 indicate the number of disposed cases from April to December of that year. Figures in parentheses or angle brackets indicate percentages. Proportions given in the "objection filed" column indicate the proportion of cases for which objections were filed to the number of cases concluded by labor tribunal. Refer to Note of IV-19