

**Reconstruction of the Mechanism for Establishing Terms and Conditions of
Employment based on Changes in the Social-Economic Structure**

Summary

Participating Researchers

Contributing Author (Chapter)

Shunichi Uemura	Research Director, the Japan Institute for Labour Policy and Training (Outline, Chapter 1, Chapter 2 Introduction, Chapters 4 and 5)
Kaoko Okuda	Associate Professor, Faculty of Welfare Society, Kyoto Prefectural University (Section 1, Chapter 2)
Hiroyuki Minagawa	Associate Professor, Faculty of Law and Economics, Chiba University (Section 2, Chapter 2)
Chikako Kanki	Doctorate Program, University of Tokyo Graduate Schools for Law and Politics (Section 3, Chapter 2)
Hirokuni Ikezoe	Deputy Senior Researcher, the Japan Institute for Labour Policy and Training (Section 4, Chapter 2)
Akio Kihara	Deputy Director, the Japan Institute for Labour Policy and Training (Outline, Chapters 3 and 5)
Yuichiro Mizumachi	Associate professor, Institute of Social Science, University of Tokyo (Chapter 4)

Other participating researchers

Oh, Hak-Soo	Deputy Senior Researcher, the Japan Institute for Labour Policy and Training
Junko Hirasawa	Researcher, the Japan Institute for Labour Policy and Training

Research Period

October 2003 to March 2006

(Interim report for the project research ending March 2007)

Objective of the Research

This is an interim report of the "Research on the Reconstruction of the Mechanism for establishing terms and conditions of employment," one of the nine projects launched by the Japan Institute for Labour Policy and Training as its mid-term objective.

In the mechanism for establishing working conditions in Japan, the labor protection laws, as the basic framework, define the minimum working conditions, and working conditions that are more advantageous than the minimum working conditions are set based on collective agreements concluded through labor-management negotiations. In the "Research on the Reconstruction of the Mechanism for Establishing Working Conditions," we analyze issues related to diversification of employment styles, a decline in the unionization rate, and an advance in individualization of human resource management, examine the mechanism for establishing working conditions, and make the necessary policy proposals.

Method of the Research

This research has the following subtopics: comparison of the legal systems in Europe and the U.S.; functions and status of labor unions and labor-management negotiations; changes in labor relations and the ideal legal system; and unionization of part-time workers.

The research project is planned to be conducted during the period from October 2003 to March 2007. Although one year is still left before the final research report is to be completed, this interim report is prepared based on results obtained from the research work that took place over two and a-half years on the subtopics, also incorporating results obtained from other surveys and researches conducted by the Japan Institute for Labour Policy and Training in relation to this theme.

Using translated papers presented to the Comparative Labor Law Seminar (organized by the Institute in March 2004) by researchers studying employment and labor laws from seven different countries including France, Germany, U.K. and the U.S., we have identified and summarized policy implications through comparative observation of the legal systems in Europe and the U.S., with additional introductory part related to the issues identified in Japan. Chapter 2 of this report introduces the results of this research, limiting our focus on the U.S., U.K., Germany and France, and using reference to related researches conducted by the JILPT on foreign countries.

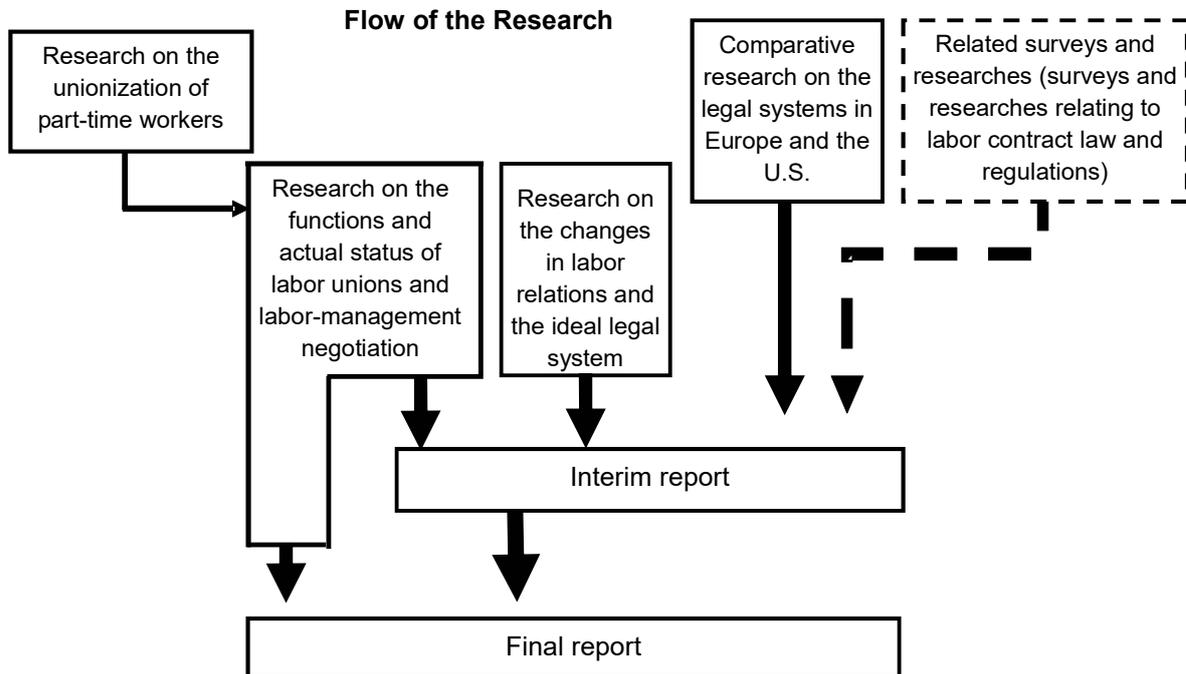
For the research on functions and status of labor unions and labor-management negotiation, we analyzed the status and functions of labor unions and labor-management negotiations, which are major elements that play an important role

in the mechanism for establishing working conditions. This research consists of two parts: one is the general review of the existing results of surveys and researches related to labor unions, and the other is examination and analysis of a study group with a focus on the small and medium sized enterprises. Based on the results of existing surveys and researches, we define, in Chapter 3 of this report, functions and status of labor unions that are the main player in the mechanism for establishing working conditions. Results of the research obtained by the study group on the small and medium sized enterprises will be incorporated into the final report.

For the research on the changes in the labor relations and the ideal legal system, we observed the changes in labor relations and labor laws in the major countries abroad, which are taking place to adapt to worldwide changes in the social-economic structure, and the background of those changes with comparison to cases in Japan. We made analysis from the viewpoint of political philosophy, business history, law and economics and so on, and made an attempt to propose a new labor law model (a basic framework). The result is summarized in Chapter 4 of the report.

Also, in light of the fact that the unionization rate of non-regular workers is remarkably low, we have studied the unionization of non-regular workers in this research project, by focusing on part-time workers who constitute the largest portion of non-regular workers. Surveys were conducted in order to analyze the activities of labor unions that are trying to unionize part-time workers. The result is reported in Chapter 3 and is used as a reference throughout this research project.

The following figure shows the flow of the research.



Contents of the Report

This report is an interim report of the research project "Research on the Reconstruction of the Mechanism for Establishing Terms and Conditions of Employment," and with the use of results obtained from research on the subtopics, we identify specific problems and issues for further discussions in relation to reconstruction of the mechanism for establishing terms and conditions of employment.

The report is composed of the following contents.

In Chapter 1, we focus on the declining unionization rate and union membership, and increasing diversity and complexity of companies and workers, outline the issues related to the mechanism for establishing terms and conditions of employment, and indicate the meaning of the research on the reconstruction of the mechanism for establishing terms and conditions of employment. In Chapter 2, based on the results from the research on one of the subtopics, "Legal Mechanism for Establishing Working Conditions: Observation for Comparison of Laws in Seven Countries," and the results of other researches conducted by the JILPT on the mechanism for establishing terms and conditions of employment in other countries, we introduce the systems for establishing working conditions used in four countries: the U.S., Britain, Germany and France. In Chapter 3, we review a wide range of precedent surveys and researches on the status of labor unions and present the results of the analysis to precisely understand the mechanism of establishing working conditions through labor-management negotiation,

in other words, the current situation of the collective mechanism for establishing terms and conditions of employment. In Chapter 4, we introduce the results of the research on one of the subtopics, "Changes in the Labor Relations and Ideal Legal System." While the labor law was supposedly designed for "indefinite, full-time, collective, dependent workers," offering the State with facilities to establish blanket codes, we attempt to find a new model (a framework) of the labor law system in this research, based on the recent social changes associated with the post-industrialization and globalization. Based on the above results, we finally set in order and present issues and problems related to further examination of the mechanism for establishing terms and conditions of employment in Chapter 5.

The contents of each chapter are summarized below.

1. Implications of the Research on the Mechanism for Establishing Terms and Conditions of Employment (Chapter 1)

Chapter 1 clarifies the meaning of the research and issues on the reconstruction of the mechanism for establishing terms and conditions of employment.

In relation to the mechanism for establishing terms and conditions of employment, one of the principal and most important issues, firstly, is the fact that the declined unionization rate and union membership diminish the presence of labor unions, one of the parties involved in labor-management negotiations, and also weaken the collective system of establishing terms and conditions of employment. Secondly, diversification of employment styles, diversification of workers, and progress of individualization of personnel management in companies are making it difficult to create uniform regulations in the way it was conventionally done in the past, and we are required new approaches in the area of the labor protection law that determines the minimum working conditions. The above two issues are related to the basic framework of the mechanism for establishing terms and conditions of employment, namely, setting the minimum standard by the labor protection law and setting additional working conditions through labor-management negotiations.

The decline of unionization rate and union membership raise the following questions in considering the ideal mechanism for establishing terms and conditions of employment. The first is how we should consider the autonomy of labor and management and how we revise the legal system related to the autonomous labor-management system. This is also a question of how we should consider and build up the system that allows workers to voice their concern. Secondly, based on the fact

that the unionization rate is extremely low in the small and medium sized enterprises, which employ the majority of workers in the labor force, revision of the mechanism for establishing terms and conditions of employment must take into consideration the mechanism of establishing terms and conditions of employment for those who work in the small- and medium-sized businesses. This issue not only poses a question of how we should consider the system for providing workers with the opportunity to speak in the small and medium enterprises, but also implies the importance of the minimum standard provided by the labor protection law is particularly felt by those who work for the small- and medium-sized companies.

To introduce flexibility to the conventional uniform regulations, a series of reform programs have been implemented. In the background, there are increasing difficulties for the conventional uniform regulations to correspond to the current conditions such as peculiarities in each industry, specific conditions of individual companies, diversified workers and work styles. To introduce the flexible working hour system in the workplace, there are requirements such as labor-management negotiation by a representative representing the majority of workers at a workplace and resolution of the labor-management committee that consists of workers as members of the committee. In some cases the uniform regulations were cancelled in light of the actual situation in companies and workplaces and on the condition that there will be labor-management negotiations between a company and the representative representing the majority of workers at the company. These examples can be seen in the amendment of the Law for Childcare and Family Care Leave and of the Law for the Stabilization of Employment of the Aged in 2004. In another example, the amendment of the Worker Dispatch Law in 2003 obliges companies to listen to the opinions of the majority representative of workers before accepting the services of dispatched workers for the period of over a year to three years.

In these recent examples of important legislation, the concept of the majority representative rule is increasingly adopted in what appears to be moves in the opposite direction to the current trend of the reduced unionization rate and reduced union membership. In the future, companies and workers will become more diversified and complicated. Instead of the conventional, uniform regulations, one of the important issues for the future will be to find out the way to incorporate diversity and complexities of companies and workers into the labor protection law, which defines the minimum working conditions. In this context, the systems designed for that purpose, such as labor-management negotiations with the majority representative and establishment of labor-management committee will have important implications as systems for providing

workers with the opportunity to speak when the presence of labor unions is declining.

2. Mechanisms for Establishing Terms and Conditions of Employment in Various Countries (Chapter 2)

Based on the result of the recent JILPT researches related to the mechanism for establishing terms and conditions of employment in other countries with a focus on the result of the research on the subtopics,¹ Chapter 2 attempts to clarify the latest situation of the mechanism for establishing terms and conditions of employment in four countries, namely, France, Germany, Britain and the U.S.A., in an effort to obtain policy implications for our examination of the system in Japan.

France

In France, legislation of detailed regulations on working conditions historically played the primary role. More recently, however, their approach is changing from the use of legislative regulations to the use of regulations determined by labor-management negotiations. Since the 1980s in particular, various policies have been implemented to allow labor-management negotiations to discuss regulatory matters through the promotion of collective bargaining and reform of the collective agreement system to guarantee collective bargaining. And on such basis, relaxation of regulations is moving further into the company level. Collective agreements can be roughly divided into the national inter-professional agreements for multiple professions and industries, industrial agreements for specific industries, and company agreements for specific companies; and working conditions are defined in concrete terms in the last two types of agreements. Traditionally, the industrial agreement defined the minimum line, and the company agreement added the details. More recently, the company agreement can be made more disadvantageous to workers compared with the industrial agreement. The recent trend will continue and develop further with relaxation of regulations based on labor-management negotiations and promotion of company-level labor-management negotiations.

Germany

¹ Systems and Actual Conditions of the Mechanism to Solve Collective Labor-Management Dispute in Other Countries: Germany, France, Britain, the U.S.A.," JILPT Research Report No. L-9, 2004, "Survey on Labor Contract Legislation in Various Countries," JILPT Research Report No. 39, 2004, "Change in Labor Relations and Ideal Legal System," JILPT Research Report No. 55, 2006, etc.

In Germany, two layers of labor-management relations were established, one for labor unions organized for the industry and the other for works council (betriebsrat) organized within companies. The collective agreements have power to supersede the company agreements, which in turn do not have power to define working conditions that are already or normally defined by the collective agreements. More recently, the open clause was introduced to the industry-level collective agreement to give authority to company agreements, and there is an increase in the number of company-specific collective agreements. However, this decentralization is exercised based on the labor-management agreement on the industry level, and decentralization is not currently permitted if it deviates from the direction and framework established on the industry level. It must be noted that, in principle, decentralization that gives authority to determine working conditions is only allowed when the collective agreement permits regulation of working conditions by the parties concerned at the company and that it is practiced within the framework that gives priority to the industry based unions and collective agreements of the specific industry.

Britain

In Britain, there was a tradition of the collective laissez-faire principle mainly in industry-level collective bargaining and collective agreements, which was justified by agreement of individuals on its binding power. Since the 1980s, as the rigidity of collective bargaining was pointed out and the rights of labor unions were legally restricted, industry-level collective bargaining declined, and, in its place, a number of laws were established to give rights to individual workers. There was the influence of EU law as well. The current Labour Party government is attempting to form two collective channels from the viewpoint of ensuring efficiency and fairness. One of the channels is the promotion of collective bargaining by labor unions, and the other is the establishment of systems of information provision and consultation within companies. Since April 2005 in particular, Information and Consultation of Employees Regulations is in effect to introduce EC Directive on the information provision and consultation of employees, which may support building up the employee representative system in place of labor unions. Further attention should be paid to the development and progress of the regulations.

United States of America

In the U.S., collective labor relations were formed based on the collective bargaining and collective agreement under the collective bargaining system established in the

1930s. There is a tendency in the U.S. to basically rely on the labor market to adjust working conditions, and therefore labor protection has been limited to the system of collective bargaining with exclusive negotiation representation. In other words, the system of collective bargaining acted as the primary framework, and the law played a modest role in regulating actual working conditions. While labor unions have been gradually phased down in recent years, labor protection through collective bargaining did not function as expected, and consequently a number of laws were established to directly secure the rights of individual workers.

3. Functions and actual situation of labor unions in the mechanism for establishing terms and conditions of employment (Chapter 3)

Although labor unions play the primary role in the mechanism for establishing terms and conditions of employment in Japan, the estimated unionization rate has continuously fallen for 30 consecutive years to 18.7 percent in 2005, indicating that the decline in the unionization weakens the functions of the collective mechanism for establishing terms and conditions of employment.

Based on the result of existing surveys, including those conducted by government agencies, we analyze, in Chapter 3, functions and actual situation of labor unions in relation to the mechanism for establishing terms and conditions of employment.

Functions and actual situation of labor unions

Members of labor unions make up less than 20 percent of all workers in Japan, and the majority of them work as regular employees for either large companies or public enterprises. The majority of workers in small- and medium-sized companies and non-regular employees do not participate in labor unions (the unionization rate is only 1.2 percent for companies with 99 employees or less. The unionization rate for part-time workers is only 3.3 percent.) This indicates that labor unions have a very limited role to play in the mechanism for establishing terms and conditions of employment.

Although there is room for debate on the influence of labor unions on the wage in the strict sense, precedent researches indicate that labor unions have influence over working conditions, employment, labor-management communication and other areas, as well as on the relationship between labor and management, on other companies and a variety of other aspects. Moreover, labor unions are highly evaluated by both union members and non-union members on the necessity of labor unions, and there are expectations on the role of labor unions in improving working conditions. Yet, in reality,

labor unions are unsuccessful in unionizing workers. Based on the result of the existing surveys, the remarks described below can be made from the analysis of the activities of labor unions. These remarks imply that labor unions are in fact not sufficiently meeting the expectations of workers.

Although facing the problem of a decline in the union membership and in unionization rate within companies, labor unions are not necessarily active in expanding their unionization. They are not active in unionizing part-time workers and other non-regular workers, and only a few labor unions negotiate with the management on the working conditions of part-time workers. While the trend of inactivity toward unionization is more conspicuous with the labor unions that have the union shop agreement, the existing labor unions are supported by the union shop and check off. (The disadvantage of the union shop must be recognized as it influences activities of labor unions in general.)

As for the relationship with employers, there is a shift from the collective bargaining based on labor dispute to that of labor negotiation without legal backing, consequently reducing the number of collective labor-management disputes. Even though the number of collective labor-management disputes is decreasing, the number of labor-management disputes is not. Labor unions are dealing with individual complaints and labor-management disputes, but their efforts are still not sufficient.

Amid the above state of affairs, labor unions that recognize the importance and issues of labor unions are in the process of developing various activities. Expected to have a role in the legal mechanism for establishing terms and conditions of employment and having substantial influence on workers, labor unions need to further develop their organization and activities.

Mechanism for reflecting the opinions of workers

Apart from those provided by labor unions, a variety of mechanisms are available for reflecting the opinions of workers in the process of establishing terms and conditions of employment.

For example, non-legal mechanisms include labor-management organizations and workplace consultation.

If a labor union is not available, these mechanisms can serve in place of labor unions, but the number of these mechanisms is on the decrease. Although no legal guarantee is

provided with these mechanisms since they are voluntary systems, if a labor union is present in the company and it sets up and operates the mechanisms through labor-management negotiation, the mechanisms can be effective and functional.

Legal mechanisms include those provided by the Labor Standards Law, such as the majority representative system and labor-management committees.

As for the majority representative system, an issue was made of the procedure for selecting the majority representatives in case where there is no single union that represents the majority of workers at a company, and the method of selection was clarified with the amendments of the Enforcement Ordinance of the Labor Standards Law and other laws in 1998. According to the survey conducted for the collection of opinions on changes in working rules, some evidence of optimization is seen for the procedure used to select the majority representatives, though there remain some doubts as to the adequacy of putting the procedure in practice. The procedure of selection needs to be further optimized to establish a framework that would make it easier for the majority representatives to do their work. As for labor-management committees, this chapter introduces the Committee for the Promotion of Working Hours Reduction (the Committee for Establishment and Improvement of Working Hours, Etc. after April 2006), the labor-management committees relating to the system of discretionary labor for those engaged in planning, and the labor-management committees proposed by the "Study Group on the Future Ideal Labor Contract Laws," which was established by the Ministry of Health, Labour and Welfare.

Summary

For workers who have a relatively weak position vis-à-vis the employer, establishment of a labor union provides the most effective way for them to gain an equal footing with the employer. For this purpose, labor unions need to fulfill their mission by further developing their organization and activities and reflect the opinions of diversified workers on their negotiation with the employers.

Since not many labor unions are organized in the small- and medium-sized companies, the mechanism for establishing terms and conditions of employment must provide workers without labor unions in their company an arrangement that is as close as possible to having a labor union.

4. Changes in the Labor Relations and Ideal Legal System

Chapter 4 introduces the result of the research on the subtopic, "Changes in the

Labor Relations and Ideal Legal System."

In this research we observe changes, as well as the background of those changes, in labor relations and labor laws in major countries abroad that were introduced to adapt to changes in their social and economic structures, and analyze the findings from the viewpoint of comparison with Japan and of legal philosophy, political philosophy, labor history, and law and economics. Performing a fact-finding survey on Japanese companies, we also attempt to propose a new labor law model (a basic framework) that supports changes in the labor relations from a wider perspective, including the legal system related to the mechanism for establishing terms and conditions of employment. We have obtained the following result from this research.

Decentralization on the decision-making level

The process of decision-making through decentralized communication proves to be a preferable method. From the viewpoint of legal philosophy, it provides an opportunity to put into practice a new reason (procedural reason) in recognizing and solving complicated problems. From the viewpoint of political philosophy, it works as one of the intermediate organizations that incorporate diversification of individuals and provide social bonds to individuals. From the viewpoint of law and economics, it is one of the ways to provide more precise response to diversified values and preferences.

In terms of comparative law, there is a shift from collective decision-making provided by law to negotiations and decision-making by the parties concerned. At the same time, in France and Germany where collective labor-management negotiation has been traditionally practiced, the levels of labor-management negotiation are being decentralized. Even with the progress of decentralization, however, decisions on the basic objectives, direction, and framework are often made at the collective level, and infringement of the basic rights of workers, such as equal right and rights to protect their health and safety, that results from decentralization, is prohibited.

In Japan, decentralized labor relations are already implemented at the company level with a particular emphasis on flexible communication at the workplace.

Decision-making process

In the history of labor-management relations in Japan, an emphasis was put on the process of collective decision-making with a particular focus on regular employees. If we look at the current situation in Japan, some companies that do not have a labor union provide all employees with the opportunities to participate and speak out, regardless of whether the employees belong to the majority or minority, to pick up and reflect diverse

opinions, but those companies tend to have difficulty in picking up opinions that are related to labor issues such as working conditions.

In terms of comparative law, there are moves to emphasize collectivization because individual workers lack negotiating power and because of the ineffectiveness in realizing the rights without collective support (collectivization has traditionally been emphasized in France and Germany, while its importance is being recognized in the U.S. and Britain). At the same time, the systems are designed so that decisions are not simply based on the majority but the opinions and interests of minorities are also taken into consideration. This is done by providing procedures to promote the participation and reflection of opinions of minorities and a guarantee on the protection of the practical basic rights, which cannot be infringed upon even by the majority decision.

From the viewpoint of legal philosophy, coordination is required, including coordination of the views and interests of minorities, in recognizing and solving complicated problems. From the viewpoint of political philosophy, social bonds and relations are needed in today's society for the purpose of better realizing the rights of individuals who belong to that society, and priority should not be given simply to the opinions of the majority. From the viewpoint of law and economics, setting an appropriate level of decentralized negotiation is a condition for fully achieving collective efficiency. To be concrete, negotiation should preferably be conducted in the place where the authority of decision-making rests, if many items on the agenda involve the interests of workers.

A new labor law model

As a result of this research, we have derived a new model of labor law as described below.

Firstly, a decentralized legal system needs to be established with an emphasis on flexible negotiation and decision-making through labor-management negotiations, instead of uniform standards and regulations based on law and precedents. As for the method for achieving this, the following methods are conceivable: (1) after regulations are established as legal standards, they can be lifted if the decentralized process of negotiation and decision-making is practiced (as in the relationship between the Labor Standards Law and collective agreements or labor-management committees), and (2) on the obligations and responsibilities of employers set by the precedents, the responsibilities of the employers can be exempted if considerations and preventive measures are sufficiently provided based on decentralized negotiation and decision-making. To promote an appropriate process of decentralized negotiation, it is

important to set higher levels of regulations and responsibilities that are applied to cases where negotiations are not carried out appropriately. As the premises and the basis of decentralization, the basic objectives, direction, and framework of the system as well as the guarantee on the basic rights of workers must be collectively determined.

Secondly, the process of decentralized negotiation must be designed for the collectivization purpose and be able to reflect the opinions and interests of minorities. To be concrete, possible approaches include, for example, legally institutionalizing the system of election by proportional representation of members who will serve in the organization that represents the employees, and legally promoting open negotiations carried out by labor, management and other parties concerned and in light of the nature of the issues in question (with the use of legal sanctions if negotiations are not conducted properly).

The labor law model proposed here is only a tentative one derived generally from the results of the review and observation of this research. Taking this opportunity, our challenge will be to deepen our research from even more diverse viewpoints and carry on further discussions so as to contribute to designing a concrete legal system.

5. Summary of the Issues and Direction of Future Review (Chapter 5)

Based on the analysis above, Chapter 5 summarizes issues and problems related to reconstruction of the mechanism for establishing terms and conditions of employment and sets out the viewpoints from which to consider the issues.

If we are to expect labor unions to regain their influence while recognizing the fact that the unionization rate is actually declining, the future review must include the possibility of establishing a system for providing workers the opportunity to speak their views, a system that is as effective as having a labor union.

Based on the agreement with the majority representatives of workers and through resolutions of labor-management committees as provided for in the Labor Standards Law, an increasing number of procedures are now being introduced that suit the actual situation of a workplace or workers working in that workplace. In light of this, it is practical to design a new system for providing workers with the opportunity to speak their views as an extended function of the labor-management committee, which is already allowed in the workplace. To realize equality between labor and management, it is important that companies provide information to workers and consider introducing a mechanism to facilitate labor-management communication and promote exchange of information.

Moreover, for workers, part-time workers and dispatched workers of the small and medium enterprises, in which labor unions are not visible, the minimum standards provided by the labor protection law and the labor standards inspection system that ensures observance of the law become increasingly important.

As it has been noted above, this is the interim report for the project "Research on the Reconstruction of the Mechanism for establishing terms and conditions of employment." We will conduct further research in the fiscal year 2006 as part of the project to examine the mechanism for establishing terms and conditions of employment in the small and medium enterprises, and we will compile the final report, which will incorporate the result of the research in the fiscal year 2006.

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